

QUESTIONS AND ANSWERS

AT THE MEETINGS OF THE

Council of the Governor of Fort St. George

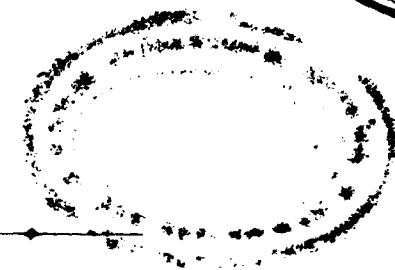
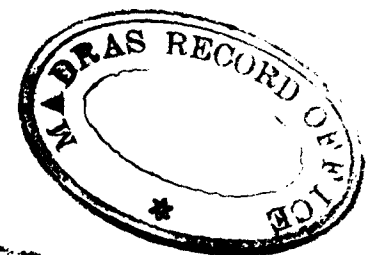
ASSEMBLED

FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS

VOL. V

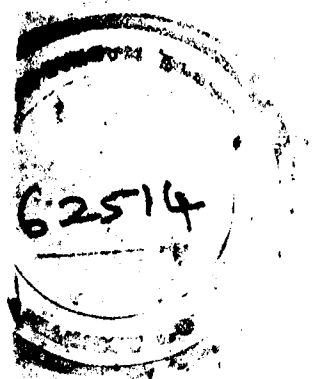
(JANUARY TO JUNE 1913)

WITH INDEX.



MADRAS:
PRINTED BY THE SUPERINTENDENT, GOVERNMENT PRESS.

1914.

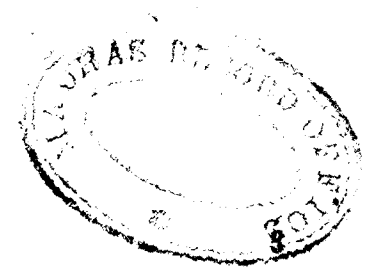


20
V211, 32 '1105

N06-33

MADRAS:

PRINTED BY THE SUPERINTENDENT, GOVERNMENT PRESS.



QUESTIONS AND ANSWERS.

The Hon'ble Mr. Forbes:—

- II. Extension of service is not given to Subordinate Judges and other public officers who have passed 55 years of age unless they are in every respect efficient, mentally and bodily, for the continued performance of the duties of their office. The Government of India have pointed out that the premature retirement of an efficient officer imposes a needless charge upon the State and that the State should not be deprived of the experience of efficient public servants by the exercise of the power possessed by a Local Government of compulsorily retiring them at 55 years of age. Government cannot regard any discontent which may possibly exist among junior officers whose promotion is less rapid than they hoped as in itself a sufficient reason for discontinuing a policy which is designed for the general good of the State.

The Hon'ble M. KRISHNAN NAYAR:—

III. (a) Has the attention of the Government been called to an article under the heading of "A white man's exploit" published in the *Hindu* newspaper of the 6th December 1904, wherein a European first-class passenger is alleged to have without any provocation assaulted a Muhammadan third-class passenger?

(b) Will the Government be pleased to state—

(i) whether the Railway Police Inspector referred to in the article has taken any, and if so, what action in the matter? and

(ii) what has been the result of such action?

The Hon'ble Mr. Forbes:—

III. (a) The Government have read the article.

(b) The offence was non-cognizable and the Railway Police Inspector reported the occurrence to the Magistrate in the usual manner in such cases. The Government have no information as to whether the Muhammadan passenger preferred a complaint before the Magistrate or not.

The Hon'ble M. KRISHNAN NAYAR:—

IV. (a) Has the attention of the Government been called to an article under the heading of "The Tramway in Chintadripet" in the *Hindu* of the 29th December 1904?

(b) With a view to prevent accidents caused by tramcars to children and others in the comparatively narrow streets of Chintadripet through which tramcars run, will the Government be pleased to direct the Tramway Company to divert the existing lines along narrow streets to broader and less dangerous ones?

(c) Will the Government be pleased to call for and lay on the table a statement of the accidents caused by tramcars and the places where these accidents occurred, since the introduction of tramways in Madras?

The Hon'ble Mr. Forbes:—

IV. (a) The answer is in the affirmative.

(b) The matter will receive the consideration of Government.

(c) The answer is in the affirmative. A statement furnished by the Commissioner of Police is laid on the table.

The Hon'ble M. KRISHNAN NAYAR:—

V. Will the Government be pleased to state what amount has been spent on account of the travelling allowance paid to the Revenue Officers in this Presidency in connection with their tours during the past official year?

The Hon'ble Mr. Atkinson :—

- V. The total amount disbursed during the past year was roughly 6½ lakhs. This sum represents the amount paid to all officers in the Revenue department as well as to their establishments: and includes the allowances made on account of tentage and the charges for travelling on transfer as well as on tour.

The Hon'ble M. KRISHNAN NAYAR :—

- VI. Will the Government be pleased to publish the correspondence relating to the scheme of appointments of Land Records Tahsildars and Land Records Inspectors?

The Hon'ble Mr. Atkinson :—

- VI. Government are unable to publish the correspondence.

The Hon'ble M. KRISHNAN NAYAR :—

- VII. Will the Government be pleased to state—

(a) what was the total mileage of roads within the jurisdiction of the District Board of the Gódvári district prior to the new territorial redistribution of the Gódvári and Kistna districts?

(b) what is the total mileage of roads within the jurisdiction of the District Board of the newly-constituted Gódvári district?

(c) what was the amount of the total income of the District Board of the old Gódvári district?

(d) what is the amount of the total income of the District Board of the new Gódvári district?

(e) what was the pay of the District Board Engineer of the Gódvári district at the end of the year 1903?

(f) whether that pay was increased, and if so, by what amount at the commencement of the year 1904?

(g) whether in sanctioning the increase, the Government said that no further increase should be made without their special sanction?

(h) whether the pay of the District Board Engineer has again been increased in the last budget of the District Board, and if so, by what amount?

(i) from what date is this new increase to take effect?

(j) whether the previous sanction of the Government was obtained for this last-mentioned increase?

(k) whether there was any minute of dissent by any member of the District Board against the proposed increase?

The Hon'ble Mr. Forbes :—

- VII. (a) The total mileage of roads in charge of the District Board of Gódvári at the end of 1903-1904 was 1,389.

(b) The total mileage is 729, excluding roads in Bhadrachalam taluk.

(c) The actual receipts of the Gódvári District Board in 1903-1904 were Rs. 9,63,680.

(d) The estimated income of the new Gódvári district for 1905-1906 is Rs. 5,50,570.

(e) The pay was Rs. 500.

(f) It was raised to Rs. 600—10—900 in March 1904 with retrospective effect from 7th October 1903, so long as the district remains undivided.

- (g) The Government directed that no increment beyond the minimum pay of Rs. 600 should be granted to the Engineer without the sanction of Government.

- (h), (i), (j) & (k) The budget for 1905-1906 now with Government contains no proposal for an increase in the salary of the Engineer.

The Hon'ble P. S. SIVASWAMI AIYAR :—

- VIII. Will the Government be pleased to state—

(a) when the decision of the Full Bench of the Madras High Court, dated the 2nd December 1903, declaring the practice of levying prohibitory assessments to be illegal was brought to their notice?

(b) whether with reference to such decision the Government issued any instructions to the Revenue authorities in respect of the practice of levying prohibitory assessments?

(c) whether after the decision came to the notice of the Government any prohibitory assessment has been levied by the Government, and, if so, what is the amount of such assessment collected during the year 1904?

The Hon'ble Mr. Atkinson :—

- VIII. The Honourable Member's question shows some misapprehension of the case. The High Court gave a judgment declaring that the levy of penal assessment was illegal in one particular case which was before them. This judgment was brought to the notice of Government in April last and gave rise to the proposed legislation which is now before this Council. The Government have meanwhile endeavoured to protect communal lands against the encroachments which were encouraged by this judgment, but the instructions given did not and could not authorise recovery under Act II of 1864. The Government have no information as to the amount of prohibitory assessment which has been collected since April 1904.

The Hon'ble P. S. SIVASWAMI AIYAR :—

- IX. With reference to the reply to Question No. XXXV at the meeting of the Council on the 29th November 1904 that the amount of the income-tax collected in the year 1902-1903 on incomes above Rs. 1,000 and below Rs. 1,250 was 2.15 lakhs and that the income-tax collected in 1903-1904 on the incomes of the same grade was 3.31 lakhs, will the Government be pleased to state—

(a) the number of persons assessed in the said grade for 1902-1903 and 1903-1904 respectively?

(b) whether there is any explanation for the increase in the number of persons assessed to income-tax on incomes between Rs. 1,000 and Rs. 1,250?

(c) whether there has been any similar or any and, if so, what increase in the number of persons assessed to income-tax in the grades above Rs. 1,250?

(d) whether in view of the recent resolution of the Government of India upon the administration of the income-tax, the Government will be pleased to ascertain whether, and, if so, how far, the increase of the numbers in the grade between 1,000 and 1,250 is due to the transfer of persons formerly taxed in the lowest grade to the next higher grade?

The Hon'ble Mr. Atkinson :—

- IX. (a) The number of persons assessed on incomes above Rs. 1,000 and below Rs. 1,250 in 1902-1903 and 1903-1904 was 10,196 and 18,973 respectively.

(c) The number of persons assessed to income-tax in the grades above Rs. 1,250 fell from 22,197 in 1902-1903 to 21,751 in 1903-1904.

- (b) & (d) The probable explanation for the increase is that the number of incomes in the particular grade has increased either by the prosperous circumstances of the period or by more attention of the servants of Government to their duty or by both, but a special enquiry into the matter has been ordered.

The G.Os., Nos. 793, dated 4th August 1903, and 788, dated 23rd July 1904, containing the income-tax statistics will now be placed on the table.

The Hon'ble G. SRINIVASA RAO :—

X. (a) Is it a fact that want of rain has been felt all over the Presidency? Has the drought prevailing been so severe as to necessitate the organization of relief measures?

(b) Will the Government be pleased to note that encouragement to the sinking and construction of wells on private lands, both wet and dry, will be of great protective and productive value and order it to be given a place among proposed relief works?

(c) Will the Government be further pleased to direct the withholding of the collection of Government kists wherever there may be a complete failure of crops?

(d) Will it, at all events, be the pleasure of Government to order the postponement of the collection of the first instalment of kist and thereby grant relief to the suffering ryot?

The Hon'ble Mr. Atkinson :—

X. As other Honourable Members are asking similar questions with regard to the state of the season, it will be convenient at this stage to make a general reply.

The rainfall in and up to November has been generally deficient except in the Circars, the West Coast districts and on the Hills. The deficiency has been most marked in Cuddapah, Nellore, Chingleput and Kurnool. At the beginning of December the Government directed the Settlement Commissioner to visit the affected districts and particularly those in the Deccan, Central and Carnatic groups. The Settlement Commissioner has accordingly visited the districts of Chingleput, Coimbatore, South Arcot, Salem, Trichinopoly, North Arcot, Anantapur, Bellary, Nellore, Kurnool and Cuddapah. His reports show that though there will no doubt be a considerable failure of crop both wet and dry in most of the districts which he inspected, it is unlikely that it will be necessary to organise any measures of famine relief in the strict sense of the term.

The physical condition of the people shows no deterioration so far, and the labouring classes generally are not complaining of dearth of labour. Nor are there any signs of an increase in crime or of the other usual accompaniments of prevalent distress, while during the current month prices have been steady or have shown a tendency to fall. The Government are, however, keeping a vigilant watch over the condition of the country and, should necessity arise, there will be no delay in the application of measures of relief.

As regards the collection of land revenue assessment, it is probable that remissions of wet assessment will be necessary on a scale more or less extensive throughout the area wherever the rains have been short. The grant of dry remissions however will be generally unnecessary. The attention of the Collectors of the affected districts has been specially drawn to the instructions embodied in the Standing Orders on the subject of exceptional remission and they are taking the initiative in inspection without waiting for the receipt of written applications.

Collectors are also suspending collections in cases where it is practically certain that remission will ultimately be granted.

In Cuddapah a general postponement of the collection of the first two kists has been ordered on all rain-fed lands in seven taluks, and in Kurnool, the collection of the first three kists on dry lands other than those protected by wells has been postponed till March in the Markapur taluk and in various parts of six other taluks. In parts of two taluks in Bellary the January kist has been postponed till March. Similar postponements will be sanctioned by the Board of Revenue where necessary.

With regard to the Honourable Member's question about wells, the Government are aware of their productive and protective value and have frequently called attention to the importance of encouraging their construction by private enterprise by the liberal grant of loans. They are, however, not suitable as relief works.

The Hon'ble G. SRINIVASA RAO :—

XI. (a) Will the Government be pleased to state the total extent of land which the Periyár project was calculated to irrigate and the extent which it has fully succeeded in irrigating up till now?

(b) If the full extent as originally calculated has not yet been brought under cultivation, will the Government be pleased to stop the further sale of tank-bed lands until the supply of water to the full extent of lands originally determined to be irrigated by the project is completely assured?

The Hon'ble Mr. Atkinson :—

XI. (a) The total extent of land which the Periyár project is expected to irrigate is 126,955 acres and this area is estimated to be reached in 1909-1910. The area irrigated in 1903-1904 was 109,287 acres against a forecast for that year of 110,535 acres.

(b) The question of postponing the sale of certain tank-bed lands is now under consideration.

The Hon'ble G. SRINIVASA RAO :—

XII. (a) Is it a fact that the Odampokki, a branch of the Vettar river in the district of Tanjore, was not allowed its full or usual quantity of water in consequence of an alteration in the regulation of water tried as an experiment by the Sub-Divisional officer of the Public Works Department?

(b) Is it also a fact that about 100 villages near Tiruválúr which depend upon the Odampokki for their irrigation have suffered from want of water, the water actually let into the Odampokki having been mostly under the level of the lands intended to be served by it?

(c) Is it true that the representations of the Tahsildar and the Sub-Collector of Negapatam to the Public Works Officers to maintain the proper and usual supply of water to the Odampokki were of no avail?

(d) If true, will the Government be pleased to grant sufficient redress to the villagers concerned and prevent the recurrence of similar experimental changes in the established rules for the regulation of water at the cost of the villagers?

The Hon'ble Mr. Atkinson :—

XII. Government have no information on the subject. A report will be called for.

The Hon'ble G. SRINIVASA RAO :—

XIII. (a) Is it the fact that the rule enjoining a certain amount of touring on the Revenue Officers in their divisions is a source of great inconvenience and worry to the people who, for the disposal of their petitions, their complaints and their appeals, have to attend the camp of the officers from great distances?

(b) Will the Government be pleased to restrict the touring of Revenue Officers to inspection work, to prohibit the posting of cases for enquiry and of appeals when the officers are on tour, and to require them to stay at the head-quarters of their division for a fixed period in the month, previously notified, for the conduct and disposal of all enquiries, trials and appeals?

The Hon'ble Mr. Atkinson :—

XIII. The present system is no doubt inconvenient to some people, but it is also convenient to others. Government consider that the balance of advantage is much on the side of the present system.

The Hon'ble G. SRINIVASA RAO :—

XIV. (a) Has the attention of Government been drawn to the article headed "The Tramway in Chintadripet" in the *Hindu*, dated the 29th of December 1904?

(b) Are the several facts alleged therein true?

(c) If true, will the Government be pleased to order the removal of the tramway line from the very narrow and inconvenient roads of the Town of Madras or to cause the danger to the public to be minimised by running the tramcars at slower speed?

The Hon'ble Mr. Forbes :—

XIV. The Honourable Member's question has already been answered by the replies to questions on the same subject asked by the Hon'ble M. Krishnan Nayar. The matter will be considered by Government.

The Hon'ble G. SRINIVASA RAO :—

XV. (a) Is it a fact that, in Vaniyambadi in the district of Salem, the Sub-Magistrate is the Vice-Chairman of the Municipality?

(b) If it is a fact, is it true that cases ordered to be prosecuted by him as the Vice-Chairman under the penal provisions of the District Municipalities Act have come up for trial before him in the capacity of Sub-Magistrate?

(c) Will the Government be pleased to order the removal of the anomaly of the same officer being the prosecutor and the judge in Vaniyambadi and in other places where it may exist?

The Hon'ble Mr. Forbes :—

XV. The Sub-Magistrate is the Vice-Chairman of the Municipality. The Chairman of the Municipality orders prosecutions for Municipal offences. The Vice-Chairman is not empowered to order such prosecutions. Cases under the Municipal and Towns Nuisances Acts in Vaniyambadi are tried by the Special Magistrate of the place, who is the Sub-Registrar.

The Hon'ble G. SRINIVASA RAO :—

XVI. (a) Is it a fact that the institution of the Bench of Magistrates in the head-quarter towns of the districts has worked well and satisfactorily?

(b) If so, will the Government be pleased to extend the system to all the taluks where the Deputy Tahsildars have to do both Revenue and Criminal work?

The Hon'ble Mr. Forbes :—

XVI. (a) Benches of Magistrates are not constituted only for the head-quarter towns of districts.

(b) The Government are unable to accept the Honourable Member's suggestion. It would often not be possible to secure the services of suitable persons for a Bench.

The Hon'ble G. SRINIVASA RAO :—

XVII. (a) Is it true that the Mahajana High School in Erode is open to all castes and classes of people and is under proper management, doing good work?

(b) Is it a fact that Erode is a small town incapable of maintaining two High schools?

(c) Is it true that Mr. Logan, the Inspector of Schools, was strongly opposed to the recognition of the London Mission High School in Erode?

(d) Is it also a fact that while so, the Mission High School has been recently recognised "provisionally"?

(e) Will the Government be pleased to state the reasons, if any, for so recognising the London Mission High School at Erode?

The Hon'ble Mr. Forbes :—

XVII. (a) On the information before Government the Mahajana High School in Erode appears to be open to all castes. The work of the school is not considered to be "good" by the Inspecting officers.

(b) The question is one which is open to discussion.

(c) Mr. Logan in 1903 expressed the view that the Mahajana High School was sufficient to meet the requirements of the locality as regards upper secondary education. There is nothing to show that he was strongly opposed to the recognition of the Mission High School. His successors were of opinion that education would be benefited by two High schools.

(d) The fourth and fifth forms in the Mission High School were recognised in 1901 and 1903, respectively. The sixth form was recently recognised "provisionally": the school was recognised in 1899 with the sixth as the highest form.

(e) The Mission High School was recognised on the recommendation of the officers who succeeded Mr. Logan, who were of opinion that there was enough room for two High schools in Erode. One of them was further of the opinion that the existence of the Mission High School was advantageous to the cause of education. Pending further investigation in regard to the future of upper secondary education in the town, the Mission High School has been, as the Mahajana High School is, recognised by the Director of Public Instruction only as a temporary measure.

The Hon'ble G. SRINIVASA RAO :—

XVIII. (a) Is it true that the sewage water from houses in the town of Kumbakonam is allowed to stagnate in many places all the year round and that the big canal made at great cost to serve as drainage to the town is unserviceable as it is not connected with the drains in the town?

(b) Is it a fact that schemes to drain some of the localities in the said town were sanctioned years ago and money borrowed for their execution by the Municipality lies unspent without the schemes being carried out?

(c) Will the Government be pleased to state why the schemes sanctioned long ago are not executed and to direct the Municipal Council to carry them out soon?

The Hon'ble Mr. Forbes :—

XVIII. (a) & (b) Yes.

(c) Schemes originally sanctioned were subsequently found unsuitable and estimates for a fresh scheme are under preparation by the Sanitary Engineer in consultation with the Sanitary Commissioner.

The Hon'ble M. KRISHNAN NAYAR :—

XIX. (a) Is it a fact that by reason of the total or partial failure of the north-east monsoon rains, great scarcity and distress prevail in many districts of this Presidency?

(b) Having regard to the surplus of more than 80 lakhs of rupees as per the budget estimate for 1904-1905 and the prevailing distress in many parts of the Presidency, will the Government be pleased to grant remissions of land revenue assessment in the districts affected by the drought?

The Hon'ble Mr. Atkinson :—

XIX. The Honourable Member's question has already been answered in the reply given to the Hon'ble G. Srinivasa Rao (Question No. X).

The Hon'ble M. KRISHNAN NAYAR :—

XX. (a) Is it a fact that when certain officers are appointed to officiate in higher 'grades' of their own 'class', they are entitled to an acting allowance of one-fifth of the pay of the appointments in which they officiate?

(b) Is it a fact that Deputy Collectors are not included among the officers who are entitled to this privilege?

(c) Will the Government be pleased to take steps to have article 140 of the Civil Service Regulations and Standing Order No. 119 (4) of the Board of Revenue, Madras, altered in such a way as to enable Deputy Collectors also to claim this privilege?

The Hon'ble Mr. Forbes :—

XX. (a) & (b) The answer is in the affirmative.

(c) The question was carefully considered in 1896 and negatived and Government see no reason to re-open it.

The Hon'ble M. KRISHNAN NAYAR :—

XXI. (a) Will the Government be pleased to state what are the gazetted appointments with reference to paragraph 8 of G.O., No. 644, Public, dated 1st August 1904?

(b) Is it a fact that the Assistant Surgeons who are employed as Assistants to District Medical and Sanitary Officers get an allowance of Rs. 50 in addition to their grade pay, while the Assistant Surgeons who are employed otherwise get an allowance of only Rs. 30?

(c) Is it a fact that the Assistant Surgeons who are employed as Assistants to District Medical and Sanitary Officers enjoy certain other privileges also which are not enjoyed by the other Assistant Surgeons?

(d) Will the Government be pleased to say whether it is meant by paragraph 2 of letter No. F. 30-Spl./9085, dated 12th November 1904, from the Accountant-General, Madras, to the Surgeon-General with the Government of Madras that the posts of the Assistant Surgeons who are permanently employed as Assistants to District Medical and Sanitary Officers and the posts of other Assistant Surgeons are interchangeable?

(e) With a view to prevent hardship to the Assistant Surgeons who are permanently employed as Assistants to District Medical and Sanitary Officers, will the Government be pleased to declare that these Assistant Surgeons are not liable to be transferred to posts occupied by the other Assistant Surgeons?

The Hon'ble Mr. Forbes :—

XXI. (a) The appointments referred to are the Civil Surgeoncies of Rajahmundry, Tellicherry, Chittoor and Negapatam, the Additional Medical Officer, Ootacamund, and twenty-one Assistants to the District Medical and Sanitary Officers. The Government have since decided that for purposes of audit, the appointment of Assistant to a District Medical and Sanitary Officer shall be treated as a non-gazetted appointment.

(b) The answer is in the affirmative.

(c) The Government are not aware what other privileges are referred to.

(d) The Government have not seen the letter from the Accountant-General to the Surgeon-General referred to by the Honourable Member. The posting of Civil Assistant Surgeons is vested in the Surgeon-General.

(e) The Government are not prepared to make the declaration proposed.

The Hon'ble K. VENKATA RAO :—

XXII. (a) Has the attention of the Government been drawn to a leading article in the *Madras Standard* of Sunday the 30th October 1904, headed "The Results of the University Elections"?

(b) If so, has any enquiry been held to ascertain the truth or otherwise of the allegations contained therein?

(c) If no enquiry has been held, will the Government be pleased to hold an enquiry now in view of the recommendations of the Indian Universities Commission to invalidate the election of any candidate on whose behalf improper canvassing has been used?

The Hon'ble Mr. Forbes :—

XXII. Yes. The Government have not held an enquiry and see no reason for doing so.

The Hon'ble K. VENKATA RAO :—

XXIII. (a) Have the Government received a memorial from Mr. Oswald deRosario, the dismissed District Board Engineer of Malabar?

(b) If so, have the Government held any enquiry regarding the allegations therein contained?

(c) Will they please state what the result of such enquiry was?

The Hon'ble Mr. Forbes :—

XXIII. Yes. The Government have considered the memorial and the report furnished thereon by the President of the District Board. The appeal was rejected by Government.

The Hon'ble K. VENKATA RAO:—

XXIV. Has the attention of the Government been drawn to several letters which have appeared in the columns of the *Madras Mail* of 20th, 30th and 31st of October last about the frequent transfers of Hospital Assistants? If so, will the Government be pleased to frame some rules to prevent frequent transfers?

The Hon'ble Mr. Forbes:—

XXIV. No correspondence of the nature referred to can be traced in the issues of the newspaper mentioned, on the 20th, 30th and 31st; letters on the subject appeared in the issues of the 25th, 28th and 29th.

Owing to the demands from many quarters for the services of Hospital Assistants, and to the occurrence of emergencies as well as to the necessity for transferring men to fill vacancies and on grounds of health and discipline, it is not practicable to frame rules such as are suggested by the Honourable Member.

The Hon'ble K. VENKATA RAO:—

XXV. In view of the failure of crops owing to the failure of the north-east monsoon and the withering of some of the crops sown during the south-west monsoon owing to the failure of rains in August and September, will the Government be pleased to suspend kist collections in the districts which are affected by the failures of these periodical rains and also to order the Collectors of the said districts to grant remissions in all deserving cases?

The Hon'ble K. VENKATA RAO:—

XXVI. Will the Government be pleased to suspend the rule requiring written applications from the ryots wishing to have remission granted to them, in consideration of the extensive territory affected by the present bad season and of the ignorance and illiteracy of most of the ryots who have incurred total loss of crops or who have left their lands waste?

The Hon'ble Mr. Atkinson:—

XXV & XXVI. The Honourable Member's questions have been answered in the reply given to the Hon'ble G. Srinivasa Rao (Question No. X).

The Hon'ble K. VENKATA RAO:—

XXVII. (a) Has the attention of Government been drawn to the suggestions of Diwan Bahadur Raghunatha Rao made in his letter published in the *Madras Mail* of the 9th instant?

(b) Will the Government be pleased to order that the village officials need not receive pattas annually from ryots, so long as there is nothing to add to, or subtract from, their holdings?

(c) Will the Government be pleased to order that no excess of revenue year's patta, or the claim for such assessment is noted in the previous under the Revenue Board's Standing Order No. 15, section III?

The Hon'ble Mr. Atkinson:—

XXVII. The Government have seen the letter referred to. The Standing Orders of the Board of Revenue provide that as a rule fresh pattas need only be issued when desired by the ryots concerned, and that when a ryot's holding has undergone no change during the year

a new patta is unnecessary. The Honourable Member is no doubt aware that the demand of the previous fasli is already taken as the basis of the kist collections. Excess collections largely arise from the fact that the demand so taken exceeds the current demand in individual cases. The rule proposed by the Honourable Member would therefore in no way prevent the evil of which he complains.

The Hon'ble K. VENKATA RAO:—

XXVIII. (a) Are village officials put to the hardships alleged in a letter which appeared in the *Madras Standard* of 16th December 1904 headed "The miseries of the village officials"?

(b) If so, will Government be pleased to pass orders allowing them leave with pay not exceeding fourteen days in the year?

The Hon'ble Mr. Atkinson:—

XXVIII. The rules framed under Acts III of 1895 and II of 1894 provide liberally for the grant of leave. They were published originally in the *Fort St. George Gazette*, dated 28th June 1898 and 9th November 1897, respectively: and amendments were subsequently published in the *Gazettes* of 30th October 1900 and 1st October 1901. The original rules and the amendments have also been published with translations in the *District Gazettes*. The Government therefore see no necessity for the issue of orders such as the Honourable Member suggests.

The Hon'ble K. VENKATA RAO:—

XXIX. (a) Have the Government received a memorial from the ryots of Markapur in the Kurnool district praying for sanction of the project of connecting the Markapur tank with the Gundlakamma river?

(b) If so, will they be kind enough to state what orders have been passed on the subject?

(c) If the scheme has not already been put in hand for execution, will the Government be good enough to order the same to be taken up urgently as a famine measure?

The Hon'ble Mr. Atkinson:—

XXIX. The Government have received a memorial and the project to which it relates is being investigated.

The Hon'ble K. VENKATA RAO:—

XXX. (a) Will the Government be pleased to state the amount of grazing revenue obtained in the Anantapur district during the years—

1901-1902,
1902-1903,
1903-1904,
1904-1905 up to 31st December 1904?

(b) If the revenue has been steadily falling year by year, will the Government kindly give the reasons for such fall?

(c) Will the Government be pleased to obtain from the District Officers of Anantapur a report of the approximate number of cattle, sheep and goats disposed of at nominal prices by the people of the undermentioned 25 villages which adjoin the Forest reserves in the Tadpatri taluk?—

1. Chillavaripalli.	14. Narjimpalli.
2. Yollutla.	15. Latchimpallai.
3. Nadimpallai.	16. Kothapallai.
4. Madugupalli.	17. Singavaram.
5. Jangamreddipetta.	18. Goddumarri.
6. Karnapudi.	19. Thimmampallai.
7. Googudu.	20. Kodavandlapallai.
8. Kunukuntla.	21. Bukkapuram.
9. Ramapuram.	22. Kuchivaripallai.
10. Chillikondayapaliam.	23. Kummanamala.
11. Palayam.	24. Maddipallai.
12. Pethakotla.	25. Daditota.
13. Parlapalli.	

The Hon'ble Mr. Atkinson :—

XXX. (a) The grazing revenue in Anantapur in the past four years has been as follows :—

	Rs.
1901-1902 (Forest year)	26,708.
1902-1903 (")	19,801
1903-1904 (")	17,382
1904-1905 (July to November)	17,452

(b) The decrease in 1902-1903 was ascribed to the prohibition of goat browsing in Forest reserves. In 1903-1904 the further fall, having been accompanied by an increase in the reported number of offences of illicit grazing, was attributed by the Collector to wilful connivance on the part of Forest subordinates. In the current year there promises to be an increase in the grazing revenue.

(c) The Government see no reason to call for the report suggested as the information cannot possibly be now obtained.

The Hon'ble K. VENKATA RAO :—

XXXI. (a) Will the Government be pleased to state if any enquiry has been made by the local Revenue authorities of the Anantapur district during 1903 or 1904 regarding the cause of the Forest fires in the Tadpatri taluk?

(b) If so, will the Government be pleased to state the conclusions arrived at?

The Hon'ble Mr. Atkinson :—

XXXI. Special enquiries were made by the Collector last year into the causes of the large number of fires that occurred in Anantapur in April, but no definite conclusions were arrived at.

The Hon'ble K. VENKATA RAO :—

XXXII. (a) Have the Revenue authorities of the Anantapur district information to the effect that a large number of cattle, sheep and goats were disposed of to the butchers of Bellary, Bangalore and other places within the last two years apprehending trouble at the hands of the Forest subordinates?

(b) If so, will the Government be pleased to state the nature of the information and the steps taken to assure the ryots against such apprehensions in future?

The Hon'ble Mr. Atkinson :—

XXXII. The Government have no information but have called on the Collector to state whether he or the District Forest Officer has received any such information.

The Hon'ble M. KRISHNAN NAYAR :—

XXXIII. (a) Is it a fact that in many parts of Malabar the second crop has failed owing to the failure of the north-east monsoon rains?

(b) Will the Government be pleased—

(i) to order a special enquiry to ascertain the extent of the damages caused by the failure of the monsoon at an early date before traces of the failure of crops disappear from the fields?

(ii) to grant remission of the second crop assessment in respect of the fields in which the second crop has failed, as per paragraph 16 of G.O., No. 883, Revenue, dated 29th August 1900?

The Hon'ble Mr. Atkinson :—

XXXIII. (a) The Government are not aware of any failure of crop in Malabar. The latest reports show that the standing crops are fair, though they have suffered from want of rain.

(b) The Government are not prepared to order any special enquiry. The ordinary remission rules are in force in Malabar and the local officers will be guided by them.

The Hon'ble P. S. SIVASWAMI AYYAR :—

XXXIV. (a) Having regard to the principles laid down in paragraph 26 of the resolution of the Government of India, dated the 11th March 1904, on Indian Educational policy, and to the resolution of the Madras Educational Conference of 1899, will the Government be pleased to state whether any steps have been taken to put a stop to the use of English as a medium of instruction in other subjects in Lower Secondary schools other than those intended for Europeans?

(b) Whether if no such steps have yet been taken, will the Government be pleased to take an early opportunity of giving effect to the resolution of the Government of India above referred to?

The Hon'ble Mr. Forbes :—

XXXIV. The resolution of the Educational Conference of 1899 referred to was as follows :—

"Resolved that, while this Conference thinks that perfect liberty should be left to managers to adopt whatever language they please as the medium of instruction, it is of opinion that managers of schools, other than those for Europeans, should be strongly advised to adopt the vernacular as the medium of instruction up to and including the third form."

In accordance with this resolution the following addition was made to the preamble of Chapter V of the Madras Educational rules in 1900 :—

"Medium of Instruction.—While managers of schools have perfect liberty to adopt whatever language they please as the medium of instruction they are strongly advised to adopt the vernacular of the pupils as that medium up to and including the third form or seventh standard."

In the revised edition of the Educational rules which will shortly issue the statement that managers are at perfect liberty to adopt whatever language they please as the medium of instruction has been omitted.

The Hon'ble P. S. SIVASWAMI AIYAR :—

XXXV. (a) Has the attention of the Government been called to the article on the registration of hackney carriages in the City of Madras in the issue of the *Hindu* of the 16th January 1905?

(b) Whether the Government concur with the Commissioner of Police in construing section 157 of the Madras City Municipal Act to mean that the owner of a hackney carriage who applies to the Commissioner of Police for registration of his carriage and who not being the owner, possessor or custodian of any animals for use therewith is not liable to pay any animal tax to the Municipality under section 150 or section 152, should satisfy the Commissioner that the tax imposed under section 150 or section 152 upon the animals that may be used with the carriage by persons hiring the carriage has also been duly paid?

(c) Whether the Government are aware that there are several owners of hackney carriages in Madras who own and keep carriages only and let them out from time to time on hire to other persons who own the animals used therewith?

(d) Whether if the Government do not agree in the Commissioner's interpretation of section 157, they will be pleased to issue the necessary instructions to the Commissioner of Police?

(e) Whether if the Government consider the Commissioner's interpretation to be correct, they will be pleased to introduce an amendment in section 157 so as to obviate hardship to the owners of hackney carriages who may not also own or possess the animals or who may have bought the animals only during the current half-year?

The Hon'ble Mr. Forbes :—

XXXV. (a) The Government have now perused the article referred to.

(b) & (d) The Government are advised that the interpretation placed by the Commissioner of Police upon section 157 of the Madras City Municipal Act, is correct.

(c) The Government have no information on the point.

(e) The Government see no present necessity for amending the law.

The Hon'ble G. SRINIVASA RAO :—

XXXVI. (a) Is it a fact that in the district of Madura, out of the lands sold by Government in the Periyár affected region, those required for channels and roads were acquired under the provisions of the Land Acquisition Act, until a year or two ago?

(b) Is it also a fact that relying on one of the conditions in the sale notifications, the Government now require the purchasers to give back such lands on receiving merely a proportionate part of their purchase money?

(c) Will the Government be pleased to state whether there is any reason for such a change of policy?

The Hon'ble G. SRINIVASA RAO :—

XXXVII. (a) Is it the case that purchasers of lands in Periyár affected tracts are required to part with portions of their lands for the purposes of roads and channels without compensation?

(b) Will the Government be pleased to direct that in all cases in which lands in the tract commanded by Periyár irrigation have to be taken up for field channels and roads after the purchasers have reclaimed the soil, a reversion may be made to the practice of acquiring them under the Land Acquisition Act on payment of market value and proper compensation?

The Hon'ble G. SRINIVASA RAO :—

XXXVIII. (a) Will the Government be pleased to order that the condition requiring purchasers to give up land for channels and roads on receipt of a proportionate part of the purchase money be omitted from future sale notifications of Periyár lands?

(b) If the Government be of opinion that such a condition must exist, will the Government be pleased to fix a short period not exceeding six months during which the condition may be in force, so as not to deprive the purchaser of the value of his improvements?

The Hon'ble Mr. Atkinson :—

XXXVI, XXXVII & XXXVIII. Before 1902 the provisions of the Land Acquisition Act were usually put in force when lands that had been sold by Government in the tracts under Periyár irrigation were again required for roads or channels. The specific conditions of sale render it unnecessary to apply the Acquisition Act in such cases, and instructions were issued accordingly in January 1903.

The Government consider that the conditions of sale are equitable and necessary to safeguard public interests.

The Hon'ble K. VENKATA RAO :—

XXXIX. Will the Government be pleased to inform what parts of the Bellary, Anantapur and Kurnool districts have been included as falling under the zone affected with insufficient rainfall?

The Hon'ble Mr. Atkinson :—

XXXIX. The rainfall has been in serious defect in the south-east portion of Bellary, in the southern part of the Kurnool district and in the valley of the Penner in Cuddapah.

The Hon'ble K. VENKATA RAO :—

XL. (a) Will the Government be pleased to state the result of the recent tour of the Settlement officer of the Board of Revenue in the districts affected with scanty rainfall and of his conference with the Collectors and their subordinates?

(b) Will the Government be pleased to depute the above or any other officer to make an enquiry into the present state of the ryots in the affected districts by conferring with the officials as well as the non-officials that are interested in, or acquainted with, the condition of the agriculturists?

The Hon'ble Mr. Atkinson :—

XL. The Honourable Member's attention is invited to the answer given to Question No. X. The Government do not think that any further special enquiry is called for at present.

The Hon'ble K. VENKATA RAO :—

XLI. (a) Is it a fact that people coming from places declared to be affected with plague are prohibited from entering certain villages and towns in the Kurnool district for transacting business or visiting friends and relations, unless they stay outside for some days, under medical or official observation?

(b) If so, will the Government be pleased to put a stop to such practices?

The Hon'ble Mr. Forbes :—

XLI. Government understand that any action in this direction is entirely spontaneous on the part of the villagers. No interference on the part of Government is called for.

The Hon'ble K. VENKATA RAO :—

XLII. Will the Government be pleased to call for information or statistics on the following points in towns and villages declared as affected with plague in the Bellary, Anantapur, Kurnool, Salem and Coimbatore districts during the year 1904:—

(a) What is the total number of plague cases that occurred in each of the affected villages and towns?

(b) What is the number of houses ordered by the Plague officers to be evacuated in each of the said villages and towns?

(c) What is the approximate population that was sent out of the houses compulsorily evacuated in each of the said villages and towns?

(d) Number of sheds erected by the Government, District Boards and Municipalities for the occupation of evacuated persons in each village or town?

(e) What is the sort and extent of relief granted to the indigent persons in putting up sheds for themselves in each village or town?

The Hon'ble Mr. Forbes :—

XLII. (a), (b), (c), (d) The Government do not understand what useful purpose could be served by the information asked for and are not prepared to order the labour involved in obtaining it.

(e) The Honourable Member is referred to rules 62 and 64 of the Mufassal Plague regulations.

ACT ASSENTED TO BY HIS EXCELLENCY THE GOVERNOR.

The Secretary reported that the Madras Village Panchayats Regulation and the Madras Village Courts Act Amendment Act, 1904, which had been passed into law at the meeting of the Council held on the 29th November 1904, received the assent of His Excellency the Governor on the 5th December 1904.

ACT ASSENTED TO BY HIS EXCELLENCY THE GOVERNOR-GENERAL.

His Excellency the PRESIDENT :—I have the honour to announce that the Madras Village Panchayats Regulation and the Madras Village Courts Act Amendment Act, 1904, received the assent of His Excellency the Governor-General on the 19th December 1904.

COMMUNICATIONS FOR COUNCIL.

The Secretary reported the receipt of a memorial from the Mahajana Sabha, Madras, on the subject of the Madras Land Encroachment Bill, and laid on the table the following papers :—

(i) G.O., No. 50, Revenue, dated 20th January 1905, with reference to the answer given to question No. X at the meeting of the Council held on the 29th November 1904.

(ii) Statement of tramway accidents referred to in the answer to Question No. IV and G.Os., Nos. 793 and 788, dated 14th August 1903 and 23rd July 1904, respectively, specified in the answer to Question No. IX asked at the present meeting.

THE MADRAS PORT TRUST BILL, 1904.

The Hon'ble Mr. G. S. FOREES :—Your Excellency, it now devolves upon me to introduce the Madras Port Trust Bill and to move that it be read in Council. The Statement of Objects and Reasons attached to the Bill, which has been duly published, gives a short account of the origin of the legislation now to be undertaken, and explains in detail the provisions of the Bill, in so far as these differ from the provisions of the Harbour Act, which the present measure will displace. It is not necessary for me, therefore, to add much to what appears in the statement.

The present law was never satisfactory to the Board of Trustees created by the Act, who found the restriction of their authority to the harbour to work unfavourably to the best interests of the harbour itself, as well as to the general welfare and trade of the port. Serious doubts also arose as to their legal responsibilities in connection with the foreshore, which was vested in them by the Act; and there were financial difficulties, owing to the great burden of the harbour construction, which necessitated the debt with which the Board started. These matters formed the subject of much correspondence between the Government and the Trustees; and finally His Excellency Lord Amphill suggested, as the readiest way of arriving at a common understanding of the differences that had arisen and of finding the best solution of them, that the Government should receive a deputation from the Board to discuss their proposals. A conference was accordingly held, and with the happiest results, since it eventuated in the Bill now before the Council, which embodies the provisions upon which both the Government and the Board are generally in mutual accord.

As I have already said, the Statement of Objects and Reasons explains in detail the clauses which differ from the present Act. I shall, therefore, confine my remarks to a few general observations upon the more important alterations of substance and principle which the Bill proposes to introduce. These may be arranged under three heads. First, provisions for giving effect to the object of constituting the Trust a Port Trust, instead of a Harbour Trust; secondly, provisions enlarging the powers and privileges of the Board; and, lastly, the new financial arrangements proposed by the Bill.

As to the constitution of the Trust as a Port Trust, the Indian Ports Act will not, it is true, be displaced within the port of Madras, and the Trustees will continue to be the Conservators under the Act for the conservancy of the port. But the authority of the Trustees under this Bill will now extend beyond the harbour to the whole Port: For example clause 60 of the Bill, instead of restricting, as section 60 of the Act does, the power of the Board to considering what works are necessary or expedient for the purposes of the harbour and carrying them out, extends their functions to the needs of the whole port. Similarly, clause 61 of the Bill, which amends section 61 of the Act, specifies the numerous classes of works which may be undertaken by the Trustees for the benefit of the port, and of the shipping and trade that use the port, and not the harbour merely, and so on. It is in this sense that the new legislation will create a Port Trust to replace the Harbour Trust, and not by ousting the jurisdiction of the Indian Ports Act, all authority under which, however, the Trustees will continue, as I have already mentioned, to exercise as Conservators under that Act.

The limits of the port will be liable to alteration from time to time, as they always have been, by notification under the Ports Act. That affects only the limits of the Board's authority and does not in any way affect the property to be vested in the new Board. The property to be vested in the new Board under clauses 33 and 34 is quite a distinct matter from the area of the Board's jurisdiction. It will be seen that clause 33 vests in the Board only the harbour and the four plots of lands or premises on the foreshore and not the foreshore itself. So far as portions of the foreshore may be needed for the purposes of the port, it will be open to the Government to convey or lease such plots under the provisions of clause 34.

The next point to which I would direct attention is the enlarged powers and privileges which the Bill proposes to confer on the new Board, besides the extension of these which arises from the wider area within which they are to be exercised. The Board will be empowered to appoint Pilots and Harbour Masters for the port, to regulate their fees and enforce discipline over them—clauses 27, 28 and 37. They may also provide, under clause 61 (7), pilot boats and appliances for the safe navigation of the port.

The Trustees are further empowered, by clause 38, to undertake the landing, shipping and transshipping of cargo in the port, also to regulate the lighterage of goods—clause 93 (8). Clause 40 enables the Board to charge for the use of docks and services therein, and for barges and fire engines and for the supply of water to shipping and also for towage, while, by sub-clauses (8) to (10) of clause 61, the Board is authorised to provide appliances for all these services.

In respect of these and like matters, the wishes of the Board will, it is believed, be very fully met.

Finally, there are the financial provisions of the Bill. One of the most important of these, clause 57, embodies the concession made by the Government of India reducing the interest chargeable on the debt to the Secretary of State from $4\frac{1}{2}$ per cent. to 4 per cent. This concession, it will be seen, will have retrospective effect from 1st April 1902. So far as this old debt is concerned it has also been arranged that repayment may be made on such terms as to the time and mode of repayment as the Government of India may settle; this amends the rigid provisions of sections 31 and 32 of the present Act. The general scheme for raising loans is embodied in clauses 47 to 56, which are modelled generally on the Calcutta Port Trust Act. The provisions of the present Madras Act are very inadequate and defective. In order to increase the Board's facilities in the money market in raising loans, the Trustees proposed that debenture interest should be made a prior charge to the interest due on the Secretary of State's loans. They also proposed that, on the default in the payment of the interest on the latter class of loans, the Accountant-General should pay the interest and debit the amount to Provincial revenues. The Government were unable to accept these or other proposals of a similar kind. The Bill, however, provides a scheme which, it is believed, will give the Board all financial facilities which they can reasonably expect. Although a Crown debt has ordinarily priority over any private debt, the Secretary of State will waive his priority, and State loans and ordinary debenture loans will, as provided by clause 52, rank on the same footing; and at the same time full provision has been made, by clauses 54, 55 and 56, for the establishment and maintenance of sinking funds for paying off long debenture loans. The maximum period of a sinking fund is to be 60 years, but it is not to run for more than 30 years without the previous consent of the Government of India. Owing to an unfortunate error in the press, the maximum period in clause 54 has been omitted in printing the final issue of the Bill, but the omitted words will be inserted in Select Committee. Clause 55 prescribes the securities in which a sinking fund may be invested; while clause 56 provides for the annual audit of the sinking funds by the Accountant-General, and power is taken to require the Trustees to make good any deficits. These provisions will, it is hoped, prove satisfactory to intending investors.

To strengthen their financial position, the Trustees proposed that all balances of the Port fund under the Indian Ports Act, as well as the balances of the Pilotage fund, should be ear-marked by law for the Board. The balances of the Port fund cannot, however, be so diverted wholesale, but the Government have taken power to pay over at their discretion any portion of such balances as they may see fit for the purposes of the new Act. Pilotage receipts are, by clause 69, constituted a separate account, to be held by the Board in trust for the benefit of the Pilot service.

In connection with the financial portion of the Bill, I may state here that since the Bill was published the Secretary of State has required that certain alterations should be made in section 59. To make the reason of these intelligible, it is necessary to explain that the Secretary of State, in approving the present scheme for the improvement of the Madras Harbour, sanctioned the following proposals for financing the scheme:—(1) a grant of Rs. 20 lakhs from Imperial Revenues; (2) the loan of the balance, not exceeding Rs. 40 lakhs, to the Board at 4 per cent. interest, repayable in 60 yearly equal annual instalments; and finally (3)—and this is the condition in point here—that if in any year the Trust is unable to provide from its revenues or balances the full amount required for the service of the loan, the Local Government shall make good the deficiency, their liability being, however, restricted to a maximum of one-half the annual sum necessary for the service of the loan. In the Bill as introduced, clause 59, which prescribes the order in which the expenditure of the Board is to be applied, gives, by sub-clauses (1) and (2), priority to the payment of interest and payments to the sinking fund, ranking thereafter, in sub-clauses (3) and (4), the expenses of the Board's establishment and the cost of the maintenance of the Board's property. Under the Secretary of State's proposals for financing the scheme, the liability of the Local Government, which, however, is a mere executive arrangement between the Local and Imperial Governments, will arise immediately there has been a default under sub-clauses (1) and (2). The Secretary of State now requires that sub-clauses (3) and (4) should precede (1) and (2), thus, as I understand it, affecting the stage at which the liability of the Local Government shall arise.

The powers of control reserved by the Local Government will not, I think, be disputed. The interests of the Trustees generally must always be with those of the

Port. They are themselves merchants to whom every improvement of the Port and of its facilities, which will attract trade and keep it, is of necessity of vital importance; and this in itself furnishes a very effective security for satisfactory administration. But very large amounts of public money have been and will be advanced to the Board in connection with the Harbour Works, and the public interests involved in the administration of the Port affect not only the trade and commerce of Madras, but of the whole Presidency. Conflicting interests may also arise locally. In view of these and other public considerations, it is essential that Government should have a considerable measure of ultimate control, and the provisions in this respect are not larger than the circumstances require.

I may conclude these remarks by reading an extract from a memorandum written in December last by the Harbour Trust Board on the present Bill. The Trustees say:—"Taking the Bill in its present form, however, it is recognised that there are reasons for the non-adoption of some at least of the Board's suggestions of six months ago. Also in some cases the Board does not now desire to press its suggestions any further. It is recognised that the Bill in its essence, as it now stands, is a good Bill. But there are still, in the Board's opinion, some matters which need such amendment as can be made in Select Committee." The few matters to which the Board refer are then explained. They do not affect the principles of the Bill and are details which will appropriately be dealt with by a Select Committee.

The Bill having thus received the approbation of those most interested in its provisions and who are best acquainted with the needs of the Port, the Government have no hesitation in commending the Bill to the approval of the Council. I now introduce the Bill and move that it be read in Council.

The Hon'ble Sir JAMES THOMSON:—I beg Your Excellency's permission to second the motion.

The Hon'ble Sir GEORGE ARBUTHNOT:—Your Excellency, I desire merely to say that this Bill has the full approval of, and is cordially welcomed by, the Chamber of Commerce and the mercantile community. It may be found possible to introduce certain improvements in Select Committee; but, speaking generally, I believe that the Bill is an excellent one and will materially conduce to increasing the prosperity and developing the trade of Madras. I desire also to express our appreciation of the liberal and sympathetic treatment, from a financial point of view, which has been secured for us by Your Excellency's Government from the Government of India. This is all I intended to say; but in view of what the Honourable Mover has told us to-day—what I have not heard before—with reference to the modifications to clause 59, I only wish to say that they will naturally require a considerable amount of attention, and, therefore, that in expressing general approval of the Bill, I desire to say that it does not refer to these modifications. As I understand that the Secretary of State has made the modifications, we have to accept them. At first sight they do not seem to me to be unreasonable in their nature.

The motion was put and agreed to.

The Secretary then read the title of the Bill.

The Hon'ble Mr. G. S. FORBES:—Your Excellency, I now beg to move that the Bill be referred to a Select Committee consisting of the following Members: The Hon'ble Sir James Thomson, the Hon'ble Sir G. Arbuthnot, the Honourable the Advocate-General, the Hon'ble Mr. V. C. Desikachariyar, the Hon'ble Mr. P. S. Sivaswami Aiyar, the Hon'ble Mr. J. Twigg and the Mover.

The Hon'ble P. S. SIVASWAMI AIYAR:—I beg to second the motion.

The motion was put and agreed to.

THE MADRAS LAND ENCROACHMENT BILL, 1904.

The Hon'ble Mr. G. STOKES:—Your Excellency, I will now with your permission move that the Bill to make better provision for the checking of unauthorized occupation of lands which are the property of Government and for levying assessment and penalty for such occupation be read in Council. It has always been regarded

by the Government of Madras as an important duty devolving on it to preserve from encroachment the communal lands set apart for the purposes or convenience of the villagers, or other communities, and no considerations of revenue have ever entered into or influenced the measures taken for that end. From the earliest times in India there would always seem to have been some ill-conditioned members of the community who wished to attain their own advantage at the expense of their neighbours by appropriating the communal lands. So much so, that the law-giver of old, Yagnawalkya, found it necessary to lay down that "whoever appropriates what belongs to the community shall be made to forfeit his property and be banished the realm". This evil tendency in regard to communal lands was kept in check in the earlier years of the last century by criminal prosecution; but it was ruled by the High Court, soon after the introduction of the Penal Code, that such an encroachment in all the more important instances in which it can occur, was not a criminal trespass, and so could not be punished under the criminal law. This ruling took out of the hands of Government an efficient instrument for dealing with the evil, and it practically deprived the communal lands of all protection. It was soon apparent that some remedy must be found. It would, of course, have been possible to have legislated then to provide a remedy, and, personally, at the present moment, I could wish that that course had been taken; but the Madras Government has always been slow to legislate in the past and has preferred to rely on the common law of the country. Under that law the King, to use the phraseology of the old law-givers, "has the power of determining the assessments of revenue" as has been laid down by the Allahabad High Court or, as the Madras High Court put it a few years ago, "the right to levy assessment on land is admittedly a right not conferred by legislative enactment but one exercised in this country from time immemorial by the Sovereign power, and no limitation is placed on that right by any Statute or Law." Under our settlements a limit is practically recognised in this Presidency in the case of land used for agriculture, but I would point out in passing that the doctrine of the Raja Bhagam is no more the basis of the right to assess revenue than the custom of *waram* is the foundation of the right to rent. Communal lands are not lands available or to be used for agriculture, and the Government of 1870 instead of having recourse to legislation applied the method of penal assessment which seemed to them to be legal for the protection of the communal lands. That remedy has for the last 35 years proved effective. But in a late case the High Court has ruled, as an *obiter dictum*, that the Government cannot levy a so-called penal assessment on the occupation of communal lands with a view to eject the trespasser. With the conclusion that it is inexpedient so to apply the prerogative of the Crown, the Government, as at present constituted, is in agreement; and Government is therefore convinced that it is necessary to provide a machinery having a statutory basis for the protection of communal lands. Hence they have determined to introduce this Bill.

When the settlement of a district is being made, the Settlement Department is authorised to fix for all land held for agricultural purposes such rates of assessment as are approved for that purpose. No assessment is imposed on land which is statutory bar to the courts interfering with the rate or amount of assessment fixed on any land, it has long been held that a suit will lie to try the fact of liability to assessment. The Bill before us does not and is not intended to alter in any way the existing position in that respect. Its scope is to define what is not private property, and in which the acquisition of a private right cannot be allowed without permission of trespasser and of punishing his entry. The machinery provided in the Bill is not a new or untried invention. It is that which has been in operation in Bombay since the year 1879. I will now ask the attention of Honourable Members to the detailed provisions of the Bill.

It will be convenient to take the first three clauses together. The drafting of these clauses (I must state that the Honourable the Advocate-General is not responsible for the drafting of the Bill) is not as I would like to see it and I must explain what is not quite clear perhaps at first sight from these clauses though it may be inferred from them, that it is not intended that the present Bill should apply to communal lands in zamindaris. It may be a moot question whether communal lands in zamindaris are the property of the zamindar but that matter will be dealt with at

the proper time. In these clauses it is laid down that all property that is not private property is Government property. It seems to me it will be necessary to consider and define more fully what is meant by private property, but that is a matter for the Select Committee. The Bill goes on to provide that any one unauthorisedly occupying any land the property of Government is liable to pay the assessment and a small penalty and to be summarily evicted. This is a much more merciful manner of dealing with the trespasser than Yagnawalkya would have advocated. Clause 3, it will be noticed, applies to lands which are Government property and other than communal lands. It is necessary under our revenue system to have the same power in regard to assessed waste as in the case of communal lands. To give one instance where it is needed. Under our darkhast rules the neighbouring ryot has a preferential right of occupancy. This is a right very much prized and of very great importance in village economy. But at present if an unauthorised ryot occupies a piece of land and the Revenue officer under the darkhast rules assigns it to another ryot, the Revenue officer has no means of enforcing his decision. The present cumbrous procedure is that the Revenue officer gives patta for the land to the recognised claimant and leaves him to sue in the civil court to recover possession. No attempt is made in the Bill to settle what is authorised possession. This is left a matter for decision in each case.

Clause 4 applies to this revenue the principle which I have referred to above, viz., that the civil court has no power to interfere as to the rate or amount of assessment imposed on any land.

Clause 5 imposes the penalty and clause 6 authorises the eviction. I would point out in connection with these sections that before they are put in force the trespasser must receive notice to show cause why he should not be dealt with. I gather it is thought that these provisions are too severe and suggestions in regard to them usually take the form of trying to whittle them away. They will be applied only in cases of obstinacy and are the provisions which have prevailed for years in Bombay, and it is better if we pass the Bill to make it efficient for its purpose. Though it is true that the ryot will generally vacate without question, I have often met most obstinate cases of contumacy in the most flagrant cases of encroachment. A summary and efficient procedure is certainly needed.

Clause 8 is necessary in consequence of the ruling of the High Court that an assessment imposed on communal land is not land revenue or recoverable under Act II of 1864.

Clauses 9, 10 and 11 regulate the right of appeal from the Collector's decisions.

Clause 12 is necessary because the High Court have ruled that in certain cases, for example the cultivation of burial poramboke, encroachment may amount to criminal trespass and it may be advisable to have recourse to the criminal law. The encroacher may also be liable under other Statutes, for instance the Municipal law.

Clause 13 is taken almost *verbatim* from Act II of 1864.

Clause 14 legalises the Collector's proceedings in regard to the levy of penal assessment in past cases so as to prevent the filing of unnecessary and speculative suits in regard to such levies. It leaves pending suits untouched and I would point out that it only validates the Collector's proceedings and does not bar the right which now exists to bring a suit to try the liability to assessment of the land occupied.

Before I sit down I would like to offer a short explanation of the present system of imposing penal assessment. I would first point out that such assessment is never imposed on assessed land, i.e., land set aside for agriculture. It is only imposed on land of which the occupation is prohibited: where in the great majority of cases there is no produce and where, therefore, the doctrine of the Raja Bhagam can have no application since it is clear that the doctrine of a share of the produce cannot apply where there is no produce. When the occupation is observed it is reported to the Divisional officer through the Tahsildar. The Divisional officer has discretion in the occupation of the land is not objectionable, as for instance in the case of an unnecessarily wide road margin to transfer it to assessed and give it on patta to the occupier or dispose of it under the darkhast rules. If it is objectionable the Divisional officer can impose prohibitory assessment. In my experience, speaking generally, even where the occupation is objectionable the ordinary assessment is imposed and notice to give up the occupation is given in the first year and it is only where the occupation is continued in defiance of the notice that penal assessment is imposed. As I said above considerations

of revenue have not entered into this question at all. It is true that a considerable revenue—about three lakhs of rupees—is derived from the unauthorised occupation of unassessed lands but only a small proportion of that revenue is derived from penal assessment, i.e., assessment enhanced above the ordinary assessment of the land. The extensive and persistent encroachment on reserved public lands is only another proof of the great need for a Bill of the present kind. It is very common to abuse the karnam in this matter of encroachments and to say that he is interested. I would however point out that if he abuses his position it is always possible to get him punished. The hardship, if any, which has hitherto arisen in connection with the protection of communal lands has been due much more to the apathy of the ryot than to the villainy of the karnam. Under the Bill the ryot will have notice before a penalty, eviction or forfeiture is imposed on him.

I therefore beg to move that the Bill be read in Council.

The Hon'ble Mr. J. N. ATKINSON:—I beg to second the motion.

The Hon'ble P. S. SIVASWAMI AIYAR:—May it please Your Excellency,—I beg to offer a few general observations at this stage upon the main principles of this Bill. I may state at once that I am in complete sympathy with the objects of the Bill as set forth in the Statement of Objects and Reasons and as explained by the Honourable Mover. The Bill is intended for protection against encroachment of two classes of property, viz., poramboke lands which are not available for private occupation and assessed waste land. It has also been stated by the Honourable Mover of the Bill that the occupation of assessed waste lands is ordinarily unobjectionable, while the occupation of poramboke lands is ordinarily objectionable. If the Bill had confined itself to protection of poramboke lands against encroachment, it would have been a much less contentious measure than it is at present. Seeing that there is not the same necessity for the protection of assessed waste lands, it would have been well if the Bill had not included, in its scope, the protection of such lands. If you turn from the Statement of Objects and Reasons to the provisions of this Bill, there is one feature which strikes you at once, namely, the unsuitability and unnecessary character of some of the provisions. While the Statement of Objects and Reasons is very clear and definite as to the aim and scope of the Bill, it appears to me that some of the clauses in the Bill contain vague and dangerous generalities. With several of the provisions I agree but some of them are objectionable. I shall draw the attention of the Council to a few clauses to which I think it necessary that attention should be drawn. The second clause of the Bill contains a very sweeping declaration of what is Government property. That declaration appears to me to be open to objection for more reasons than one. In the first place, there is no necessity for such a declaration, because all that the Bill aims at is the protection of two descriptions of land and there is no reason why the Bill should not go to work by simply and directly providing that any encroachment on those descriptions of land shall be punished or dealt with. But the Bill goes on to lay down what Government property is. Where is the necessity for a declaration as to what is Government property and what is not? You assume that, in order to be able to deal with encroachments, it is necessary to bring property under the category of Government property. Property may not be Government property but it may be set apart for public purposes. Notwithstanding that it is not Government property, I do not see why the Government should not interfere and protect property which is set apart for public purposes. The attempt to bring all property under the head of Government property and lay down an exhaustive definition as to what is Government property appears to me an attempt to embark upon a needless controversy. That is my first objection to that provision. My next objection to that provision is that it is very uncertain as to what it includes and what it does not include. It has been stated by the Honourable Mover that the Bill is not meant to be applied to zamindari lands, that is, communal lands in zamindaris. Perhaps it is not also meant to apply to properties vested in Municipalities or District Boards. If you take away these classes of property, there is nothing left but the two descriptions of property referred to in the Statement of Objects and Reasons. Take again the case of village communal lands which are said to be most in need of protection. Do they or do they not come within the scope of this clause? The language of the clause is "all lands, wherever situated, which are not the property of individuals or of aggregates of persons legally capable of holding property". In the case of village communal lands, would you consider them to be property

belonging to aggregates of persons legally capable of holding property or not? I dare say that the view may be put forward that they do not belong to the village community but are property vested in Government. At the same time, it must be admitted there is an opposite view which is capable of being put forward and put forward with considerable force, viz., that the communal lands in a village belong to the villagers as a body. That raises the vexed question as to whether a village community can be regarded as an "aggregate of persons legally capable of holding property". The wording "aggregate of persons legally capable of holding property" clearly applies to a Corporation; but whether a village community could be regarded as a Corporation or not is a matter which may be regarded by some as open to doubt. The most recent pronouncement upon the subject is that by the Chief Justice of Bombay in a recent case where he states that village communities are capable of holding property. If that is the correct view, I think it may be urged, and reasonably urged, that the communal lands of a village are the property of the entire body of the villagers. But it would not be open to any villager to encroach upon such lands and those lands would

1 P.M.

be held in trust for the purposes of the community as a whole. If that is the correct view to take, would it not be outside the scope of this exhaustive and ambitious declaration, which says "all lands which are not the property of aggregates of persons legally capable of holding property". If you say that they are capable of holding property and if they do form an aggregate of persons, it would not be possible to protect the property belonging to a village community. On the other hand, if you do want to protect such property, you must hold that it is not the property of the village community but is property vested in Government. Would it not be going too far to say that the communal lands of a village are not the property of the villagers, but are vested in Government? Is it necessary to raise all these unprofitable and thorny questions as to the rights of villagers and the rights of Government? It is quite practicable for Government to protect communal lands from encroachment by saying that whoever encroaches on village communal lands shall be liable to be dealt with in a particular way. I will just make one other remark on this aspect of the case. Even under the Standing Orders of the Board of Revenue, dealing with the subject of encroachment on property, there is a distinction drawn between lands set apart for public purposes in towns, such as roads, open places, etc., and communal lands in a village. It does recognise the two classes of land and treats them somewhat differently, though there are provisions that protect both. My complaint against this declaration is that it mixes up various descriptions of property over which Government and private individuals have different degrees of control and brings them all under the category of Government property.

There is a considerable amount of doubt as to what the clause includes. There is one species of property which the Honourable Member does not intend to include under the Bill and which, at the same time, is sure to fall within the purview of clause 2; and that is, property which may be claimed by Government as escheat. The claim of Government in such a case will be that it is not the property of any individual but has become the property of Government. The machinery at present under the control of Government for the protection of such property is laid down in the Standing Orders. If it is real property, it is dealt with by section 16 of Regulation VII of 1817. The Collector may take possession if there is no person actually in possession; but if the Collector is opposed by the person in possession, he has to report the matter to the Board of Revenue and a civil suit has to be brought. I do not think that property which has escheated to Government is intended to be brought within the scope of the Bill; but as it is likely that such property may be considered to fall within the purview of the clause, it is desirable that the language of the clause should be clear and precise and not admit of any misapprehension or misconception. The question is not whether it is intended to be used for a particular purpose, but whether it is liable to misconception at any future time. Seeing that property of this kind may be considered to fall within the purview of clause 2, it furnishes an additional reason for not inserting such a wide declaration as is contained in clause 2, but for dealing with the matter in a simpler and more direct way.

Then again there are other kinds of property with regard to which some question may arise. Take the question of land leased by Government, say, to a planter for 99

years. Is it the property of Government or not? Suppose the planter says: "somebody has encroached upon my land; I want your help, I want you to put the machinery available under this clause into motion to get rid of the encroachment by my neighbour." It is all very well to say that the Government would not move when it is an encroachment by one landowner upon the land of another. But the question is, will it come under clause 2? Can you say that because the Government has leased out the property, the property has ceased to be Government property? Although it may not be in possession of Government, it may be contended that it is still the property of Government, and this again is a case in which it would be possible to contend that the property would fall within the purview of clause 2. The language of this clause is inefficacious and unnecessarily wide. I say inefficacious, because there is a doubt as to its reaching and protecting the particular classes of property for which we are all most anxious to secure protection; and I say unnecessarily wide—not to say dangerous—because it is likely to include many descriptions of property which it is not the intention of the Government to include and which may, at some future time, be made to come within the scope of this clause.

It may be urged that such a clause finds a place in the Bombay Code. That argument may be urged in respect of several other clauses too. I respectfully submit that that argument ought not to have very much weight. In the Bombay Code there may be some appropriateness. That is a comprehensive Land Revenue Code, intended to deal with the whole of the Land Revenue Law of the Presidency and it may find a place there appropriately. But here we are attempting to deal with a specific case of mischief and to secure remedies in respect of particular classes of property against a particular kind of wrong-doing. In a special law of this kind intended to deal with a specific case of mischief, there is no necessity at all for introducing any provisions more or less of an academical character, of a more or less theoretical character. There is no necessity for any such large and sweeping theory as is laid down in this clause. We can get on very well without such a theory, and I would submit that the Bill could be made very effective, as effective as the Honourable Member may desire, without containing any such ambitious declaration as that contained in Clause 2 in respect of ownership of property. If this declaration is meant to create new rights, it is objectionable. If, on the other hand, it is intended to declare existing rights, whatever they may be, opinions differ as to the necessity for any declaration of that sort. I would, therefore, strongly object to embarking upon the solution of this vexed question as to what is Government property, more especially when there is no call or necessity for it.

Now I will pass on to a few of the salient provisions of the Bill. Clause 6 contains a provision for summary enquiry for determining whether a person who obstructs the taking of possession by the Collector is liable to punishment or not. It seems to me that such a summary enquiry ought to precede the action to be taken by Government under clauses 3, 4, 5 and 6. I do not know whether I understood the Honourable Mover quite correctly. I think he said that there ought to be some sort of notice before a person is called upon to vacate.

The Hon'ble Mr. G. STOKES:—Notice is to be given under the clause before any penalty, forfeiture or eviction is to take place.

The Hon'ble P. S. SIVASWAMI AIYAR:—Is it notice to show cause?

The Hon'ble Mr. G. STOKES:—Yes.

The Hon'ble P. S. SIVASWAMI AIYAR:—At present it does not find a place in the Bill.

The Hon'ble Mr. G. STOKES:—Under the penalty and eviction clauses, notice is to be given.

The Hon'ble P. S. SIVASWAMI AIYAR:—That is notice to quit, as given in clause 6.

The Hon'ble Mr. G. STOKES:—The intention of the Bill is as I have stated.

The Hon'ble P. S. SIVASWAMI AIYAR:—I suggest that there should be notice before any assessment or penalty can be imposed.

The Hon'ble Mr. G. STOKES:—Not under clause 3.

The Hon'ble P. S. SIVASWAMI AIYAR:—Before any penalty, forfeiture or eviction is enforced, there ought to be notice to the person to show cause why action should not be taken against him under the clause. Before action is taken, the Collector must make up his mind whether the property belongs to Government or to individuals. It is only fair and just that before arriving at a conclusion on that matter the Collector gives an opportunity of hearing to the party. What I would suggest is not merely there should be notice to quit, but there should be a summary enquiry. I do not ask for a full enquiry; but I say that there should be some sort of summary enquiry. As soon as the notice is issued, the man must be allowed to put in a petition, showing what his claims are and the Collector must make some sort of enquiry into them.

There are a few other provisions to which I would draw the attention of Honourable Members. With regard to penalty, I may suggest that the penalty should be levied for the period of occupation subsequent to the notice. I believe the present practice is, as stated by the Hon'ble Mr. Stokes, something like that. You do not levy the penalty for occupation prior to the notice issued to the man. I wish to point out that the actual practice ought to find a place in the Bill. You should state that the man is not liable to penalty for any occupation prior to the notice, because he may be altogether unaware that he is holding any land unauthorizedly. It may be a cent of land in his backyard and he might not have even known that he has encroached upon it. All of a sudden he may find an assessment imposed for a period of ten years during which he has occupied the one cent and he may also be called upon to pay a penalty. It is desirable that the penalty which is levied should be for the period subsequent to the notice and that it should be so stated in the Act. With regard to the maximum amount of penalty to be levied, there is not much difficulty as regards lands which are assessed, because there is a maximum provided in clause 5, that the penalty shall not exceed ten times the assessment payable, that is as regards lands which are devoted to agricultural purposes. But as regards lands not devoted to agricultural purposes, the maximum is such an amount as may be fixed by rules framed under clause 7. The policy of framing rules and legislating by notification has been often condemned because the attention of the public is not sufficiently drawn to the rules which are introduced by such notification. Without endorsing all the objections against legislation by notification and while admitting that it may not be quite practicable to provide for all the necessary rules in the body of the Act itself, seeing that there may be necessity for variation or alteration from time to time, I think there is strong reason for laying down in the Act what the maximum should be. Why I ask for the maximum being fixed in the Act is: if you say that the maximum will be fixed in the rules, we know what the present rules are and if the rules now in force are likely to furnish us with a guidance as to what the rules are likely to be, the necessity for providing for the maximum in the Act will be apparent. In the existing rules and the Standing Orders there is no maximum and there is no limit to the amount of assessment which may be imposed. Probably the rules now in force may be republished and it may be said that there is no need to fix any maximum. If that is so, that will be a great hardship. Seeing that Government has the special power of eviction, there is no reason why they should have the power of imposing a penalty *ad infinitum*. It is, therefore, desirable that there should be a maximum fixed in the Act and it should not be left to be fixed in the rules framed under clause 7. With regard to the assessment now imposed under clause 3, I should just like to make one observation as regards a question of principle. If the land upon which encroachment takes place is an assessed survey number, the assessment which is to be paid by the encroaching person is not the assessment payable upon the portion of the land that he has encroached upon, but the assessment leviable upon such part of the number as the Collector may determine. I will illustrate my remark by one instance. Suppose there is poramboke land consisting of a block of 20 acres adjoining a person's backyard and suppose that person encroaches upon one cent out of those 20 acres, what is the amount of assessment to be levied? Is he liable to pay the assessment upon the one cent or is he liable to pay the assessment upon the 20 acres or such portion of 20 acres as the

Collector may decide? It is possible that the Collector may ask him to pay the assessment on 20 acres for the whole period of occupation. Such things have happened before. It is desirable that a thing of that kind should be prohibited and the assessment leviable should be proportionate to the extent of land encroached upon. There is no necessity for levying more than the proportionate assessment, because the Bill provides for a penalty. What is provided for in clause 3 is not by way of punishment for occupation but by way of compensation to Government for occupation. There is no reason why in a clause providing for assessment Government should be authorised to impose any assessment without any limit.

Then again with regard to the question of eviction, the provision is a somewhat novel one. I know that it finds a place in Bombay Act V of 1879 and also in one or two Madras Acts, viz., the Madras Court of Wards Act. In the case of poramboke lands it may be necessary but in the case of assessed waste there is not the same necessity for conferring this power of eviction. But assuming there is necessity even in regard to assessed waste lands, it is an extraordinary power which places the person against whom it is exercised at a considerable disadvantage. He is turned out of possession, he forfeits his crops, his buildings are removed, he has to go to a Civil Court to establish his rights and has to pay a heavy court-fee. When you place him under all these disadvantages, is it not desirable that there should be some qualification or limitation placed upon the exercise of this power? In the case of assessed waste lands, which have been held for six years by a person, I think that this power should not be capable of being exercised. That would be consistent with some of the provisions of the existing law. Under the Specific Relief Act any private individual who may be dispossessed of his property may bring a summary suit within six months for its recovery, but if he allows that period to elapse, he cannot have the summary remedy. Similarly, I would say that with regard to the assessed waste, if the Revenue Department has been sleeping over the encroachment and has not taken measures within a reasonable time to check the encroachment—admittedly the occupation of such lands is not open to serious objection—a time limitation may well be imposed. It may be stated that after a period of six years encroachments upon assessed waste should not be liable to be dealt with by the exercise of the summary power of eviction under clause 6.

1-20 P.M.

Then with regard to the remedies provided for the purpose of carrying out the summary powers of eviction, there is the power to commit a person to custody for 30 days. I would respectfully submit that there is absolutely no necessity for the exercise of this power of committing a person to custody. I am not aware of any enactment in which such a power is conferred upon Revenue officers. In the Rent Recovery Act and the Revenue Recovery Act, there is a procedure provided for putting the purchaser of the land in possession, but it is nowhere provided that if a person obstructs he should be sent to the civil jail or placed in close custody in the Taluk office for 30 days. One reason against this is that the party who sends the man to the jail is the officer who takes action in the first instance. The very officer who is the complainant becomes also the judge. The elementary principle of law is that a person ought not to be both a complainant and a judge. It is the Collector who puts these provisions into motion and it is the Collector who exercises this power of sending the obstructor to jail for 30 days. That is not a power which can, in fairness and justice, be entrusted to a person who puts the Act into motion. If there is no other remedy, it may be reasonable; but there is an adequate remedy, inasmuch as the man can be dealt with under the ordinary criminal law. If a Collector gives notice to a person to quit the land and if any lawful order is resisted the man can be dealt with under the ordinary criminal law. The person can be taken before a magistrate under the ordinary criminal law and the punishment that can be inflicted on him is quite sufficient to have a deterrent effect. There is, therefore, no necessity for enacting that the Collector should have the power of sending the man to jail. Clause 6 says "without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction". Considering that a person can be proceeded against under the ordinary criminal law and considering that the provisions of the Penal Code do not certainly err on the side of leniency, the necessity for any such provision in clause 6 as sending a person to jail appears to me altogether wanting.

There is one other clause in the Bill to which I might refer, that is, the last clause, clause 14, which legalises exactions already made by way of penal assessment. It seems to me that there is no valid justification for giving retrospective effect to this legislation. If money has been recovered by Government to which it has no right, there is no reason why it should not refund the same. Ordinary principles of fairness which regulate dealings between man and man ought certainly to govern, perhaps even in a higher degree, the relations between Government and its subjects; and if the Government has received money which it ought not to have collected, there is no reason why in all fairness and equity it should not refund it to the person from whom it has been collected, no matter even if it is two or three lakhs. Fortunately for Government there is a period of limitation prescribed. You cannot bring suits for the recovery of the money after a period of three years. With respect to the so-called assessment collected within three years, if claims are made, they should be fairly met and the money repaid. There is one part of the provision which seems to be particularly open to objection. That is the legalisation of collections subsequent to the date of the High Court's decision. The High Court's decision was passed in December 1903. With all respect to the Honourable Mover, it is much more than an *obiter dictum*; it is a well-considered judgment of the High Court and the Government were aware that the practice of levying the so-called prohibitory assessment, was declared illegal. That having been declared to be the law by the highest tribunal in the land, if the Government proceeded to levy sums of money from people—I hope I may be pardoned for saying—with deliberate disregard of the law so enunciated by the High Court, it is not a case for legalisation by retrospective enactment. That is a case in which the Government ought undoubtedly to meet the claims to refund of the money which it has collected.

There are one or two other matters in respect of which the Bill ought, I think, to contain provisions which are incidental to the powers conferred by this Bill and which are not now found in it. For instance, with regard to the moneys which are collected by way of assessment or penalty, it has been explained to us that the object of Government is not fiscal, but that the Bill is merely for preserving property from encroachment. How are you going to dispose of the money collected? Are you going to reserve it for yourself or spend it in some manner? I desire to suggest an equitable method of disposing of these funds. As these provisions are intended to be put into force for preserving communal lands, it is only fair and equitable that the money collected on account of encroachment on communal lands should be paid over to the Village Cess Fund. There is a Village Cess Fund under Madras Act IV of 1893 which is utilised for the purpose of maintaining the village establishment. I think that any money that is collected in respect of encroachments made on communal lands in a village ought in fairness to be handed over to the Village Cess Fund which maintains the village establishment. If that is done, it will benefit the Government and the people. The expenses of the village establishment are met in equal proportion by Government and the Village Cess Fund. If the Village Cess Fund contributes half, the Government contributes half of the expenses. If, therefore, this money is paid to the Village Cess Fund it will go towards the reduction of the liability which devolves upon both the villagers and the Government in maintaining the village establishment. That would be a very fair method of appropriation of these funds.

There are one or two matters in regard to which one might expect to find provision in this Bill. While the Bill provides for an appeal to the Board of Revenue, it does not provide any power of revision for the Government. It has often been said that this is an appeal-ridden country and that the people are fond of appeals. What I am suggesting is not so much an appeal from the Board of Revenue to Government as a power to the Government to revise of its own motion the decisions of the Revenue Board. Suppose a Collector levies a penalty of Rs. 1,000 upon an encroachment of quarter of an acre and the Revenue Board confirms his order, and suppose the man concerned though he may not have the right of appeal presents his case to Government and the Government in exceptional kindness looks into his papers and views the matter favourably. Why should it be debarred in such a case from exercising its power of revision and interference? I do not ask that it should be done as a matter of right, but I think it is only right that the Government should reserve to itself the power of revising the proceedings of the Board of Revenue. One more observation and I have done. In addition to the power of revision on the part of the Government, there is also another power which should be provided and that is to stay execution. Suppose a person appeals against the order of the Collector to the Board of Revenue,

unless power is given to the Board to suspend the execution of the order of the Collector, irreparable harm would have been done to the aggrieved party. I think there ought to be some provision empowering the Board of Revenue to suspend the execution of the Collector's order pending the disposal of the appeal. I have ventured to make these few suggestions in the hope that the Honourable Mover will see his way to adopt them, if he finds that these suggestions do not in any way interfere with the efficient protection of communal lands. I do not oppose the introduction of the Bill.

The Hon'ble V. C. DESIKA CHARIYAR:—Your Excellency, while endorsing the remarks made by the Hon'ble Mr. Sivaswami Aiyar I would also mention with reference to clause 2 of the Bill that it does away with what is admitted to be a very salutary provision. It is both common law and statute law that possession is *prima facie* evidence of title. If one reads carefully clause 2 of the Bill, it will be found that the moment this declaration is made and a man turned out of his property, he has to go to Civil Court and his possession may count for nothing. It is well known that in any suit against the Secretary of State for India in Council or the Crown the long period of 60 years' limitation exists; and if a man has been in possession even for 59 years, it will be difficult for him, when he comes as a party plaintiff, to rely upon his long possession. What necessity there is to do away with that presumption which exists under all systems of jurisprudence I do not see. I do not think that the Honourable Mover could have intended it; but that is the effect of this wide definition. The Statement of Objects and Reasons is very clear; it clearly mentions the common law cases, and all that we want is to provide for those cases. The evil has arisen by copying the clause from a code which is a complete code on matters of land revenue in another Presidency. I say it may not be in utter disregard of the existing differences between the two Presidencies, but I may be pardoned for saying without having due regard to the existing differences in the two Presidencies. The Honourable Mover, in introducing the Bill, has stated that it does not include communal lands in zamindari tracts. But the clause, as it stands, would include them. I dare say that some provision will have to be introduced to make that point clear. In the Bombay Presidency, I think I am right in saying, there is no permanently-settled estate. There they are all alienated lands. You will find that in Bombay Code the word "alienated" had to be defined. The last portion of clause 2 says "and may be disposed of in such manner as may be authorised by general rules sanctioned by Government, subject always to the rights of way and all other rights of the public or of individuals legally subsisting". We are all aware that the rules now subsisting are called darkhast rules; and so far as the Government lands are concerned, they are dealt with under those rules. It is because that some people try to evade those rules, the system of prohibitory assessment has come into vogue. Why should you introduce them into the provisions of this Bill? I do not suppose that by so doing it is meant to throw open the wide door for litigation. Once you make these rules a part of the Bill, they become statutory, and then any person aggrieved against any proceedings taken under this Bill will be entitled to go to Civil Court. The land is entirely Government land and you can give it to anybody you like. I don't suppose that was the intention of the Honourable Mover. This is the evil that comes by copying the clause from another code which is complete in itself, which may be well or ill suited to the needs of this Presidency, and for the introduction of which into this Presidency there seems to be no reason whatever. On the other hand, all that is wanted is, as stated in the Statement of Objects and Reasons, to protect two classes of property, viz., poramboke and assessed waste. For that I would suggest a modification like this in clause 3. Omit the definition altogether from the Bill, for which there is no necessity, and amend clause 3 in this form—

3. Any person who shall unauthorisedly occupy any land—
- "(a) not situate in an estate as defined in section 4 of Madras Act II of 1894,
 - "(b) nor vested in a "local authority" as defined in the General Clauses Act of 1897,
 - "(c) nor held by a landholder as such as defined in section 1 of Madras Act VIII of 1865,
 - "(d) nor included in a tract reserved as a Forest under Madras Act V of 1882,
 - "(e) nor being building-sites or backyards attached thereto which have been assigned as such to any person by Government with or without liability to pay ground rent,
- "shall, if the land which he unauthorisedly occupies forms an assessed survey number or part thereof, pay the assessment of such number or such part thereof as the Collector

"may determine for the whole period of his occupation and if the land so occupied by him has not been assessed, then the highest dry or wet rate, as the case may be, of the village or such amount of assessment as may be fixed in rules or orders made under section 7; but such payment of assessment shall not confer any continuing right of occupancy."

That ought to be quite enough for the purposes of this Bill. That would exclude all lands that you want to exclude. You need not define what Government land is.

With regard to the question of imprisonment, I think the provision contained in the Bill is quite unnecessary. There is no object in imprisoning a man if you can get the land from him. Both under Revenue Recovery Act and Rent Recovery Act there are very easy provisions under which a man is evicted. The Honourable Mover has told us that there are cases of obstinate people. But I dare say obstinate people come before Civil Courts as they come before Revenue officials. In fact, there are more obstinate people before Civil Courts than there are before Revenue officials who are also Magistrates. Section 39 of the Revenue Recovery Act says: "When lands may be purchased at public sale, the Collector, or other officer empowered by the Collector in that behalf, shall publish in the villages in which the land sold may be situated, in the cutcherry of the taluk, in the head cutcherry of the district, and in the District Gazette, the name of the purchaser and the date of purchase, together with a declaration of the lawful succession of such purchaser to all the rights and property of the former landholder in the said lands."

1-40 P.M.

All that you need do is to give notice to the party as proposed in the Bill. Section 40 says: "Where, notwithstanding such publication, any lawful purchaser of land may be registered and prevented from obtaining possession of his purchased land, any court of competent jurisdiction, on application and production of certificate of sale provided for by section 38, shall cause the proper process to be issued for the purpose of putting such purchaser in possession, in the same manner as if the purchased lands had been decreed to the purchaser by a decision of the court." You may make the clause even more imperative. You may say that the moment that the Collector sends his report that such and such man is given notice to be evicted then the Civil Court may summarily eject him in due course of law by issuing a process through an amin. If you are not prepared to do that, there are the provisions of the Rent Recovery Act. Section 43 of that Act says: "The warrant shall be entrusted to some officer of Police, who shall serve it in the manner laid down in section 39 of this Act. When no appeal shall be preferred to the Collector within fifteen days after service, or when an appeal has been preferred and decided against the defaulter, and when the amount named in the warrant is not discharged, the Police officer shall place the person who has procured the warrant in possession." You may say that the Collector may depute any man and ask him to take possession. You may send a Policeman with him. Is the person going to raise an army to oppose the Collector or his Deputy in taking possession of the land? There has been no difficulty so far in regard to cases arising under the two Acts to which I have just referred in the matter of taking possession of property; and what difficulty is anticipated for taking possession under this Bill I cannot conceive. In this connection I should like to draw the attention of the Council to section 73 of the Rent Recovery Act; it says: "If the judgment be for the ejectment of a tenant or for the reinstatement of any tenant in the occupancy of land from which he has been ejected, the judgment shall be executed by giving the possession or occupancy of the land to the person entitled by the judgment to such possession or occupancy. If any opposition is made to the execution of the order for giving such possession or occupancy by the party against whom the order is made, or by others, the Magistrate shall, on application, give effect to the same." If the Magistrate is able to give effect, what is the difficulty when Government itself is a party? The Collector has simply to send a report "such and such a man is given notice, put him out of the land". If you turn to the provisions of the Civil Procedure Code, there is a similar provision about imprisonment; but that provision is used only in very rare cases, that is, when a man has been told to do a specific thing, when he evades the doing of that thing, and when it is easy to ascertain which immovable property is decreed against the man and if he would not deliver it imprisonment is provided. Even in such cases while the Court can do the thing itself it does not send the man to jail. If the specific relief asked for is to ask a man to execute a conveyance and if the man does not do it, the Court executes the conveyance and it is tantamount to conveyance executed by the person himself. Section 263 of the Civil Procedure Code says: "If the decree be for the delivery of

"any immoveable property, possession thereof shall be delivered over to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, and if need be, by removing any person bound by decree who refuses to vacate the property". If it has been possible to work these sections to which I have referred in the Civil Procedure Code and the Revenue Recovery Act—if it has been possible to work these sections without hindrance, what necessity is there for introducing the principle of imprisonment in the case of this Bill only. There is just one other point to which I should like to refer in passing. In clause 3 it is stated "if the land so occupied has not been assessed, then the highest dry or wet rate, as the case may be, of the village or such amount of assessment as may be fixed in rules or orders made under section 7, etc." I do not know whether the Honourable Member in charge of the Bill meant this to be an alternative rate to be imposed; whether in cases where the land could be treated either as wet or dry, the highest rate should be levied or that it must be the highest wet or dry rate or the amount that may be fixed under the rules to be made under clause 7. It seems to me that the object was, I speak subject to correction, that there may be lands, unassessed lands, neither wet nor dry, for instance a hill; and for that it may be necessary to make rules. But if the object is to leave it in the hands of the Collector either to charge the highest wet or dry rate or to charge the alternative rate that may be fixed under clause 7, it is objectionable. Why should you say the highest wet or dry rate and also the highest that may be fixed under the rules to be framed under clause 7. I have only one more remark to make. In answer to a question put in Council the Honourable Member said that the fact of the High Court's decision was brought to the notice of the Government only in April last though the decision had been passed in December 1903. It is not a case where the decision was one which affected private parties. The Government itself was one of the parties to the litigation, and why it should have taken from December 1903 to April 1904 to know the result of the decision I fail to see. With reference to this matter, it seems to me, if I may be pardoned for saying so, that the Government would not be setting a good example, if they try to evade the decision of the highest tribunal in the land by calling it an *obiter dictum*. I respectfully differ from the Honourable Member, when he says that it is an *obiter dictum*. It was quite as much necessary for the decision of the case; it was a well-considered decision of three Judges of the High Court and under the rules of the High Court it is a decision of the Full Bench. If the decision of the Full Bench is to be treated in this way by the Government, I respectfully submit that it is not setting a good example. If the Government does not care for the decisions of the High Court, how could its subjects pay respect to the High Court's decision.

The question of giving retrospective effect to the Bill is only an academical question. I do not agree with the Hon'ble Mr. Sivaswami Aiyar that there is a priority of limitation of three years. If you look into the Limitation Act, you will find that there is only one year. If you are to recover this as Land Revenue under the Revenue Recovery Act, you have only six months' time. The High Court's decision was passed in December 1903, and as the Bill means to exclude pending suits there is no object in giving retrospective effect to the Bill. These are the few remarks that I desire to make on the provisions of this Bill, not that I oppose its introduction.

The Hon'ble M. KRISHNAN NAYAR:—May it please Your Excellency, this is not the time for referring in detail to the various provisions of the Bill; and so, with Your Lordship's permission, I will confine myself to the important features which involve the principles of the Bill.

Before I go into the subject, I may be permitted, my Lord, to refer to one circumstance which is not altogether connected with the business before this meeting. This is the first time when Your Excellency presides in this Council after Your Excellency laid down the reins of the exalted office of the Viceroy of India; and on my behalf and also on behalf of my non-official friends in this Council and on behalf of the people generally, I may be permitted, My Lord, to respectfully congratulate Your Excellency on the eminent success which attended Your Lordship's tenure of office as Viceroy of this country. Persons and newspapers who generally always differ on other matters found it possible to unanimously agree on this point, viz., on the eminent success which attended the tenure of Your Lordship's office. There was no difference of opinion whatever from one end of the country to the other on this point. A reference was made in this Council to the office which Your Excellency was going

to take up in April last, and we did not then consider that it was altogether an accident that called Your Excellency to fill that office. We are proud to know that the anticipations that were entertained on that occasion have been more than fulfilled. I may also be permitted in this connection to refer to the Government of the Hon'ble Sir James Thomson assisted by his colleagues, while Your Excellency was absent from Madras. It was, if I may be permitted to say, highly satisfactory to the people.

Coming to the Bill itself, all the Non-Official Members of this Council are greatly indebted to the Honourable Member in charge of the Bill for the lucid way in which he explained the Bill in the speech with which he introduced it this morning. Reference has been made to the various principles which are embodied in this Bill by both the Honourable Members who have preceded me, and I am not going to take up the time of the Council at any length. There is one circumstance that is specially applicable to the West Coast. The Honourable Member was pleased to say, when he opened the discussion on the subject, that though the Bill was not specific on the point, yet it was not intended that the provisions of the Bill should be made applicable to Zamindari tracts. I hope that after the Bill passes through the Select Committee, the Honourable Mover may find it possible to introduce a similar provision, excluding the district of Malabar also from the operation of this Bill. In Malabar the Government owns no land, and such land as the Government possesses is either by way of escheat or by way of purchase. In other districts the Government may be the ultimate landlord, but in the district of Malabar all land is private property, except such lands as the Government has acquired by escheat in the capacity of the paramount power or by purchase. Seeing that this special distinction exists between the district of Malabar and other districts, I hope it will be possible to exclude Malabar from the operation of this Bill, the Government taking, of course, ample care to protect the interests of Government with reference to such land as belongs to Government in Malabar. In Malabar, as in other parts of the world, all people have a right over roads and waterways and if public roads and watercourses are interfered with, there is the ordinary criminal law which is sufficient for the purpose of preventing encroachments thereon. Beyond that, I don't think it is necessary to make this Bill applicable to Malabar. I hope it may be found possible to exclude the district of Malabar from the operation of this Bill when it ultimately becomes law.

The observations that I am now about to make are applicable not only to Malabar but also to all other districts. The definition of Government property, as given in this Bill, is a sort of negative definition. The definition proceeds to say that all properties which do not belong to individuals or groups of individuals are the properties of the Government. It may so happen that an item of property which is not really the property of a private individual but which is the property of Government may be situated close to the property of a private owner. The private owner, in ignorance of the actual boundary, may unconsciously trespass upon the Government lands or lands which are not his and sow crops on them. If it is pointed out to him that he has actually committed trespass, it is quite possible that the individual will be perfectly willing to give up the land on which he has trespassed. Having regard to such difficulties, it is necessary that a clearer definition of Government property should be introduced. What the clearer definition is it will be for the Select Committee to consider. I don't think it will be difficult for the Select Committee to find out a satisfactory definition of Government property which will get rid of all possible difficulties in connection with encroachments.

One other principle that I wish to refer to is the principle of notice. The Honourable Member in charge of the Bill referred in his speech to the question of notice in connection with the various sections embodied in this Bill. I venture to suggest, my Lord, that notice is necessary practically in all cases contemplated in this measure, even with reference to the imposition of assessment on lands trespassed upon by a person whether consciously or unconsciously. I submit, my Lord, that it is necessary that, before assessment is levied upon land which is trespassed upon, notice should be given to the trespasser. It may be that a person who actually committed trespass may be unconscious of the fact, and if once he receives notice from Government, his eyes may be opened and he may be quite willing to remove himself from the land upon which he has trespassed. In that case it will be unnecessary to levy the assessment on the land upon which he unconsciously trespassed. If thus even in the case of assessment on the land trespassed upon notice is necessary, &

fortiori notice is necessary in the case of the levy of prohibitory assessment. The reasons that exist for giving notice for the purpose of assessment apply with greater force when you have to levy a penalty. There is a provision in the Bill which says that the Collector may, in passing an order, require a trespasser to remove certain things from his land, viz., buildings and crops, and if after a stated period given in the notice, he does not remove the buildings and the crops, these will be liable to forfeiture.

2 P.M.

I submit, my Lord, that it is only just that notice of the order which the Collector is about to pass must also be given to the trespasser before the final order itself is passed. The only provision that we now find is that after the Collector once passes the order, he should give notice of the order to the trespasser, stating that, within a fixed time, he must remove these things and if he does not, he is liable to a certain punishment. What I submit, my Lord, is that before the order itself is passed in which the Collector comes to the conclusion that the crops and the buildings ought to be removed, notice of a proposal to pass the same should be given to the party concerned and his objections should be heard. It is quite possible to conceive of a case in which the Collector, after he hears the party concerned, may not pass an order, in which he directs the removal of the crops or the building. I submit it is but reasonable that a provision giving notice to the person or persons concerned should be inserted in this Bill.

One word with reference to the imprisonment as to which both of my friends who preceded me have made remarks. I submit that it is not necessary to insert this provision in the Bill. The consequences of having this provision may be disastrous, my Lord, to the parties concerned. Collectors are after all human. Actuated by the best of motives, they may, at times commit mistakes. In this particular instance, which is the stage in which the Collector ultimately passes an order for sending a man to jail? That is the final stage of his enquiry. In connection with this matter, there is the first stage of levying the assessment, in which he comes to a conclusion with reference to the ownership of the land and the gravity of the trespass; then there is the other stage in which, in addition to this assessment, a sort of penalty is also imposed under another clause. If I may say so, the conviction of the Collector with reference to the gravity of the trespass becomes, so to speak, more intense in this second stage. Then there is the third stage in which he says that the produce and the building that may exist on the land should be removed; that is, his conviction becomes more intense and it is after that stage that, if a person who is a trespasser is found to obstruct, the Collector holds an enquiry and passes an order for imprisonment. It is in this fourth stage that he is given the power to send a person to jail. It is not at all improbable that a Collector will exercise the power of sending trespassers to jail, and this may cause very great hardship to very respectable persons. It may be that a person who continues to trespass is doing so with the best of motives and in the *bona fide* belief that Government is not the owner and that he himself is the owner of the property; and if he does so, he will find himself in the predicament of being sent to jail. I am not oblivious of the fact that more or less there is a provision to this effect in the Civil Procedure Code in regard to execution of decrees. When a person who obtains a decree applies for its execution, sometimes the judgment-debtor obstructs; and then the decree-holder has to put in a petition to the Court, which holds an enquiry as regards the obstruction and ultimately the Court passes an order to remove the obstruction, and if the obstructor continues to obstruct, the Court is given the power to send him to jail. But as a matter of fact, that power is never exercised by the Civil Courts and that for the best of reasons. As a matter of fact, the Court sits as an arbitrator settling disputes between two parties and has no interest in the disputes settled. But in the present case, it is not so. The Collector is both party and judge. It is only human that the Collector should stick to the views that he has formed and it is not likely that he will change them. In these circumstances, it is not proper that the power of sending persons to jail should be given to Collectors. There are many other parts of the Bill to which I have objections, but, as I stated in the beginning, this is not the time for discussing the details of the Bill. We are now only concerned with the principles of the Bill.

Before I sit down, I may be permitted to refer to the last clause which gives retrospective effect to this penal legislation. I would request Your Excellency's Government and the Honourable Member in charge of the Bill to see whether there is any necessity for giving retrospective effect to this Bill, seeing that it is admittedly and

professedly a penal Bill. No doubt the matter involved in pending suits is exempted; but in principle the case of those who have not gone to court is more pitiable. They may not have been so diligent, it may be, as to contest the assessment levied by the Collector or the prohibitory assessment levied by him. It is quite possible to conceive of cases in which penal assessment has been levied after the passing of the High Court's decision and in which persons have not gone to court either on account of inability or on account of some other reason. On principle, therefore, there is no reason why their cases should not be placed on the same basis as those who have filed suits. In regard to the general principle of the Bill, that the Government should be given some powers which are not possessed by private individuals to check trespass, I perfectly agree. In the case of trespasses as between one individual and another, they are given the power to go to court and eject the trespasser. In the matter of Government property it is certainly desirable and necessary that Government should have higher powers in the matter than the ordinary powers which are possessed by private individuals. I quite agree with the principle embodied in the Bill that the Government should be given certain powers in addition to the ordinary powers possessed by a suitor. With regard to other matters to which I referred, viz., definition of the Government property, the question of exclusion of Malabar from the operation of this Bill, the question of notice, the question of imprisonment and the question of retrospective effect being given to the Bill—I hope that all these matters will be taken into consideration by the Honourable Member in charge of the Bill before the Bill is finally passed by the Select Committee and is placed before the Council.

His Excellency the PRESIDENT:—Honourable Members, I think this is a convenient hour for our usual adjournment. The Council will adjourn till 3 o'clock.

2-7 P.M.

The Council re-assembled at 3 P.M.

The Hon'ble K. VENKATA RAO:—Your Excellency, as we have to discuss the principles of the Bill, I don't wish to take up the precious time of Honourable

3 P.M.

Members by going into the details of it; but I will merely draw the attention of the Honourable Mover, as he has immense experience of the Deccan districts, districts which contain mostly dry lands, to the inconvenience and sometimes enormous loss to which the ryots as well as Government will be put to by enforcing some of the provisions of this Bill. Of course the Honourable Mover has immense experience of Cuddapah and Bellary districts, and he knows perfectly well the practices prevailing there, so that, if I merely point out the inconveniences to which the ryots will be put by the mere existence of the provisions of this kind in a Bill of this stamp, I trust and hope that the Honourable Member will take care to modify some of the provisions in the Select Committee. One thing is this. The so-called Deccan districts, namely, Cuddapah, Kurnool, Bellary and Anantapur and other districts which are known as dry districts, North Arcot, Nellore, Guntur and Vizagapatam and also Ganjam to some extent are subject to periodical droughts once in three or four years or quinquennial droughts which are almost equal to famines and also once in ten years we have recognised famines. During these periods the practice that has been going on for many years in these very districts is that the ryots give up their lands very freely, thousands and thousands of acres are surrendered to Government, they being unable to retain them and pay the assessment thereon or even obtain suspension of kists. In order to get remissions, there are so many difficulties that they have to undergo that they think that the surrendering of lands is a better course than to follow the tedious or circuitous course of obtaining remissions from Revenue officers, so that lakhs and lakhs of acres are given up every year during famines or seasons of drought. Subsequently when the next year appears to be good or fairly good, no doubt regularly or irregularly the practice has been for many years that they squat upon the lands, go on cultivating old lands or other lands. In our districts, the seasons are not uniform; sometimes we get our early rains in the middle of June or in the first week of July and sometimes we don't get our south-west monsoon till about the third or fourth week of August; and they have to wait for a couple of showers in the north-east monsoon. So, to follow strictly the provisions of the Standing Orders is a very great inconvenience. Under darkhast rules, applications for pattas should be made before the 15th of August. If we don't get rains by then, there is no use taking up the lands for cultivation. When once we get a patta we must apply for remission or suspension of kists, if we do not get proper crops. So, they wait till they get good rainfall say eight or ten

inches of soaking rain and they don't want to undergo the process of getting the patta; they simply take possession of the land, raise crops and then the Revenue officers find out the occupation of the lands. Sometimes the rains come after the date fixed in the Standing Orders for darkhast being made. Then, you have to give up cultivating the land or to wait till next year or to follow the irregular procedure of squatting upon Government lands or waste lands or unoccupied lands and cultivate them. So far as I have been able to judge, all the Collectors that have had experience of our districts have been reporting, from time to time, that this is a very popular procedure and it is scarcely objected to by Revenue authorities. For instance, in 1877 we had the worst famine and then a large extent of land was given up. Ten per cent. of the surrendered land was taken up next year, 20 or 30 per cent. next year and so on; and it was only in 1893 all the lands held in 1877 were taken up. The same was the case in the famine of 1899 when lands were largely given up and most of them were taken up within the next two or three years and all of them were taken up after the elapse of four or five years. I should say that 95 per cent. of these lands were taken up not under darkhast rules or by application, but only by squatting upon the land and looking to the sky for blessed rains. It is in this way our ryots have been doing the thing and our Revenue authorities, particularly Collectors have been considering the conduct of these ryots as being unobjectionable; and also they have been holding that this is a popular procedure to be allowed to be followed by the ryots.

I don't say that the facilities for ryots to take up lands in Deccan districts would be interfered with by the passing of this Bill; but I should say that the very existence of these provisions will deter the ryots from occupying the lands as they do now. They are already timid and illiterate and this will deter them from occupying and cultivating lands, being under the impression that the provisions of this Act can be enforced at any time after the crops have been raised. Suppose there are no rains till about the 16th of August, so that the time for applying for lands under darkhast rules has elapsed, and suppose that, subsequently they get favourable rains, they will go and cultivate the lands in the month of November, after they get a couple of showers in the north-east monsoon and then they get very favourable crops,—12 or 14 anna crop or even a rupee crop. If, however, on the report of the village officials that these men have squat upon the land, and that this is the time to levy prohibitory assessment, the Revenue officials should impose penalty, the people will not follow a similar course next year. The Tahsildar may take it into his head to report the fact of people having squat upon lands, in order that he may not be accused of not having reported it, even though it is a well recognised fact; and on that report the authorities may, in the course of routine business, pass an order imposing an assessment of, say, Rs. 5 an acre. Another thing is eviction. Under the provisions of the Bill, the buildings and crops upon a land trespassed upon are liable to be confiscated. The existence of provisions like this will deter a lot of people from cultivating lands, thereby not only will the ryots be losing the only means of livelihood for themselves, and for their children and of the maintenance of their cattle, but the Government will be put to enormous loss. The procedure herein prescribed are of four-fold character. One is under clause 3. In the case of assessed unoccupied land, assessment will be levied in the first instance, under clause 3; and next, penalty will also be levied, not exceeding 5 or 10 times the value of assessment, which, in our districts, means, I should say, twice or thrice the value of the produce itself—the net income of the land itself. The third thing is eviction and the fourth is confiscation. The fifth thing is imprisonment and that applies only to contumacious tenants. I would rather beg of the Honourable Member to see that only clause 3 is retained. As regards the fifth clause, notice should be given to the man to vacate the land; and if he fails to do that he should be asked to pay the penal assessment. He should be allowed to occupy the land by merely paying the assessment on the extent of the land that he has cultivated. Our survey fields are sometimes 40 or 50 acres. There may be exceptional cases in which survey fields might be even 200 acres. In such a case, if the ryot cultivates 5 or 10 acres, there is the risk of his being charged for the whole field. If the Revenue authorities are not unreasonable, they will charge him for the extent of the land occupied. It is not by the standard of the legal knowledge of the Revenue authorities or the merciful treatment of the ryots by those authorities we have to judge; but we have to judge by the ordinary understanding that an ignorant villager is capable of. When he finds that the Revenue authorities have the power to call upon him to pay the assessment on a full field of 30 or 40 acres, when he has cultivated only 4 or 5 acres out of that piece of

land, that will, itself, have a deterrent effect on him and prevent him from cultivating the lands and thus earn his livelihood. I have no doubt that the matter will be deeply and thoroughly considered by the gentlemen who will form the Select Committee. All the Members may not have the opportunity of knowing the details of this matter and therefore it is I place before the learned Members how these provisions will work upon the mind of the agriculturists and will influence their conduct. In that view of the matter, I would beg the Honourable Member in charge of the Bill to see that, in the case of assessed or unoccupied lands, in the words of the Board of Revenue, the ryot is allowed to cultivate the lands as hitherto and it may be added to his patta under the darkhast rules; and it is only when the land is wanted for other people who have preferential claims, the man should be deprived of the land; otherwise he should be merely called upon to pay the assessment for the portion he has cultivated for that year. Next year there will be plenty of leisure and so he can very well think over his own rights as well as those of others. The next thing is when he is to be ousted from the land or deprived of the land, notice should be given to him that other or better claimants are forthcoming or that the land is required for better purposes. If the man persists in not giving up the land, then alone the penal provisions of levying penal assessment—viz. five times the assessment—should be given effect to. The existence of the provisions about eviction and confiscation of crops will have a very injurious effect in a district like ours, so far as the interests of both the ryots and the Government are concerned.

The provision as to eviction should be put into force, only if the man persists in cultivating the land, after notice has been given to him calling upon him to vacate it; and if he persists in remaining in possession of the property, in spite of the levying of penal assessment, and persists in cultivating the land and raising the crops, it is only then the procedure about eviction must be adopted. I submit that, so far as the wording of the Bill goes, notice will be given only for the purpose of evicting a man, and that, too, after the Revenue authorities have come to a conclusion in the matter. They first of all come to a conclusion that the man should be evicted and then they give him notice to vacate. I should say that, before passing orders, the Collector should call upon the man to show cause why he should not be evicted. My learned friends have already put forward their objection regarding the existing provision about imprisonment or detention in custody. In regard to the question of giving retrospective effect to the Bill, I do wish to join my voice, humble as it may be, to that of my other friends and to say that the decision that was passed by the Full Bench of the High Court in December 1903 is not to be looked upon as an *obiter dictum*, but as an authoritative interpretation of the existing law. Judges cannot make the law but they can interpret the law. Once the law has been interpreted by the highest judicial tribunal in the land, I should say that the executive authority and all other Government officials as well as the non-official public must bow to it. What the Judges have stated is not a casual remark; but they thoroughly discussed the procedure that was being adopted by the executive and decided upon the matter. Judicial precedents and judicial interpretations of that sort are always looked upon in the matter of Hindu Law and Muhammadan Law as being precedents laid down for the conduct of persons for their future guidance. I should, therefore, submit that this decision about the right of levying penal assessment upon the lands of the character that are dealt with in that decision are conclusive and must be accepted; and any provision introduced in this Bill for the purpose of legalising the acts that have been committed, since the date of the decision is, I should say, not correct or proper procedure, and I would request Your Excellency to make this Bill apply only to cases that may arise hereafter. As I understood the Honourable Mover, he said that nearly three lakhs have been collected since the date of the decision.

The Hon'ble Mr. G. STOKES :—I never said anything of the sort.

The Hon'ble K. VENKATA RAO :—Since April.

The Hon'ble Mr. G. STOKES :—I never said anything of that sort.

The Hon'ble K. VENKATA RAO :—Anyhow the penal assessment that might have been collected must be small and we need not grudge the refund of this small amount, even if it be a lakh or so, to the ryots that are aggrieved by the levy of such assessment. Then as regards other matters, as regards the nature of the lands that

are considered Government lands, and communal lands as well as escheats, I hope a proper definition will be inserted in the Bill. I understand that zamindari p. ramboke are not included in this Bill. As regards communal and other lands, I hope that the objections raised by my Honourable friends will be seriously considered in the Select Committee and the necessary modification in the definition may be introduced for the purpose of making the law as clear as possible.

The Hon'ble K. VASUDEVA AIYANGAR :—May it please Your Excellency.—Every body will agree with the Honourable

3-20 P.M.

Mover in considering that it is just and proper that Government lands should not be allowed to be encroached upon with impunity; and the desire of Government to provide checks against wilful misappropriation, when the encroachments are to the great disadvantage of the community and lead to loss of legitimate revenue to Government, ought to have the support and sympathy of all classes of people. It only remains to be seen whether the provisions of this Bill do not go far beyond what would be necessary for the protection of such interests. It is admitted that the occupation of assessed lands is not at all objectionable. It is hardly necessary for me to submit that it would be very hard to compel ryots to go to authorities in each and every case of the cultivation of assessed lands, which are evidently set apart for cultivation purposes. The system of allowing the ryots to grow crops thereon in favourable years seems to be very popular, as is evident from the growing revenues during the last four years when the seasons have been very favourable. The revenue rose from 5 lakhs for fasli 1309 to something more than 8 lakhs in fasli 1312. Inevitably there will be decrease in the revenue under this item this year owing to the absence of rains and the consequent fall in the extent of cultivated holdings. It may not often be expedient to compel the ryots to take permission in each and every case, for these unoccupied lands are not very fertile and are not very rich in the unirrigated parts of the Ceded Districts and even in the Southern Districts, where the soil is mostly barren and gravelly and cannot be brought under something like continuous cultivation, and pattas cannot be granted as regards those lands. Even in the irrigated parts of Cauvery and Kistna, unoccupied lands are swampy, ill-drained and liable to submersion and unless floods are much below the average, it is not possible to bring them under cultivation. Some parts of unoccupied lands are rugged, uneven and filled with forests and jungles and these cannot be brought under the plough unless it be by laborious exertions on the part of the ryots. Again that is not consistent with the policy pursued for a long time by the Government as regards the cultivation of these lands. Mirasidars have been exercising some sort of rights over the village waste, from ancient times. A great statesman in the early part of the last century said that "such a right is a natural one and it is accordingly assumed by the ryots of every village without its being supposed that such a formal grant is necessary for the purpose." Without entering into the discussion about the respective rights between Government and mirasidars over the village wastes, it may be safely conceded that mirasidars can exercise their right of occupation over village wastes as against strangers although the Government may have absolute right to dispose of the property and impose equitable assessment thereon. If, in the exercise of this right, one is seen to cultivate the land without interfering with the rights of others, I do not see why he should be precluded from doing so and why any penalty should be levied, especially when one does not exceed the powers conferred upon him by the established usages of the country. It may be said that unauthorised occupation has a demoralising effect upon the ryots and the karnam and induces the former to have recourse to the concealment of cultivation and the karnam to connive at it. I don't think that evil exists on a large scale. I am informed that this tendency is becoming more and more scarce on account of the vigilant supervision exercised over the conduct of the karnam by the Revenue authorities. Anyhow this ought not to prevail when we take into consideration the hardships which the imposition of the penalty will cause to the ryot. Although penal assessment has been recently declared by the Honourable Judges of the High Court as one not known to law as the prerogative of the Crown entitles them only to take their just share of the produce from the land on just and equitable principles, yet it is too late in the day to think of discussing the question, as the Government have evidently resolved upon continuing the assessment under the impression that this has been proved to be the only way of checking encroachments. It will be sufficient for us if provision is made so as to make the imposition fall upon the ryots as lightly as possible. It may

not be out of place for me to submit one or two instances which go to show how the procedure adopted now in levying assessments presses somewhat hardly upon the ryots.

In the first place, in the majority of cases ryots do not become aware of cases of encroachments until penalties levied for them assume larger and larger proportions. In many cases encroachments are over an insignificant extent of area and it is not possible for the ryots to know whether they exist. The mere existence of prickly-pear and shrub, or some rank vegetation by the side of a ryot's holding is considered as an encroachment, and penal assessment is imposed on them. To show that the Divisional officers are not able to exercise their discretionary powers properly, it may be pointed out that after penal assessments, which are many times over and above the ordinary assessment, are levied and after reasonable requests, by the parties, for assignments are refused, it so happens that the Revenue officer goes and inspects the land and finding the encroachment unobjectionable sees his way to grant the patta. In many cases they have allowed the ryot to cultivate lands and spend enormous sums of money in reclaiming it and to plant cocoanut and valuable trees; and after a series of years, notice is served on him to vacate. The recent resurvey has contributed to the difficulties already existing. The system of measuring a large extent of the land as one survey number, a large piece of land with sub-divisions not marked, with names of several pattadars indiscriminately mixed together leads to the taxing of innocent people. We, in Trichinopoly, are familiar with cases of measurements in registers differing from those of the fields, of lands which are in the enjoyment of persons and others which are fit for cultivation being entered as poramboke, of bends and crooked courses of small streams and path-ways not being marked properly in the maps. I submit, My Lord, that these discrepancies inevitably lead to miscarriages of justice. Ryots are not able to remove their encroachments and avoid paying penal assessments under the circumstances. What I am submitting is not to contend against penal assessment being levied in obstinate cases; but simply to point out the importance of proceeding to legislate on cautious lines, so that these provisions may not be worked so as to cause hardship to ryots, whose interests I may be allowed to submit, are indissolubly connected with those of Government. Such caution is all the more necessary in this country where people do not know what it is to contend against the orders of Government in whom they have the highest respect and confidence. This may be evidenced by the fact that ryots have not been found to contest the legality of these assessments, although they have been in vogue for 35 years. This must be said to their credit. The safeguards that must be provided in the new Act may be summarised as follows, *i.e.*, safeguards which have been so well amplified by the Honourable Members who preceded me. Ordinary assessed waste lands except those set apart for sale or other purposes under the orders of the Government under clause 7, all poramboke lands which are fit for cultivation and all insignificant encroachments, due to survey errors or to causes beyond ryot's control, should be excluded from the penal provisions of the Bill. It may be said that the Collector can exercise his discretion and deal with cases properly, but I would submit that the thing may not work well, if we subject all these things to the discretion of the Collector, without laying down broad principles. Discretion depends upon the temperament of individual officers. One Collector is very sympathetic and is very anxious to save the ryots from being put to unnecessary exactions while his successors interpret the rules differently. As regards the penal provisions of the Bill, it is regarded in some quarters that the ordinary provisions of the Local Boards Act and the Criminal Procedure Code may be sufficient to evict a trespasser, but if it is too tedious to prove criminal intent on the part of the trespasser and too elaborate to go into the question of ownership in each and every case and if it is necessary that these summary powers should be given to Collectors, provision should be made to enable aggrieved parties to appeal to the District Court under the Rent Recovery Act against the orders of the Collector. I presume that he has the right to appeal to the Board of Revenue but that may not be so satisfactory as a public enquiry in a District Court, especially as his personal liberty is at stake and when, as pointed out by another Honourable Member, the assessing officer is both the prosecutor and the judge. As regards the other suggestions mentioned by the Honourable Members, I am entirely in accord with them in thinking that orders of Collectors which have been made conclusive under clause 4 may be made appealable to the Board of Revenue; notice may be issued to parties to show why prohibitory assessment should not be levied and there should be some limit even in imposing penalties where lands are used for non-agricultural purposes. These would greatly

facilitate matters and would provide ryots with sufficient safeguards. These are the only remarks I wish to offer and I beg Your Excellency to take them into consideration.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—Your Excellency, I beg to say a few words on the motion before the Council, but before I do so I wish to associate myself with the Hon'ble Mr. Krishnan Nayar in what he has said by way of respectful congratulations on Your Excellency's tenure of office as Viceroy. It is no small achievement to have earned the esteem and approbation of Indians and Anglo-Indians alike, and Your Excellency's expectations have been not only justified but fully realised during the régime of Sir James Thomson and his Colleagues during Your Excellency's absence from Madras.

Going to the Bill, the question of the introduction of which is now before the Council, I take it that the principle of the Bill is not one of enhancement of revenue that is available but of prevention of encroachment on lands, the occupation of which it is desirable in the public interests either to prevent absolutely or without restriction or previous sanction. Judging the matter from that standpoint, I fear, My Lord, that the Bill, as it is framed, is not best calculated to serve it. In my humble view it is not only likely to make that object ineffectual but it also travels very much beyond the scope of the Bill as indicated by me. I do not think that in this Bill it is the object of Government to determine or to declare to what lands the Government are entitled and if that question at all arises it can only be as a matter of subsidiary importance.

I am in hearty agreement with what the Hon'ble Mr. Sivaswami Aiyar said with reference to what he considers to be defects in clause 2 of the Bill. I would only add that attention has been drawn to the controversy that undoubtedly there is, as to the ownership of what are called waste lands in villages; and I do not know if it is necessary for Government or this Council to decide the propriety of either side in this controversy, for the purpose of giving effect to the object that is intended to be effectuated by this Bill. I, for one, am in thorough sympathy with the object that is intended to be served by this Bill; but I am only unwilling that any side-issues should arise which will serve to deprive this measure of the efficacy which it would otherwise possess or to whittle away the importance of the various provisions that are to be found in this Bill. By retaining

3-40 P.M.

clause 2, as we have it, there is very great danger of litigation arising by the application of the provisions that are now contained in the Bill, all that litigation being directed not to the question of encroachment or otherwise but to the question of the ownership of the property in respect of which the encroachment is said to have taken place. It is therefore desirable that the Bill should be so drafted as to leave no uncertainty or doubt as to the class of lands to which this Bill is intended to apply; and for the purpose of doing that, it appears to me that, taking into consideration all the difficulties that have been suggested, the best course to adopt is not one of definition, as has been given in clause 2, but one of description. I believe that when we take into consideration the two classes of lands in respect of the encroachment of which this measure is chiefly intended, namely, lands used for communal purposes and assessed waste lands, it will not be difficult to find out a method of so expressing our ideas as would be descriptive of the classes of lands to which the Bill is to refer, so that this question of ownership need not be gone into. I may also mention that nobody is going to deny that even in cases wherein, strictly speaking, the ownership of the property might vest in the village community, the Government have authority, as the guardian of the village community, to take such measures as are calculated to protect the rights of the community, to the lands, which are used for communal purposes. I therefore submit, My Lord, that clause 2, as it is in the Bill, is one which is likely to lead to litigation of an undesirable kind and it is also likely not to altogether serve the purposes for which this Bill has been brought forward. I beg also to take objection to the latter portion of clause 2, which provides for the making of rules by which Government can dispose of such lands as are referred to in the earlier portion of this clause. It seems to be a novel method of legislation, by which legislative sanction is given to rules, in the making of which the Council has no voice. Yet that is exactly the scope and significance of the second portion of the second clause. No doubt we find it, in the Bombay Code, but, as has already been pointed out to this Council, the Bombay Code professes to be very much

more comprehensive, full and complete in its scope than this Bill is. I may mention that the Bombay Code provides for improvements not being taxed and also for there being no reclassification of soils during the second settlement. In the case of the first principle, although this Government are willing to recognise its propriety, yet they are unwilling to lend legislative sanction to it. As for the second principle, this Government are not prepared to recognise its propriety even. This I mention to draw attention to the fact that when this Council is to legislate with reference to rules to be adopted for purposes of giving away lands at the disposal of the Government, various considerations shall have to be kept in view, before the rules are adopted. Without any discussion of those rules, it would be a novel thing simply to delegate to Government the power of making rules and impress them with legislative sanction. I would, therefore, submit that especially when we take into consideration the purpose of this Bill, it is very desirable that this particular portion of clause 2 should be deleted. In the speech of the Honourable Mover and also in the Statement of Objects and Reasons, that has accompanied this Bill, the distinction that undoubtedly there is in importance between lands which are used for communal purposes and lands which are merely assessed waste lands, is fully recognised. But we do not find any such recognition of distinction in this Bill. I do not say that the Bill, as it stands, does not include both these classes, but it appears to me that, from the very nature of the case, from the cardinal distinction there is in the character of these two sets of lands, they are capable of different treatment, not merely that they are so capable, but that encroachments upon them require different treatment. I beg to submit, My Lord, that it should not be merely left to the discretion of the executive, but that it is desirable that certain rules should be enunciated in the Bill itself, by which encroachments upon the one kind or the other kind of lands as the case may be can be governed.

The next point to which I request your Lordship's attention is, with reference to the provision that is contained in clause 6 of the Bill. I submit that especially when the urgency of preventing encroachments is not quite so great in the case of assessed lands, as it is in the case of lands used for communal purposes, this provision of eviction or punishment that is to follow any obstruction to eviction, is not necessary in the case of assessed waste lands; and if at all, it can be necessary only with reference to the lands which should be used for communal purposes, and on which there have been encroachments made. I may mention, My Lord, that the chief reason that is stated as to why this Bill came to be introduced was, that there has been recently a decision of the High Court by which prohibitory assessments, such as have been levied in the past, are considered illegal. I am not now concerned with the question whether that decision is a binding one or whether that merely contains an *obiter dictum* by which Courts might be influenced in subsequent cases that might arise. The reason as to why this Bill was brought into existence was that decision; and, until that decision was pronounced, the existing machinery was considered enough. I submit that till now, it has not been known that there has been any such eviction or punishment following obstruction to such eviction as stated in clause 6, so far as this Presidency is concerned. If we take also other pieces of legislation for which this Government are responsible, it appears to me that there have been no such instances. Neither in the Rent Recovery Act nor in the Revenue Recovery Act do we find a provision similar to that contained in clause 6. In Madras Act II of 1902 (Court of Wards Act), which reflects the tendency and spirit of legislation in the present times—even there, while there is a provision made for the eviction of persons from properties, there is no such provision made as will enable persons who want to turn out others to send them to jail in the event of obstruction being offered to such eviction. It, therefore, appears that there has been no necessity as yet felt under the circumstances of the case for the introduction of what cannot but be considered a very drastic method of legislation, such as is contained in clause 6. This I mention in addition to the reasons already given by Honourable Members who have had occasion to speak upon this clause.

Going to other clauses, I take special objection to clause 14, which provides for retrospective effect being given to this Bill. I must respectfully dissent from the view that has been propounded by the Honourable Member that the decision to which this legislation is due, is merely an *obiter dictum* on the matter to which the Bill relates. I take it, that, if the Government had entertained any doubt as to the soundness of

that view, it was open to Government to have had that view corrected by reference to other authorities. What I beg to submit is that for the present, at any rate, we have to consider ourselves to be bound by the view as propounded by the High Court. One of the principles of legislation being that ordinarily no retrospective effect should be given to a measure, there ought to be very important reasons either of State or of policy which require any such retrospective effect being given to this Bill; and, so far as I have been able to consider the question, I must submit, My Lord, I was unable to find any such reason. It merely comes to this: that the Government are now to be allowed to declare that to be right which admittedly is wrong. And I submit that no reasons have been assigned as yet as to why it should be so. I must confess that I was unable to follow the Honourable Mover when he said that clause 14 still leaves the question of liability open, because it appears to me that the High Court decision refers to exactly those cases wherein the question of liability of assessment arises, and not to cases where the propriety of assessment is in question. In these days of surpluses, I believe it could not be stated that financial considerations on the part of Government require that there ought to be no refund of amount which, as the law stands at present, has been illegally derived from the ryots although innocently taken; and when it is remembered that the Government propose to do by means of legislation what will certainly not be possible for a private individual or body to do, it appears to me, My Lord, that the moral affect of such a clause cannot but be depressing. I also beg to submit that certain reasons have already been pointed out as to how it must of necessity be that even supposing there was no such clause as this in the Statute Book, the hardship or loss to Government cannot be very appreciable. If, therefore, I now object to this clause standing in the Statute Book, it is because I am afraid that this might become a dangerous precedent for introduction in other cases wherein the necessity for having some such retrospective effect given to pieces of legislation that might be taken in hand, might not be apparent. The Government have for their help the law of limitation. There has been also the High Court decision which clearly stated in December 1903 that such assessment as has been levied in the cases to which this Bill is now sought to be applied is not legal assessment. Under these circumstances, I submit, My Lord, that it is not desirable that retrospective effect should be given to this legislation.

With these suggestions and subject to these objections, I support the motion before the Council.

The Hon'ble G. SRINIVASA RAO :—I am in full accord with the principles of the Bill and I heartily support the proposition of the Mover that the Bill be read in Council. Without mentioning the reasons for the various changes that I propose to place before the Council, for the simple reason that they have been spoken to at immense length by my Honourable friends already, I will *seriatim* mention the changes that are required leaving the matter in the hands of the Select Committee and the Honourable Mover of the Bill. I believe that the language of clause 2 is indefinite in some respects and the clause is besides unnecessary. It must be, therefore, removed; and if it is considered necessary to retain it, it ought to be made more definite. In clause 3, a preliminary notice is necessary calling upon the person encroaching to give up the land. In the same clause, I feel that, in view of the fact that a *bona fide* occupier may have spent large sums of money upon the lands, collection of assessment for the year is sufficient and that it need not be for the whole period that he has been occupying it. In the same clause again, I feel that where a portion of a survey number is occupied, the assessment to be levied from him should be made proportionate to the portion occupied and not levied on the whole survey number of which the portion occupied is only a small fraction. Reading the same clause, I am anxious that the words "or such an amount of assessment as may be fixed in rules or orders made under section 7" should be deleted. Or if a provision similar to that is necessary, the sum should be ascertained and mentioned in the Act itself. Going to clause 5, I would suggest that just as in the case of lands occupied for agricultural purposes the maximum amount may be fixed at five times the assessment, I would suggest that the purposes, without its being left to be decided by the rules to be framed hereafter. I do not mean to say that the rules ought not to be made. But what I say is that the maximum should be fixed in the Act and should not be left to be determined by the rules. In clause 6, my objection is mainly to eviction in the manner provided for it. I have given my anxious consideration to see whether an obstruction to eviction after

an order is passed by a Collector is not punishable under the law as it exists and whether if there is any case in which obstruction to eviction in the manner provided for in the clause cannot be brought under the Penal Code. If it can be so brought, I feel it altogether unnecessary to go over to a procedure which is very old, although it happens to be in the Bombay Act. I have heard it said in my younger days that when the assessment is not paid, a ryot is kept in a bent posture in the Taluk Cutcherry for a number of days until he pays down the money. The passing of this clause would probably amount to that sort of punishment. The provision to keep a man in close custody in the Collector's office or to send him to the Jail for 30 days is in my view highly objectionable. With regard to clause 8, I would respectfully ask the Members present to consider, if it is not necessary for the power of revision by Government being provided for in it.

The Hon'ble Mr. G. STOKES :—Is it clause 8 or 9?

The Hon'ble G. SRINIVASA RAO :—It is clause 9. I was wrong in mentioning clause 8. In clause 8 I suggest that until the appeal period is over there should be no eviction. It is just possible that as matters stand there may be eviction before the appeal period is over. Then in clause 13 "cause of action" is the language used. This is rather indefinite and I would like the cause of action to be definitely enunciated. I should suggest that the date of the order of the Collector or the date of the order of the Board of Revenue when there is an appeal provided, to be mentioned as the

4 P.M.

date from which the cause of action arises. Several Honourable Members have pointed out that retrospective effect should not be given to this legislation and I join my humble voice with theirs without discussing the question. I do not see why we should give retrospective effect to this Bill and therefore I do not propose to say anything as to how the money to be collected should be utilised. With these words, My Lord, I beg to support the motion that the Bill may be read in Council.

The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR :—Your Excellency, on behalf of myself and the Zamindars whom I have the honour to represent, I beg to congratulate Your Excellency on the admirable success that has attended your Viceroyalty, and we are also certain that Your Lordship's noble-mindedness has contributed not a little to that success. We are equally certain that the same high-mindedness was the key to the popularity of Sir James Thomson, as Governor of our Presidency, during your absence in SIMLA. These are only examples of what high-mindedness could achieve for one in this world. It is all the more rejoicing to us since it was under Your Excellency's direction the community whom I have the honour to represent has had every help in the matter of legislation towards its progress and usefulness. Now coming to the Bill, I thank the Honourable Mover for having excluded zamindaris from the scope of this Bill. I hope he will make that point clear in the Bill when it comes out of the Select Committee. I reserve my remarks on the Bill to a future occasion when it comes again before this Council for consideration after it leaves the hands of the Select Committee.

The Hon'ble Mr. G. STOKES :—Your Excellency, it now devolves upon me to reply to the many criticisms which have been levelled against this Bill. Perhaps it would be most convenient if I simply follow the arrangement of the clauses.

A great deal of objection has been taken to clause 2 of the Bill. It has been pointed out that it is not needed, that the clause is uncertain, that it is too sweeping, that it offends against certain legal principles, that the definition of Government property is a mere negative definition whereas a clear definition is wanted, that it is alien to the scope of the Bill. I confess that, as the clause is drafted, there is a great deal of force in these objections. As I intimated in my opening remarks, I think the negative form of definition, embodied in clause 2, will have to be amended, and we will have to make the scope of the Bill more precise and accurate by defining what private property is. The Hon'ble Mr. V. C. Desika Chariyar suggested something of the sort, and I think it will be the duty of the Select Committee to see if we cannot arrive at a definition which will make the clause precise and accurate in its application. As the clause stands, I must admit that it is no definition of Government property to say that it is everything that is not private property. As I say, it will be necessary to make that clause precise. If that is done, it is perfectly necessary to keep the clause in the Bill.

With regard to clause 3, the first objection taken to it is that notice should be given before the assessment is imposed. That, I think, is both impossible and unnecessary. It will be quite impossible to work our revenue system if you have to give notice before you impose fair assessment on the land. As regards the imposition of assessment on assessed waste lands under this clause, it will be imposed, as it is imposed now, practically on the extent actually cultivated. That is what the clause intends and that is what will be done. In the case of land which is not assessed waste but *poramboke*, the amount of assessment is and must be, to a certain extent, arbitrary. The Bill proposes to lay down that in that case the highest dry or wet rate, as the case may be, should be the lowest assessment imposed upon the encroachment. There being admittedly an encroachment upon the *poramboke*, that seems to me an unobjectionable rule to adopt. That is to say, you simply assume against the man who encroaches that the land is the best land in the village which it probably is from the fact that it is communal *poramboke*. That is the minimum, and the maximum may be any amount that may be fixed in the rules framed under clause 7. With regard to the maximum penalty to be levied, a good deal has been said, urging that it should be fixed in the Bill. I am quite prepared to accept that suggestion. I see no objection to include in the Bill the maximum penalty which may be imposed for the illegal or unauthorized occupation of *porambokes*. Under the present system of *pinal* assessments, of course, it is necessary that the assessment which is imposed should be unlimited, because the object is to compel eviction. Under this Bill, though some penalty must be imposed because it is the punishment for doing what everybody must know to be objectionable, it is unnecessary to impose a large penalty. I regard the ryot who occupies the communal land of a village as not only a thief, but as a very bad kind of thief. He deserves, to my mind, no sympathy and no consideration. I am entirely in agreement with that old law-giver whom I quoted to you as to the manner in which the action of a villager of this kind is to be treated. With regard to the levy of assessment on assessed waste I have already pointed out that it will be in proportion to the part actually cultivated. That is an important point connected with the Ceded districts, where, as the Hon'ble Mr. Venkata Rao pointed out, the lands are taken up according to the rainfall. It is an important point which should be made clear. I don't think it need be made clear in the Act, but it will be made clear in the rules—that the existing system shall be followed, that is, that the assessment shall usually be on the extent actually cultivated. But the power must be retained of charging for the whole survey number, if that be necessary. That will not be the ordinary rule. But it will be necessary to retain the power which the clause gives.

As to clause 5, I have already explained in my opening speech, that it is intended, before the penalty is imposed, that notice should be given. That must be made clear in the clause. That is a matter for the Select Committee. It has also been suggested that the application of this clause should be conditional on disobedience. That is really what it comes to. It is so at the present moment. I think the matter is one which is in the discretion of the Collector, and it must be so left.

In regard to clause 6, a good deal of objection has been taken to it. In the first place, here again no eviction can be made until after notice. I think that will remove a great part of the objection either to the power of eviction or to the power of forfeiture. It is perfectly plain that if you have not got the power of penalty, you must have the power of eviction. Eviction seems to me to be the more important of the two and one which it is absolutely necessary to retain. There is no objection to limiting the penalty. But the power of eviction must be retained so as to make the Bill completely operative. The necessity for dealing with forfeiture and for removal prevent the use of the land by other persons who are entitled to it in the case of, say, assessed lands, and it may also cause considerable inconvenience in the case of unassessed lands. It is not necessary for me to give cases to illustrate this, because they will suggest themselves to every one. As to the mode of eviction, these provisions have been taken from the Bombay Code. It has been pointed out that these provisions are all very well in the Bombay Code, but they will not work well here, and it has also been pointed out that they are very much analogous to provisions now existing in the Civil Procedure Code. For my own part, I think, where it is necessary summarily to remove a man, they are as good provisions as you can find. I see no objection to them. It is extremely unlikely that they will ever be used. A similar provision in the Civil Procedure Code has never been used. I think that these provisions should be retained.

Objection has also been taken that the Collector should not be the Judge in his own case, that he is interested and so on. That seems to me always a very great mistake. I do not see what interest the Collector has in these matters. If the Collector has any personal interest in the matter, it is not to take any trouble about it; he will let the ryot alone which is the easiest thing to do and not evict him and have his decision appealed against. I don't think that the Collector has any more personal interest in the matter than the Judge has in enforcing his own decree. If a Judge decrees a sum of money and if the man decreed against does not pay, he has power to imprison him. So, if a Collector sees that a man does not obey his orders, he removes him and keeps him in custody. It is a simple way of dealing with the matter. It is summary but efficient. These clauses will have therefore to be kept very much as they are. The main objection has been to sub-clauses (a) and (b) of clause 7 and the ground of that objection I have already dealt with, when I said that there was no objection to fixing the maximum penalty.

In regard to clause 9, it has been suggested that it should be made clear that the Government should have the power to revise any order passed by the Board of Revenue or the Collector. I don't think that there can be any objection to that provision being included. That is what was intended, and there is no objection to have it included in the Act.

In regard to clause 13, the proposal which has been made relates to the date from which the period of limitation should run. That is a matter which must be considered by the Select Committee. It must always be remembered in connection with this clause and other provisions in the Act and the suggestions that have been made in regard to this Bill that it is always open to any one aggrieved, the moment action is taken, if the land is not liable to assessment, to go to the Civil Court. That must always be remembered in connection with this Act. Therefore, the question that a suit shall be instituted within six months from the time at which the cause of action arose is not of much importance. If he has a good case, he will go to the Civil Court. Let him go at once, if he does not think that he will get justice from the Revenue authorities. That, of course, you must remember is a great protection against any abuse of this Act—the power which exists under the Act to go to the Civil Court at any time when necessary.

In regard to clause 14 to which objection has been taken on the ground, that retrospective effect should not be given to the levy of these assessments, I think there is some misapprehension as to the real position of this matter. The position is this: for years past a certain system has been in existence; it has been regarded as legal, it has been declared as legal by the High Court and acted upon. Then a short while ago a Bench of the High Court ruled that that system which was existing was illegal. In the first place, that decision governed only that one case. But taking it to be the proper exposition of the law regarding the matter, as I have already said, the Government determined to introduce this Act, with a view to put things on a proper basis. But it seems to me that there was no reason why the existing system should at once be suspended, everything thrown into confusion and upset and the whole administrative machinery stopped. That seems to be a very unreasonable demand. It is all very well to say that the revenue on unassessed waste has been illegally collected. If it has been illegally collected in any particular case, the Courts will say so if asked. But if it has been legally collected and that must *prima facie* be the presumption, why open the question? It seems to me therefore that on the mere ground of, what I may call, philosophical doubt, it is quite unnecessary to upset the whole of the practical working of the administrative machinery and to re-open a number of closed questions which nobody wants to re-open except a few persons who have the power of re-opening them, if they wish. If they have not done so by the time the Bill passes they should be prevented doing so thereafter. It seems to me that the objections to this clause are such as cannot prevail.

I think, Sir, I have dealt with the main objections to the provisions of this Bill. There is no doubt that there are many points, which the Select Committee will

4-20 P.M.

be able to elucidate and make clear. I am glad to find that the members who have spoken have generally approved of the principle of the Bill and have admitted that it is necessary; and I think that they will also admit that there must be, as I contend, an efficient and proper machinery to deal with the cases. How far the Bill goes in

providing that machinery and how far that machinery can be made to work will be matters for anxious consideration by the Select Committee. At present, I think I have endeavoured to explain most of the objections that have been taken to the Bill. I would now ask Your Excellency to put the motion to the Council that the Bill be now read.

His Excellency the PRESIDENT said:—Honourable Members, my Honourable Colleague has acted as the spokesman for Government and I cannot usefully add anything to what he has said. I should like to say just this in order to disarm possible outside comment on our proceedings, that if we have not put forward more than one spokesman on the side of Government, it is not from any want of consideration and respect for the opinions of the Honourable Non-official Members. Certainly, to the outsider, it might seem strange that on the side of Government there should be only one speaker, while on the other there should be no less than eight. The reason, I think, is fairly obvious to all Honourable Members, but I should like to explain it, in order, as I said, to disarm any outside criticism. There is, it appears, no opposition whatever to the object of the Bill and the principles of the Bill are thoroughly approved. Honourable Non-official Members however object and have given very excellent reasons for their objections to the method of carrying out the object and the principle of the Bill. It is right and necessary that every Non-official Member who holds an opinion on the question of this legislation should state his opinion separately and for himself. But, on the other hand, it is not necessary that every official should reiterate the opinion of the Government. That is the simple and sole reason why we have left the whole exposition of the Government case to my Honourable Colleague,—not because we wish to ignore the opinions and arguments of Honourable Members. If there had been any opposition to the actual principle or object of the Bill, we should, of course, have put up champions to meet the Honourable Non-official Members after they had stated their arguments. But I think, after the very reasonable and courteous criticism that we have heard to-day, anything of the kind was unnecessary; and whatever there was of criticism I think my Honourable Colleague is perfectly capable of dealing with, single-handed. He is an Irishman and very exceedingly capable of taking care of himself. Before I sit down, I should like to thank the Honourable Members for the more than kind remarks which they were good enough to make as regards myself. I do not feel to deserve the praise which I have received outside this Council Chamber and which Honourable Members here have been kind enough to reiterate. But I can assure them it is more gratifying to me than I can describe that they should entertain those feelings towards me which were manifested in their remarks; and it is particularly gratifying to me that, even if I have not achieved as much as is attributed to me by critics who cannot possibly have the information on which to base their opinion and who can only form that opinion from a generous and kindly estimate of my personal character rather than on any intimate knowledge of what I have actually done or tried to do—it is particularly gratifying to me that Honourable Members should think that, even if I have not actually achieved anything which is worthy of great praise, at least that I have not brought discredit on the Presidency of which I am so proud to be the Governor and on the administration to the head of which I am so heartily glad to return.

The motion to read the Bill in Council was put and agreed to.

The Secretary then read the title of the Bill.

The Hon'ble Mr. G. STOKES:—Your Excellency, the motion that the Bill be read in Council having been carried and the title of the Bill having been read, it now becomes my duty to move that the Bill be referred to a Select Committee. It is unnecessary for me to say anything to show the necessity for such a course. Comments already made show that the Bill is contentious and is in need of amendment and it is perfectly obvious that this is a Bill which must be referred to a Select Committee. The proper course, therefore, for me is to move that the Bill be referred to a Select Committee and then to move that the Committee be formed in a particular way. I now, therefore, move that the Bill be referred to a Select Committee.

The Hon'ble Mr. G. S. FORBES:—I beg to second the motion.
The motion was put and agreed to.

The Hon'ble Mr. G. STOKES:—It now becomes my duty to move that the Select Committee be constituted as follows:—

The Hon'ble Mr. J. N. Atkinson, the Hon'ble Mr. A. E. Castlestuart Stuart, the Hon'ble Diwan Bahadur R. V. Srinivasa Aiyar, the Hon'ble L. A. Govindaraghava Aiyar, the Hon'ble P. S. Sivaswami Aiyar, the Hon'ble the Advocate-General and myself.

I need not say anything in support of the motion. The names will commend themselves to you.

The Hon'ble G. SRINIVASA RAO:—I beg to second the motion.

The motion was put and agreed to.

His Excellency the PRESIDENT:—The Council is adjourned *sine die*.

H. D. TAYLOR,
Ag. Secretary to Government, Legislative Dept.



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 Vic., cap. 67, and 55 and 56 Vic., cap. 14.

The Council met at the Council Chamber, Fort St. George, at noon on Tuesday the 21st day of March 1905.

PRESENT:

The Hon'ble Sir JAMES THOMSON, K.O.S.I. — *Presiding*.
The Hon'ble Mr. G. STOKES, C.S.I.
The Hon'ble Diwan Bahadur R. V. SRINIVASA AIYAR Avargal.
The Hon'ble Mr. A. G. BOURNE, D.Sc., F.R.S.
The Hon'ble G. SRINIVASA RAO Avargal.
The Hon'ble M. KRISHNAN NAYAR Avargal.
The Hon'ble K. VENKATA RAO Garu.
The Hon'ble GHULAM MUHAMMAD ALI Sahib Bahadur, Khan Bahadur, Prince of Arcot.
The Hon'ble Mr. H. P. HODGSON.
The Hon'ble Mr. H. BRADLEY.
The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR Avargal, Zamindar of Chudainpet.
The Hon'ble Mr. A. E. CASTLESTUART STUART.
The Hon'ble P. S. SIVASWAMI AIYAR Avargal.
The Hon'ble V. C. DESIKA (HARIYAR Avargal).
The Hon'ble Mr. J. E. P. WALLIS (Advocate-General).
The Hon'ble Mr. J. TWIGG.
The Hon'ble Mr. G. S. FORBES, C.S.I.
The Hon'ble L. A. GOVINDARAGHAVAIYAR Avargal.
The Hon'ble Mr. A. J. YORKE.
The Hon'ble Mr. M. HAMMICK, C.I.E.
The Hon'ble K. VASUDEVA AIYANGAR Avargal.
The Hon'ble Mr. W. B. DEWINTON, C.I.E.
The Hon'ble Mr. C. J. WHIR.

The PRESIDENT:—Honourable Gentlemen, I regret to have to report to the Council that His Excellency the President is unwell and prohibited from undertaking any work at the present time. His Excellency has had a long term of very arduous duties without any intermission, and, as you know, the present is the busiest time of what is never an easy time in the Government of Madras. It is therefore very unfortunate that His Excellency should have been laid aside from duty now and, in particular, rendered unable to preside at our deliberations to day. It is gratifying, however, to know that his health is improving, and the Council will join with me in wishing him a thorough and speedy recovery. He desires me to express his regrets that he must be absent.

ADDITIONAL MEMBERS.

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

The Hon'ble Mr. A. J. YORKE.
The Hon'ble Mr. M. HAMMICK, C.I.E.
The Hon'ble K. VASUDEVA AIYANGAR Avargal.
The Hon'ble Mr. W. B. DEWINTON, C.I.E.
The Hon'ble Mr. C. J. WHIR.

QUESTIONS AND ANSWERS.

The PRESIDENT:—Honourable Gentlemen will now put the questions that stand in their names.

The Hon'ble G. SRINIVASA RAO:—

I. (a) Will the Government be so good as to place on the table the report of the Hon'ble Mr. Castle Stuart Stuart, the Settlement officer, regarding the state of the season and the actual condition of the people in the districts of Cuddapah, Kurnool, Nellore and Chingleput after his recent visit to them?

(b) Is it a fact that the impressions which he formed and reported are not in accord with those of the local officials of the districts?

(c) If they are not, will the Government be pleased to state in what districts they are not?

The Hon'ble Mr. Hammick:—

I. (a) A report from the Settlement Commissioner dealing with the state of the season up to March 11th will be laid upon the table.

(b) & (c) As might have been expected, there have been differences of opinion in details between the Commissioner and some of the local officials. The Government see no reason for publishing any further information on the matter.

The Hon'ble G. SRINIVASA RAO:—

II. (a) Is it a fact that under the new Appellate Side rules of the Madras High Court, a single judge in the Admission Court is empowered to reject a criminal appeal except when the appellant or a person tried along with him is sentenced to death?

(b) Is it also a fact that civil appeals other than appeals relating to costs only from an original decree, are to be heard by a Bench of two judges, whatever the value of the subject-matter may be?

(c) Will the Government be pleased to direct that the rule regarding criminal appeals may be so modified as to secure to the appellant a final hearing before two judges without the chance of their being dismissed by the Admission Court or by a single judge?

The Hon'ble Mr. Forbes:—

II. The rules of the High Court in the matters referred to in the Honourable Member's question appear to be as stated, but these rules are made by the High Court under the statutory authority vested in it by sections 13 and 14 of 24 and 25 Vic., Cap. 104. Such statutory authority is subject to any laws or regulations that may be made by the Governor-General in Council and this Government see no reason to make any representation on the subject.

The Hon'ble G. SRINIVASA RAO:—

III. (a) Is it a fact that the fees collected for translating and printing the records of cases in the High Court leave a surplus over the cost of the establishment maintained for the purpose?

(b) Will the Government be pleased to lay on the table a statement of the receipts and the charges under the above heads during the last three years?

The Hon'ble Mr. Forbes:—

III. (a) The answer is in the affirmative.

(b) A statement showing the receipts and charges of translation and printing fees for the last three years will be placed on the table.

The Hon'ble G. SRINIVASA RAO:—

IV. (a) Is it a fact that the translation fee per page of 24 lines of vernacular records in the High Court is 10 annas and that the payment given to the additional translators for each such page is only 6 annas?

(b) Will the Government be pleased to direct that no profit should be made in this branch of income or that the profit should be decreased to the greatest possible extent?

The Hon'ble Mr. Forbes:—

IV. Charges for the translation of records in civil cases are regulated by the High Court under section 652 of the Civil Procedure Code, and the Local Government have no authority to interfere. The charges for translations of criminal records are also regulated by the High Court by rules made under 24 and 25 Vic., Cap. 104.

The Hon'ble G. SRINIVASA RAO:—

V. (a) Is it settled to have the head-quarters of Palladam taluk in the district of Coimbatore at Tiruppur and to have a new taluk called Avanashi?

(b) Is Avanashi to be the head-quarters of the taluk of that name?

(c) Are the Government aware that Tiruppur and Avanashi are only within a distance of seven miles and that people of the two taluks will have to travel long distances to go to the head-quarters?

The Hon'ble Mr. Forbes:—

V. As indicated in the answers given on former occasions to the Hon'ble Messrs. Srinivasa Rao, Vasudeva Aiyangar and Govindaraghava Aiyar, the scheme for the re-distribution of district, divisional, and taluk arrangements is not yet sanctioned and the Government are not prepared to publish the details of the scheme.

The Hon'ble G. SRINIVASA RAO:—

VI. (a) Will the Government be pleased to call for and place on the table a statement of the fines which Mr. E. Scott, I.C.S., Collector of Anantapur, has imposed upon the clerks and the officers of the Revenue department within the last one year?

(b) Is it a fact that Mr. Ponnuswami Aiyar, B.A., Tahsildar at Gooty, who has been acting for Rs. 200 for nearly two years, has been reverted to Rs. 175 and one Mr. C. Venkoba Rao, B.A., on Rs. 150 has been brought in his place from the district of Bellary?

(c) Will the Government be pleased to state the reasons, if any, why the Tahsildars in the district of Anantapur drawing Rs. 150 and Rs. 175 have been passed over?

The Hon'ble Mr. Hammick:—

VI. The Government have no information on the matters referred to. A statement of the fines inflicted by the Collector is submitted periodically to the Board of Revenue. The appointment of Tahsildars and their reversion from one grade to another are matters which are left to the discretion of the Board of Revenue and the Collector.

The Hon'ble G. SRINIVASA RAO:—

VII. (a) Is it a fact that in the estates of Kaldhasti and Karvetnagar the last four years have been years of successive favourable season?

(b) Will the Government be pleased to state whether any and, if so, what amounts have been paid to the creditors of these estates during the last four years?

(c) Is it a fact that there is a sum of nearly 3 lakhs of rupees in the hands of the Decree Collector which may be made available for payment to the creditors? Is there any reason why this amount is not paid to the creditors?

(d) If there is no possibility of the creditors being paid, will the Government be pleased to direct the Court of Wards to withdraw from the management of the estates?

The Hon'ble Mr. Hammick :—

VII. (a) In 1900-1901 and 1901-1902, the rainfall was insufficient, untimely or ill-distributed, and affected either the extent of cultivation or the outturn of crops or both, in both Kálahasti and Karvetnagar, and relief works had to be started in some parts of the latter estate; in 1902-1903 the season was generally favourable, while in 1903-1904 the rainfall was abnormally heavy and affected the outturn in both the estates.

(b) The debts repaid in Kálahasti and Karvetnagar during the last four years amounted to Rs. 77,799 and Rs. 1,99,906 respectively.

(c) & (d) The balance to the credit of the Karvetnagar estate at the end of fasli 1313 (1903-1904) was about $2\frac{1}{2}$ lakhs and that to the credit of Kálahasti about $3\frac{1}{4}$ lakhs.

The Government are now considering the question of utilisation of these amounts in the best interests of both debtors and creditors. They are unable at present to make any pronouncement as to the future management of the estates.

The Hon'ble G. SRINIVASA RAO :—

VIII. (a) Is it a fact that some years ago in the reports on the administration of Civil Justice, information was given regarding the number of cases in which the decision of a single judge of the High Court was confirmed on appeal and those in which the Privy Council affirmed those of the High Court?

(b) Is there any reason why the information has been omitted in the recent reports? If none, will the Government be pleased to direct the information to be given in future?

(c) Similarly will the Government be pleased to order the information regarding the receipts from the Civil Courts and the charges incurred by them to be also given in future?

The Hon'ble Mr. Forbes :—

VIII. (a) The answer is in the affirmative.

(b) The information regarding appeals from a single judge on the Original Side has not been given in the annual Civil Justice reports since 1881, nor as to Privy Council appeals since 1893. The reasons why statistics on these points were dropped are not clear. The Honourable Member's suggestion that such information should be embodied in the future reports will be considered.

(c) With regard to the receipts and charges of Civil Courts a statement was appended to the annual Civil Justice reports up to 1896. As this statement as given was altogether misleading in that it omitted a number of heavy charges, such as the salaries of officers only partly employed in the administration of Civil Justice, the share of the cost of the Stamp establishment and of the discount on the sale of court-fee stamps, pension and leave allowances, cost and rent of buildings used by the Courts, stationery and printing, and so forth, proposals were considered for revising it. But it

was found impracticable so to amend the statement that it should afford accurate information on the subject with which it dealt, without at the same time imposing an altogether disproportionate amount of labour on those charged with its preparation. The proposals to revise it were therefore abandoned and the statement was discontinued from 1897. In these circumstances the Government cannot see their way to carrying out the Honourable Member's suggestion.

The Hon'ble G. SRINIVASA RAO :—

IX. (a) Has the attention of Government been drawn to the proceedings before the Sub-Divisional Magistrate of Penukonda reported in page 3 of the *Madras Mail*, dated 3rd February 1905?

(b) Will the Government be pleased to state whether any and, if so, what notice has been taken by the District Superintendent of Police regarding the conduct of the Station-house officer and the Police constables in handcuffing the Village Munsif and the Karnam of Morasalapalli in the taluk of Hindupur, if it is true that they were so handcuffed?

The Hon'ble Mr. Forbes :—

IX. The Government called for a report and have ascertained that the Police did handcuff the Reddi and Karnam while bringing them to the police station at Penukonda; and that the use of handcuffs was in the circumstances apparently unjustifiable. The Superintendent of Police is only awaiting the conclusion of the trial of the case against the Reddi and Karnam to take action regarding the irregular conduct of his men, as he expects the trial will enable him to discover the officer primarily responsible for the irregularity.

The Hon'ble G. SRINIVASA RAO :—

X. (a) Has the attention of Government been drawn to the case of suspicious death of a prisoner at the Police station in Tanjore city reported in page 3 of the

Madras Mail, dated the 3rd of February 1905?

(b) Is it a fact that the Sub-Magistrate and the Head Assistant Magistrate have reported it to be a case of natural death due to excessive drinking?

(c) Is it also a fact that the District Surgeon and the Assistant Surgeon of Tanjore have reported the death to be due to hanging and that the posture of the body after death was inconsistent with death by excessive drink?

(d) Is it a fact that the movements of the deceased were being watched by the Police before his death and that his widow stated that he died in consequence of the beating that the Police gave him?

(e) Will the Government be pleased to state whether the inquiry into the cause of the death has come to an end and with what result?

The Hon'ble Mr. Forbes :—

X. (a) The attention of Government has been drawn to the case mentioned.

(b) It is a fact that the Sub-Magistrate of Tanjore held an inquest assisted by four jurors, of whom three were of opinion that the death was due to excessive drinking and one to some internal complaint. The Sub-Divisional Magistrate was present at the inquest and has in a later communication expressed the opinion that death was due to excessive drinking.

(c) The death was considered by both the medical officers to be due to hanging, evidently suicidal.

- (d) There is nothing to show that the deceased was being watched by the Police before his death. His widow has stated she was told that her husband had been beaten to death by the Police.
- (e) The inquiry has come to an end. The complaint of the widow against the two constables who arrested the deceased is under inquiry.
- The papers in possession of Government relating to the matter will be shown, if desired, to the Honourable Member.

The Hon'ble G. SRINIVASA RAO :—

XI. (a) Is it a fact that Vedampettu Perumal Nayudu of Villupuram, paying an income tax of Rs. 125 and a kist of Rs. 3,000, submitted a memorial alleging that he was oppressed and ill-treated by the Tahsildar and the Sub-Collector at Tindivanam in connection with an income tax enquiry which was conducted by the latter from day to day at indefinite hours in November 1904, and praying for an open enquiry into the facts alleged by him stating that he would prove every allegation made by him and was prepared to take the legal consequences of failure to prove them?

(b) Is it a fact that during the enquiry the Sub-Collector directed Perumal Nayudu's vakil to write to his dictation in English a note admitting that he (Perumal Nayudu) was the cause of all the Tahsildar's troubles and would square them up, and expressing his regret and apology and that he was threatened to sign it, but refused to do so even if it was at the cost of his life?

(c) Is it a fact that Perumal Nayudu's clerk, who was in the Sub-Collector's office with his master's accounts for scrutiny, was fined Rs. 25 by the Sub-Collector for criminal trespass?

(d) If so, have the Government been pleased to order the investigation courted, and, if they have, will they be so good as to state with what result it has ended?

(e) Is it a fact that Perumal Nayudu has thrice applied for the return of his accounts and original documents, undertaking to produce them whenever necessary, and that he is not favoured with a reply?

The Hon'ble Mr. Hammick :—

XI. (a) Yes.

(b) On the proposal of the memorialist's pleader to withdraw the objection petition to the tax, it is true that the Sub-Collector, as a condition of the withdrawal, proposed that the memorialist should sign an apology, the terms of which, as taken down by the memorialist's pleader, ran thus :—

"Expresses his sincere regret for having falsely and maliciously induced third persons to prefer against Pampathy Sastry charges containing distorted assertions of what were comparatively harmless transactions and I promise never to take part in such conspiracies against any Government official in future and express my sincere regret for having done so in the past. I request that the Sub-Collector may be pleased to take a lenient view of the matter and have pity upon my grey hairs."

The memorialist ultimately declined to sign this apology, but the Sub-Collector in no way threatened the memorialist with penal consequences if he did not sign.

(c) Yes. The High Court on an application by the clerk for the revision of the sentence declined to set aside the conviction or alter the sentence.

(d) The allegations in the memorial were carefully investigated and in the result the Government found that the memorialist had no real grievance in respect of the proceedings relating to the enhancement

of his income-tax. The Government expressed their entire disapproval of the course adopted by the Sub-Collector in proposing to require an apology in the terms dictated by him or in the circumstances of the case.

(e) From a petition received in the Government Office from Perumal Nayudu, it appears that the Sub-Collector has informed him that his accounts and original documents are retained pending the disposal of the income-tax objection petition which the petitioner has filed.

The Hon'ble G. SRINIVASA RAO :—

XII. (a) Are any of the second-class Magistrates of the Presidency invested with the powers under section 562 of the Criminal Procedure Code?

(b) If they have been, how many and in what districts? Has the exercise of the powers by them been satisfactory?

(c) If so, will the Government be pleased to extend it to a larger number of second-class Magistrates of the Presidency?

The Hon'ble Mr. Forbes :—

XII. Six second-class Magistrates have been invested with powers under section 562 of the Criminal Procedure Code in each of the districts of Cuddapah, Gódvári and Coimbatore; five in each of the districts of Vizagapatam and Ganjam; and one in each of the districts of Madura, Nellore and Guntur. As the powers have been recently conferred, no report has yet been obtained as to whether the Sub-Magistrates have exercised the powers in a satisfactory manner. The Government are, however, prepared to confer the powers on Magistrates whose character and experience appear to fit them for the responsibility.

The Hon'ble G. SRINIVASA RAO :—

XIII. (a) Is it a fact that the Government of India have recently raised the age-limit to judicial appointments from 30 to 35?

(b) Has the period of service which qualifies for a full pension been correspondingly altered so as to enable a judicial officer appointed at the age of 35 to be entitled to a full pension at the age of 55?

(c) If not, will the Government be pleased to adopt the measures which will secure full pension to the judicial officers who will be employed at 35 but who will have to retire at 55?

The Hon'ble Mr. Forbes :—

XIII. In the case of persons appointed to a judicial office in the Provincial service in this Presidency, the limit of age prescribed by article 51 of the Civil Service Regulations has been recently raised from 30 to 35 years in the case of persons appointed directly from the Bar. Under the orders of the Secretary of State the pensions of such persons will be regulated by article 474 of the Civil Service Regulations and they will be exempted from the operation of article 478 (a) of the Regulations. An officer entering service at 35 will thus be eligible for full pension only if or when he retires at 60. No further concessions seem called for.

The Hon'ble G. SRINIVASA RAO :—

XIV. (a) Is it a fact that the Collector of Coimbatore has issued an order directing the Tahsildars to be out in camp for at least seven days together when once they leave the head-quarters and not to return to it earlier?

(b) Is there a rule requiring the Tahsildars to inspect the treasury in their charge at least once a week?

(c) Will the Government be pleased to ascertain and state why the order was passed, whether it was an order for any special purpose or a permanent one; and if the latter to direct it to be cancelled?

The Hon'ble Mr. Hammick:—

XIV. (a) The Government have no information on the matter.

(b) Under the standing orders Tahsildars are required to examine their treasuries not less than twice a month and every time they leave or arrive at, head-quarters.

(c) The Government do not think it necessary to enquire into the matter.

The Hon'ble G. SRINIVASA RAO:—

XV. (a) Is it a fact that the District Board of Tanjore applied to Government for sanction to open a railway line from Védaranniyam to Nidámangalam having resolved upon it at its meeting held on 6th February 1904 and that on the 1st of August 1904 it allotted a sum of Rs. 29,000 for the conduct of the preliminary survey of the line and the preparation of the necessary plans?

(b) Is it a fact that the District Board has been directed by the Government to give up this scheme and adopt a railway line to connect Mannárgudi with Kumbakónam?

(c) Is it true that the salt canal connecting Negapatam with Védaranniyam has become very shallow and is unfit for speedy and convenient navigation?

(d) Is the construction of Védaranniyam-Tirutturaippúndi line less costly and more advantageous than the Mannárgudi-Kumbakónam branch?

(e) If the answer to (d) is in the affirmative, will the Government be pleased to direct the District Board of Tanjore to adopt the Védaranniyam-Tirutturaippúndi branch or the Védaranniyam-Nidámangalam line in preference to the Mannárgudi-Kumbakónam line now in contemplation?

The Hon'ble Mr. Forbes:—

XV. (a) The answer is in the affirmative.

(b) As the District Board seemed to be under a misapprehension as to the effect of a former Government order, the Government asked the District Board to say whether it would be willing to adopt the Kumbakónam-Mannárgudi line instead of the Nidámangalam-Védaranniyam line and the District Board replied in the affirmative.

(c) The canal between Negapatam and Védaranniyam is inconveniently shallow for the passage of heavily laden boats.

(d) & (e) Neither of the lines has been surveyed, but the Mannárgudi-Kumbakónam branch passes through a more rich and densely populated country and is believed to be the more advantageous.

The Hon'ble G. SRINIVASA RAO:—

XVI. (a) Is it a fact that three successive prosecutions were instituted by the late Chairman of Cannanore Municipality against a minor school-boy studying in a college outside Cannanore under section 221 of the Municipal Act for leaving stable-refuse in an open receptacle attached to the stable?

(b) Is it true that, on the minor accused being acquitted by the Town Sub-Magistrate, the second prosecution was withdrawn by the Chairman and nevertheless the third prosecution was launched on the 27th of February 1904 by the late Chairman in the face of two resolutions of the Council, dated 13th and 23rd February 1904, to the effect that the minor owner was not bound to remove the stable-refuse and that such third prosecution ended in the acquittal of the minor accused?

(c) Is it true that the Town Sub-Magistrate who disposed of the three cases against the minor accused has since been degraded to the position of Taluk Sarishtadar-Magistrate of Cochin?

(d) Will the Government be pleased to state why the Town Sub-Magistrate was so degraded, and, if the Government are not in possession of the information, to cause the same to be obtained and placed on the table?

(e) Is it a fact that three civil suits were filed for damages for malicious prosecution against the Municipal Council and the Chairman, and will the Government be pleased to ascertain and state how they have ended?

The Hon'ble Mr. Forbes:—

XVI. (a), (b) & (c) Towards the close of 1903, the late Chairman of the Municipal Council prosecuted one Kunhi Raman, a student of the Brennen College, Tellicherry, and a stable licenseholder in Cannanore, under section 221 of the District Municipalities Act, for keeping stable-refuse in a receptacle in front of the stable for more than 24 hours. The Sub-Magistrate, Cannanore town, acquitted the accused on the grounds that stable-refuse was not an offensive matter and that the accused was not the occupier of the building. A second prosecution pending against him was withdrawn the next day. The Chairman then on the suggestion of the Divisional officer inserted a condition in the stable license under section 188 (3) of the Act requiring that the stable-refuse should be removed once in 24 hours. An appeal was preferred to the Municipal Council against this under section 188 (6), and the Council in its resolution of the 13th February 1904 cancelled the modification introduced by the Chairman in the license. When the accused was acquitted, Kunhi Kannan, as father and guardian of the accused, served the Council with a notice claiming Rs. 150 as damages. This the Council refused to grant, but directed in its resolution of the 23rd February 1904 that the stable-refuse in question should be removed by the Municipality free of charge every 24 hours. In the meantime the Chairman reported the facts of the above prosecution to the District Magistrate, and on the latter expressing the opinion in his proceedings, dated 27th January 1904, that stable-refuse was offensive matter and that the acquittal was wrong, he instituted another prosecution against Kunhi Raman on 27th February 1904; but the accused was again acquitted. The Government have information only as to the institution of one suit. The result is not known and the Government have called for the necessary information.

(c) & (d) The three cases were not tried by the same Magistrate. One was withdrawn and the other two were tried by different Sub-Magistrates. One of these Sub-Magistrates was transferred on the same day to Cochin; he was not degraded.

The Hon'ble G. SRINIVASA RAO:—

XVII. (a) Is it a fact that the bungalow placed at the disposal of Cannanore Municipal Council for plague purposes was let by the late Chairman to some Moplahs for the celebration of the Muharram last year without the knowledge or consent of the Municipal Council?

(b) Is it a fact that at its meeting held on 26th April 1904 the Municipal Council of Cannanore adopted a memorandum for submission to Government, disapproving of the procedure of the Chairman?

(c) Has any such memorandum been placed before the Government and have any orders been passed thereon? If not, will the Government be pleased to enquire why the memorandum was not placed before them and direct it to be done?

The Hon'ble Mr. Forbes:—

XVII. (a) & (b) The answer is in the affirmative.

(c) A copy of the memorandum has been received. Government have taken such action as is necessary.

The Hon'ble G. SRINIVASA RAO:—

XVIII. (a) Is it a fact that the waterman attached to the Municipal hospital at Cannanore did not do any duties in the hospital for about a year during the period that Mr. Winckler was the Municipal Chairman and acting Civil Surgeon?

(b) Is it true that at its meeting held on 10th May 1904 the Municipal Council of Cannanore adopted a memorandum in that connection to be placed before Government?

(c) Are the Government in receipt of any such communication and will they be pleased to state the orders that have been passed thereon?

The Hon'ble Mr. Forbes:—

XVIII. A memorandum presented by six Municipal Councillors of Cannanore complaining that the Civil Surgeon of the place who was also Chairman of the Municipality was employing the hospital waterman to do private service at his house, and adopted by the Municipal Council at its meeting held on the 10th May 1904, was received by Government in June last. On enquiry it was found that, as Civil Surgeon, Mr. Winckler ordered the hospital waterman to do the duty of the peon and the peon to do the work of the waterman. The distribution of work amongst the menial servants attached to the hospital being a matter left to the discretion of the Civil Surgeon, the Government saw no reason to interfere.

The Hon'ble G. SRINIVASA RAO:—

XIX. (a) Is it a fact that as per the latest season report there is no water in more than one-half of the Presidency, the crops are withering, the outturn is bad or positively poor, pasture is scanty, fodder is insufficient and prices of all food-stuff have gone high?

(b) Do the Government consider that the present conditions indicate impending famine and the necessity for opening relief works?

The Hon'ble Mr. Hammick:—

XIX. The Honourable Member is referred for information as to the existing state of the season to the report of the Settlement Commissioner which will be laid upon the table.

The Hon'ble M. KRISHNAN NAYAR:—

XX. (a) Has the attention of Government been called to an article under the heading of "Government and Insolvent Zamindars" published in the *Madras Mail* of 1st February 1905?

(b) Is it a fact that Raja Venugopala Bahadur has submitted a petition to Government stating that he is a creditor of the Kálahasti Zamindari, that he holds from the Decree Collector of the estate certificates of claims amounting to nearly

Rs. 10 lakhs, that the interest on his debt at the reduced rate of 6 per cent. amounts to not less than Rs. 55,000 a year, that since the assumption by Government of the management of the estate nothing has been paid to him either on account of principal or interest, that he is consequently in great difficulties and that Government may be pleased to take some immediate steps to alleviate his extreme hardship?

(c) Are the allegations made in his petition true?

(d) Is it a fact that there are other creditors also of the Kálahasti Zamindari who have not been paid anything on account of their principal or interest since the assumption of the management of the estate by Government and who have consequently been reduced to difficulties?

(e) Is it a fact that the Karvetnagar Zamindari also has creditors who like the creditors of the Kálahasti Zamindari have not been paid anything on account of their principal or interest since the assumption of the management of the estate by Government and who have consequently been put to difficulties?

(f) Will Government be pleased to take steps at an early date to alleviate the hardship to which the creditors of the Kálahasti and Karvetnagar estates are subjected?

**The Hon'ble Mr. Hammick:—*

XX. (a) & (b) The answer is in the affirmative.

(c) They are generally true.

(d) Certain other creditors of the estate have not been paid anything yet on account of principal and interest.

(e) Certain creditors of Karvetnagar estate have not been paid anything on account of principal and interest.

(f) The Government have now before them proposals from the Court of Wards for dealing with the two estates and hope shortly to issue orders upon the subject.

The Hon'ble M. KRISHNAN NAYAR:—

XXI. (a) Is it a fact that Deputy Tahsildars are required to be on circuit for at least ten days in a month outside their head-quarters and that when they are in circuit they are not entitled to any allowance?

(b) Will Government be pleased to sanction the grant of an allowance to Deputy Tahsildars when on circuit?

The Hon'ble Mr. Hammick:—

XXI. (a) Deputy Tahsildars are required to be on circuit for not less than three months in the half-year, except on the West Coast where they are required to tour for only two months in the half-year. They are not given any travelling allowance.

(b) The fact that Deputy Tahsildars were required to do much travelling was taken into account when their pay was fixed at the present rates: and it has been decided not to allow them travelling allowance.

The Hon'ble M. KRISHNAN NAYAR:—

XXII. (a) Is it a fact that famine conditions prevail in many parts of the Presidency, especially in the districts of Bellary, Kurnool, Anantapur, Cuddapah, Chingleput, Nellore and Salem?

(b) Will Government be pleased to state what steps they intend taking to alleviate the sufferings of the poor people in the affected districts?

The Hon'ble Mr. Hammick :—

XXII. The Government are satisfied that famine conditions do not at present prevail anywhere in the Presidency, and do not consider that at present any necessity exists for special relief measures.

The Hon'ble G. SRINIVASA RAO :—

XXIII. (a) Is it a fact that, by the resettlement of Guntūr, the net increase of revenue on the wet lands is 15 per cent., and the dry rates are raised by fully 22 per cent.?

(b) Is it also a fact that in the case of some wet lands in Guntūr, the enhancement is even 19 per cent., and that the rates recommended by the Settlement officer have been approved of by Government?

(c) Is it a fact that the net increase by recent resettlement in Gódvāri was 5 per cent., and that in Masulipatam was 2 per cent.?

(d) Will the Government be pleased to state why the increase of revenue by resettlement in Guntūr has become so high when compared with Gódvāri and Masulipatam?

The Hon'ble Mr. Hammick :—

XXIII. (a), (b) & (c) If the Honourable Member refers only to the delta tracts the facts are correctly stated.

(d) The reasons for the greater increase in Guntūr are partly that prices have continued to rise since the resettlements of Masulipatam and Gódvāri and partly that the incidence of assessment in Guntūr under the old settlement was proportionately low.

As was explained by Government in their order sanctioning the resettlement proposal for Guntūr, it is wrong to compare the Guntūr delta with either the Masulipatam delta or the Gódvāri delta as a whole. The closest analogy is to be found in the Gódvāri Eastern delta, where the average assessment per acre is higher than that fixed by the resettlement in Guntūr.

The Hon'ble G. SRINIVASA RAO :—

XXIV. (a) Is it a fact that at this season, in former years—say within the last three years—the people and the coolies who daily emigrated *via* Tuticorin used to be on an average about 50 while the number this year is about 250 every day?

(b) If the figures given are incorrect, will the Government be pleased to state the average daily numbers that now emigrate not only at Tuticorin but also at the other ports of emigration in the Presidency as compared with the figures of the last three years or if this is inconvenient as far as it may be possible?

The Hon'ble Mr. Forbes :—

XXIV. The Government receive annual returns of passengers who embark from ports in the Madras Presidency for the Straits Settlements, Burma, Ceylon and of emigrants who embark for Natal, Mauritius and Fiji. The returns for 1904 are not yet available, but the figures for the three years 1901—1903 show that the daily average number of passengers who left Tuticorin was approximately 230 (and not 50 as in the Honourable Member's question). The daily average number of departures from all ports in the Presidency was 630 in the same period.

The Government do not propose to undertake the collection of special statistics for the current year in anticipation of the usual returns.

The Hon'ble G. SRINIVASA RAO :—

XXV. (a) Is it a fact that the town of Sivakási is a major union with a population of 13,000 people and is without a dispensary since the Mission dispensary was abolished nearly four years ago?

(b) Is it a fact that, in order to look after the health of the special punitive police of 100 persons stationed at Sivakási, there is a Hospital Assistant at work there?

(c) Will the Government be so good as to direct that a dispensary be opened at Sivakási or that the services of the Special Hospital Assistant there may be made available to the people of Sivakási, so long as he is retained there?

The Hon'ble Mr. Forbes :—

XXV. (a) & (b) The answer is in the affirmative.

(c) The proposal was considered and abandoned as recently as February 1902, as the Taluk Board and Union were unable to provide the necessary funds. A further report will be called for from the Taluk Board of Sattūr. The suggestion in the latter portion of the question will be considered.

The Hon'ble K. VENKATA RAO :—

XXVI. (a) Is it a fact that the Government deputed the Hon'ble Mr. C. J. Weir to inquire into certain irregularities committed by Mr. B. Macleod, Collector of Cuddapah, in connection with the administration of the Indian Arms Act?

(b) If so, will the Government be pleased to state the nature of those irregularities disclosed in the inquiry of the above-named officer and the order passed by the Government on his report?

(c) Will the Government be pleased to place on the table the report and the Government order on the subject?

The Hon'ble K. VENKATA RAO :—

XXVII. (a) Is it a fact that Mr. Macleod confiscated a large number of firearms between March 1902 and July 1904?

(b) Did the Hon'ble Mr. Weir find any firearms missing?

(c) If so, how many were missing and how were they accounted for?

The Hon'ble K. VENKATA RAO :—

XXVIII. (a) Is it a fact that Mr. Macleod distributed some of the confiscated firearms among his acquaintances, official and non-official?

(b) If so, how many were so distributed and under what authority?

The Hon'ble Mr. Forbes :—

XXVI, XXVII & XXVIII. The facts are substantially as indicated in the Honourable Member's question. Mr. Macleod was severely censured by Government. The Government are unable to give any further information on the subject or to lay Mr. Weir's report and the Government order on the table.

The Hon'ble K. VENKATA RAO :—

XXIX. Is it a fact that Mr. Macleod prohibited the Hindus, even last year, from celebrating in their own houses their Srirama Navami festival with music however removed they might be from the Muhammadan houses and places of worship?

The Hon'ble Mr. Forbes :—

XXIX. A copy of the District Magistrate's order will be placed on the table.

The Hon'ble K. VENKATA RAO :—

XXX. (a) Is it a fact that the Hindus approached the Government several times pointing out the illegality of the orders of the District Magistrate and praying for permission to celebrate their festivals in their private houses?

(b) Did the Government order the District Magistrate Mr. Macleod to hold an enquiry into the alleged grievances of the Hindus?

(c) If so, will the Government be pleased to state the result of such enquiry and to place the report of the District Magistrate and the Government order thereon on the table?

(d) Is it a fact that Mr. Hakim Saiyid Sahib and his son Khan Bahadur H. S. A. M. Manjumiah Sahib, residents of Cuddapah, were examined at the enquiry above referred to, and did they give out as their opinion that there should be no objection to Hindus celebrating their own festivals in their houses even during the Muharram?

The Hon'ble Mr. Forbes :—

XXX. (a) & (b) The answer is in the affirmative.

(c) The District Magistrate found that the established practice and custom in Cuddapah was to prohibit music during the Muharram; but he added that, if circumstances altered through a great reduction in the Muhammadan population of the town, or from a greater spirit of tolerance, it might be possible to disregard the custom. The Government are not prepared to place Mr. Macleod's letter on the table.

(d) Hakim Saiyid Sahib Bahadur and Munjumiah Sahib Bahadur were amongst the persons from whom the District Magistrate took statements.

The former said "Last year's disturbance was due to Brahmins' breaking the custom to publicly celebrate during Muharram. We do not object to bhajana privately in houses."

Munjumiah Sahib Bahadur said "The custom here is one or two centuries old. We do not object to Hindus privately worshipping then inside their houses. The Hindus willingly fall in with the local custom, and the authorities have upheld it always."

The Hon'ble K. VENKATA RAO :—

XXXI. (a) Has the attention of Government been drawn to an article in the Hindu of 21st January 1905 under the heading of "A farewell entertainment to Mr. B. Macleod, I.C.S."?

(b) Was it given by his subordinates with the previous sanction of Government?

The Hon'ble Mr. Forbes :—

XXXI. (a) The answer is in the affirmative.

(b) The answer is in the negative.

The Hon'ble K. VENKATA RAO :—

XXXII. (a) Will the Government be pleased to state for how long the periodical Survey school for training karnams has been in existence in the Cuddapah district?

(b) Is it a fact that every karnam, irrespective of his age and experience, is required to undergo Survey training and pass the examination?

(c) Is it a fact that some of the karnams in Jammalamadugu taluk who have been holding the karnams' posts for a long time, and who have been also measuring lands satisfactorily, have not been paid their salaries for the last three months on the ground that they have not passed the Survey test?

The Hon'ble Mr. Hammick :—

XXXII. (a) Survey training schools for karnams have been held yearly in Cuddapah since 1893, except in the year 1897.

(b) Every karnam is required to undergo training unless he has previously got a good or fair certificate.

(c) No: but the pay of some karnams whose outturn of survey work in connection with the revision survey was deficient has been stopped proportionately.

The Hon'ble K. VENKATA RAO :—

XXXIII. Will the Government be pleased to state the number of cases prosecuted for offences under the Plague regulations, and the amount of fines collected in the said cases, in the towns of Bellary and Adoni, during the years 1901, 1902, 1903 and 1904?

The Hon'ble Mr. Forbes :—

XXXIII. The Government are unable to give the information asked for but will call for a report.

The Hon'ble K. VENKATA RAO :—

XXXIV. (a) Will the Government be pleased to state whether in the village of Uravakonda, in the Gooty taluk, containing mostly Lingayats and agriculturists, there was only one toddy shop for many years?

(b) Whether a second shop was opened in 1903 with the ostensible object of making the holder of the second shop compete with the first in selling better toddy?

(c) Whether the residents of the said village objected to the opening of the second shop?

(d) Whether in 1904 both the old and the new shops were rented out to one and the same person enabling the renter to defeat the original object?

(e) Has the revenue from the two toddy shops in this village largely increased by renting them to one and the same person?

The Hon'ble Mr. Hammick :—

XXXIV. (a) Until 1903-1904 there was only one toddy shop in Uravakonda.

(b) A second toddy shop was opened in 1903. The ostensible object of opening a second shop is not known.

(c) The Government and the Board of Revenue have no information to this effect.

(d) In 1904 the two shops were purchased by one Imam-ud-din Sahib along with five other shops. In 1903 the same thing happened when G. Hanumanthappa and Mula Guleppah bought these two shops with the other five shops.

(e) The Government have no information in the matter. The seven shops referred to above have been sold together since the second shop at Uravakonda was opened.

The Hon'ble K. VENKATA RAO :—

XXXV. Will the Government be pleased to order one of these shops to be closed?

The Hon'ble Mr. Hammick :—

XXXV. For the five years before the second toddy shop was opened the average monthly rental of the single shop was Rs. 795 odd, Rs. 200 per mensem more than that of any other shop in the district. According to the census returns Uravakonda contains 9,385 inhabitants, of whom only 1,179 are agriculturists by occupation. There are at least three towns in the Anantapur district with fewer inhabitants than Uravakonda (Penukonda,

QUESTIONS AND ANSWERS.

Anantapur and Kalyandrug) in which there are two toddy shops. The Government, on the information before them, see no reason to order one of these shops to be closed.

The Hon'ble K. VENKATA RAO :—

XXXVI. Will the Government be pleased to state whether the Collector of Anantapur has ordered the Deputy Tahsildar of Uravakonda, Gooty taluk, to make good the sum of Rs. 200 spent by him in constructing plague sheds under the sanction of the former Collector?

The Hon'ble Mr. Forbes :—

XXXVI. The Deputy Tahsildar, Uravakonda, submitted on 31st October 1903 a bill for Rs. 335-6-1 for the construction of sheds at Uravakonda in July 1903. The estimate on which the bill was based was incorrectly drawn up as to details of work actually executed. After a final scrutiny the bill was passed for Rs. 258-2-8.

The Hon'ble K. VENKATA RAO :—

XXXVII. Is it a fact that the Collector of Anantapur refused to sanction the money spent by the Tahsildar of Kalyandrug for purchasing blankets and other articles for the use of the plague patients in compliance with an indent sent by the Assistant Surgeon in charge of the Plague duty?

The Hon'ble K. VENKATA RAO :—

XXXVIII. Will the Government be pleased to state if the Tahsildar of Tadpatri built sheds for plague patients at Re. 1 per shed; if so, whether they are according to the plague rules and regulations?

The Hon'ble Mr. Forbes :—

XXXVII & XXXVIII. The Government have no information on the subject.

The Hon'ble K. VENKATA RAO :—

XXXIX. (a) Is it a fact that the Collector of Anantapur sanctioned only Rs. 2 per shed for accommodating plague patients?

(b) If so, whether the District Medical Officer and the Sanitary Commissioner have approved of such sheds?

The Hon'ble Mr. Forbes :—

XXXIX. The cost of plague sheds varies: in the Anantapur district the cost is reported to have almost invariably exceeded Rs. 2, being as high as Rs. 15 at Gooty and Pamidi. The Collector considers that the cost of sheds in villages can be generally reduced to Rs. 2 if timber from waste lands instead of patta lands is utilised. The District Medical and Sanitary Officer has raised no objection to the sheds.

The Hon'ble K. VENKATA RAO :—

XL. (a) Will the Government be pleased to call for a return from the Collector of Anantapur showing the extent of assessed waste lands transferred to poramboke for forest purposes?

(b) If so, will the Government be pleased to cancel such transfers in view that the forest reserves in the Anantapur district are already excessive?

The Hon'ble Mr. Hammick :—

XL. The Government see no reason to call for the suggested return. The proportion borne by the reserved area to the total unoccupied area is smaller in Anantapur than that in any other district in the Presidency, excepting the districts of Chingleput, Tanjore and Malabar.

QUESTIONS AND ANSWERS.

The Hon'ble K. VENKATA RAO :—

XLI. Will the Government be pleased to state whether the Collector of Anantapur refused to sanction an expenditure of Rs. 2 made by the Tahsildar of Gooty under the orders of the Sanitary Commissioner for enabling a poor man to put up a shed having evacuated his house under compulsion?

The Hon'ble Mr. Forbes :—

XLI. The Collector refused to sanction a cash payment of Rs. 2 made by the Tahsildar of Gooty as such payments were opposed to his express orders, experience having shown that such payments are improperly utilised. The Sanitary Commissioner has no authority to issue orders to the Tahsildar, neither did he do so in the present instance.

The Hon'ble M. KRISHNAN NAYAR :—

XLII. (a) Is it a fact that Mr. M. Achyutaramayya was elected Chairman of the Rajahmundry Municipality by the Municipal Councillors and that Government acting on a letter from the Collector of Gódvári have disapproved of the election of Mr. Achyutaramayya and directed the Municipal Council to elect another Chairman?

(b) Is it a fact that Government gave no opportunity to the Municipal Council or to Mr. Achyutaramayya to state what they had to say regarding the election of Mr. Achyutaramayya before the order disapproving of the election was passed?

(c) Will the Government be pleased to state how long has the officer who made the report forming the basis of the Government Order referred to been the Collector of the Gódvári district?

(d) Will the Government be pleased to publish the report of the Collector?

(e) Will the Government be pleased also to reconsider the decision which they have already arrived at?

The Hon'ble Mr. Forbes :—

XLII. (a) Government on the facts of the case disapproved of the election of Mr. Achyutaramayya.

(b) The answer is in the affirmative.

(c) Mr. Braidwood who reported the matter was the Divisional officer in charge of Rajahmundry and was temporarily in charge of the district. His predecessor whom he consulted entertained the same opinions as Mr. Braidwood.

(d) & (e) The answer is in the negative.

The Hon'ble M. KRISHNAN NAYAR :—

XLIII. (a) Is it a fact that the properties which belonged to the late Kunhi Kelappan Mannanar of Eravasi desom, Kanhileri amsom, Chirakkal taluk, Malabar district, have on his death been entrusted for management to Chirakkal Raja by Government?

(b) Will the Government be pleased to state the circumstances which led to this entrustment?

(c) Is it a fact that Kunhi Kelappan Mannanar died intestate, that he has two children and that he has not made any provision for them?

(d) Will the Government be pleased to direct that some provision be made out of the properties entrusted to Chirakkal Raja for the maintenance of the two children of Mannanar?

The Hon'ble Mr. Hammick :—

XLIII. The Government have no information on the matter, but will call for a report.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—

XLIV. Will the Government be pleased to state what the average collections are per year made on account of voluntary irrigation cess from the holders of wet lands under the Cauvery channels in Námakkal taluk in the Salem district and how they are utilised?

The Hon'ble Mr. Hammick :—

XLIV. The collections average Rs. 14,500 per annum. The amount is utilised on the korambus establishment and the upkeep and improvement of the channels.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—

XLV. Will the Government be pleased to lay on the table the reports of the Settlement Commissioner referred to in the answer given to question X put at the meeting of the Legislative Council of the 27th January last?

The Hon'ble Mr. Hammick :—

XLV. The Government will not lay upon the table the various reports referred to, but, as already stated in reply to the question (No. I) asked by the Hon'ble Mr. Srinivasa Rao, a report from the Settlement Commissioner dealing with the state of the season up to March 11th will be laid upon the table.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—

XLVI. (a) With reference to the answer given to question VIII put at the meeting of the Legislative Council of the 27th January last, will the Government be pleased to lay on the table a copy of, or to state, the instructions given to their officers to protect communal lands against the encroachments said to have been encouraged by the Full Bench Decision of the Madras High Court on the illegality of levying prohibitory assessments?

(b) Have the Government any information as to the actual or approximate amount of prohibitory assessment collected for the year 1904 and for that period of it since April 1904 and, if so, will the Government be pleased to give it and will the Government be also pleased to state how much of the said amounts was collected on account of encroachment on assessed waste lands and how much for encroachment on communal lands?

(c) Will the Government be pleased to state whether any processes were issued since April last for the collection of prohibitory assessment and, if so, under what law they were so issued?

(d) Will the Government be pleased to state what amount was collected for each of the five faslis prior to fasli 1314 by way of prohibitory assessment and how much of the amount so collected was for encroachment on assessed waste lands and how much for encroachment on communal lands?

The Hon'ble Mr. Hammick :—

12-40 P.M.

XLVI. (a) The answer is in the negative.

(b) & (c) The Government have not the information asked for.

(d) The amount of penal charge collected for the occupation of lands set apart for public or communal purposes was—

	RS.
In fasli 1311	2,39,000
" 1312	2,60,000
" 1313	2,87,000

Similar figures are not available for faslis 1309 and 1310.

Information as to the amount of prohibitory assessment levied on assessed waste lands is not available, but cases of such assessment are very rare.

The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR :—

XLVII. Will the Government be pleased to state—

(a) Whether the managers of estates under the control of the Court of Wards complained of the difficulty of obtaining correct returns in due time from the karnams in such estates?

(b) Whether such managers have, in consequence, been allowed to exercise the privilege of fining these karnams for their misconduct and neglect of duty under section 16 of the Madras Proprietary Estates' Village Service Act II of 1894?

The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR :—

XLVIII. Will the Government be pleased to order to be laid on the table a list of such zamindars and estate managers as have been empowered to exercise the privilege of fining under section 16 of Act II of 1894?

The Hon'ble Mr. Hammick :—

XLVII & XLVIII. No general complaint has been received of the difficulty of getting returns in time from karnams; but in the case of the estates of Karvetnagar, Kālahasti, Arni and Sivagiri it has been represented to the Court of Wards that it is inconvenient for the managers to have to hand up village officers to the Revenue Divisional officer for every petty neglect or misconduct, and accordingly the managers of those four estates have been empowered under section 16 (1) of Act II of 1894 to fine village officers. The Regulation Collector of Karvetnagar and Kālahasti has also been empowered under section 46 (2) of the Court of Wards Act I of 1902 and section 16 (2) of Act II of 1894 to exercise in regard to the village officers of the estates all the powers of punishment which are exercised by Revenue Divisional officers.

No zamindars and no other managers of estates have been empowered to fine village officers.

COMMUNICATIONS FOR THE COUNCIL.

The Secretary reported the receipt of the following papers :—

(i) Memorials from the Tanjore District Association, dated 21st February 1905, from Killikkurissi Manakkal Ashtamurti Somayajipad and 81 others, dated 20th February 1905, from the Committee of the Madura District People's Association, dated 18th March 1905, from the Madras Landholders' Association, dated 15th March 1905, and from certain Janmis of Malabar on the subject of the Madras Land Encroachment Bill.

(ii) From Messrs. Binny & Co., Agents to the British India Steam Navigation Company, dated 3rd March 1905, on the subject of the Madras Port Trust Bill.

The Secretary also reported that since the agenda paper had been printed, further communications had been received from the Chingleput District Association, dated the 8th March 1905, and from the Secretary, Tanjore District Association, from the chairmen of public meetings held at Kumbakonam and Tanjore and from the zamindar of Kīrappakkam, Chingleput district, all dated 19th March 1905, on the subject of the Land Encroachment Bill.

He laid on the table the following papers :—

(1) G.O., No. 261, dated 18th March 1905, containing the report of the Settlement Commissioner on the state of the season up to March 11th, referred to in answer to question No. I.

(2) A statement showing the receipts and charges under translation and printing fees referred to in answer to question No. III.

(3) The order of the District Magistrate of Cuddapah referred to in answer to question No. XXIX.

THE MADRAS ABKARI AMENDMENT BILL, 1905.

*The Hon'ble Mr. H. BRADLEY :—*Sir James Thomson, I beg leave to introduce the Bill to amend the Madras Abkari Act I of 1886. The Bill was published in accordance with Rule No. 33 of the rules for the conduct of business in this Council. The

Bill is intended to facilitate the admission to bail of persons arrested under the Abkari Act and also to legalise a practice which has sprung up but which was not contemplated when the Act was passed. That practice is that Inspectors and officers holding enquiries under the Abkari Act give bail to persons arrested and produced before them under the Act. This power, although it is not in accordance with the Act, is very necessary. It is most inconvenient that when persons are produced before these officers, they should not be able to admit them to bail. I therefore move that the Bill be read in Council.

The Hon'ble G. Srinivasa Rao seconded the motion.

The Hon'ble Mr. A. J. YORKE:—I would wish to say, Sir, that I welcome this Bill as meeting one at least of the various complaints put forward of late by the palm-tree owners and tappers of this Presidency. I could wish, however, that Government, while on the subject, had seen its way to do more. I do not propose to refer in detail to those complaints which, I understand, were patiently listened to by the Honourable Member in charge of this Bill and so fully gone into as his departmental resources permitted; but he openly admitted to a deputation from Tinnevely that he had much more regard (and naturally so, seeing his official position) to the interests of the Abkari revenue than to the well-being of a valuable industry, or than to possible hardships being suffered by the poorer classes of the population as alleged. It is true that by his orders an enquiry was held, but it was merely a departmental one, and this having to be conducted to a great extent through the very subordinates complained against, a negative result was a certainty. On the other hand, we have the fact that wherever palmyra palms are seriously worked and form an important part of the resources of a district it is common knowledge and talk that oppression with a view to extortion is practised by the Abkari subordinates owing to the large powers given them in the revenue interests. In the case of Tinnevely, where the palmyra tapping is more developed than in any other district, these complaints by the climbers have been endorsed not only by tree-owners and jaggery buyers, but also by disinterested Missionaries, and their request for a Commission to enquire into the matter merited, I think, more response than this Bill, and the mere departmental enquiry which under the circumstances could not be impartially conducted in spite of the best intentions on the part of the superior officers of the department. I would ask Government to consider that the value of the jaggery industry concerned is to be gauged not only by the monetary value of the jaggery annually obtained from South Indian palms, but that the fact should also be borne in mind that where they chiefly thrive, little else flourishes, so that thousands of the poorest people are almost solely dependent on palms, but for which large tracts of land would be mere desert. Under these circumstances, I suggest that Revenue regulations as to tree-tax which may be right enough in parts of the country where palms are comparatively few, and form but one out of many means of livelihood for the poorer people, become unsuitable, and a real cause of grievance in a district like Tinnevely, where many a coolie, if harassed in his tree-tapping, has only the alternatives left him of emigration or starvation. I, therefore, trust that Government will reconsider the request of the Tinnevely memorialists for a Commission, and will appoint an impartial one to enquire into these repeated and serious complaints against the subordinates of the Abkari department, and thereafter will take such steps as the findings of the Commission may appear to call for. It may well be possible to raise an equal revenue from the palmyra districts by other methods than those now in force, and so obviate the necessity for giving the present arbitrary powers to low-paid subordinates who are certain to abuse them.

The PRESIDENT:—If the Honourable Member will permit me, I would like to ask what he is leading up to; because, so far as his remarks go at present, they are not concerned with the business before the Council. Are you leading up to a motion?

The Hon'ble Mr. A. J. YORKE:—I do not propose to lead up to a motion.

The PRESIDENT:—I did not know what the Honourable Member was leading up to when he began to speak. He is now discussing the whole administration of the Abkari department. If he is not leading up to a motion, I can hardly permit the discussion, as conducted by him, to proceed.

The Hon'ble Mr. A. J. YORKE:—I have only one more sentence to say. As the Bill is introduced to amend the Abkari administration it appears to me with due deference to you, Sir, that my remarks are in point.

The PRESIDENT:—I thought that the Honourable Member was proposing to extend the scope of the Bill. If he is not leading up to any particular motion, it is hardly proper on the motion before the Council to permit these general remarks to be made.

The Hon'ble Mr. A. J. YORKE:—I do not propose to extend the Bill, but I wish the Government to consider the introduction of some extension of the Bill at some future occasion. All I wish to say is that supposing any extension, modification or change of system is proposed, even if it involves a loss of revenue, I hope the Government will not shirk the matter in view of the demoralising tendency of the existing regulations.

The Hon'ble M. KRISHNAN NAYAR:—In connection with this Bill, I wish to make one statement. The Bill really confers a benefit upon persons who may happen to be innocent and who may be arrested by persons who are empowered to arrest. Under the existing enactment—it has been referred to by the Honourable Member in his introductory speech—there is no provision for the persons who arrest for taking bail from the persons arrested. The object of the Bill is to confer upon persons who are empowered to arrest, the power of taking bail. This Bill will be of great benefit to those persons who are innocent and who may happen to be arrested by Abkari officers. This is a very beneficial Act and confers a great boon upon innocent persons. So I think it is a matter for congratulation that the Government should have thought fit to introduce this Bill.

The Hon'ble V. C. DESIKA CHARIVAR:—I fully endorse the statements of the Hon'ble Mr. Krishnan Nayar. I would only suggest to the Honourable Member in charge of the Bill that an early opportunity may be taken to introduce a similar amendment in the Salt Act, No. IV of 1889. There also there is the same defect, though not to the extent it is found in the Abkari Act. With these remarks I support the motion.

The motion was put and agreed to.

The Secretary then read the title of the Bill.

The Hon'ble Mr. H. BRADLEY:—I now beg to move that this Bill be not referred to a Select Committee. It is a simple Bill and as no body seems to be against it, it is a waste of time to refer it to a Select Committee.

The Hon'ble Mr. G. STOKES:—I beg to second the motion. The Bill makes only a technical extension of the law which everybody admits is beneficial. There can be no doubt about its operation. A purely legal question is involved and the best legal opinion has been had on it. As everybody says that it is advisable to have this Bill, there is nothing further to be said about it.

The motion was put and agreed to.

The Hon'ble Mr. H. BRADLEY:—I beg to move under rule 70 that the operation of rule 46 be suspended, so that the Bill may be taken into consideration and passed into law at once. I may remark with regard to what fell from the Hon'ble Mr. Yorke, I have nothing to say in reply, because I cannot admit what he says that I admitted when that deputation from Tinnevely was before me. I cannot admit the harassment that he speaks of on the part of the subordinates of the Abkari department. So long as large numbers of climbers come from Travancore to Tinnevely and work there during the season, I do not think that there can be any harassment going on.

The Hon'ble M. Krishnan Nayar seconded the motion.

The motion was put and agreed to.

The Bill was then taken into consideration clause by clause.

1 P.M.

The consideration of the title and the preamble of the Bill was postponed.

Clauses 1 to 5 were allowed to stand part of the Bill.

The title and the preamble were then allowed to stand part of the Bill.

The Hon'ble Mr. H. BRADLEY :—I beg to propose that the Bill be passed into law at once.

The Hon'ble the Advocate-General seconded the motion.

The motion was put and agreed to.

THE MADRAS PORT TRUST BILL.

The PRESIDENT :—The Hon'ble Mr. G. S. Forbes will now present the report of the Select Committee on the Madras Port Trust Bill.

The Hon'ble Mr. G. S. FORBES :—I have scarcely anything to add to what is said in the Select Committee's Report, which sets out very fully, and, I hope, clearly, the nature of the amendments introduced and the reasons for the same. The clauses of the Bill have been rearranged more logically and conveniently. The amendments made do not raise any radical questions of principle and are all designed to facilitate the practical administration of the port to the general advantage of trade and of the public; nor have any of them presented any real difficulty, except clause 40, on the question of the receipt to be given for cargo taken charge of by the Harbour Board. On that point there was some difference of opinion, and on further representations from the Harbour Trustees and the Chamber of Commerce I shall, later on, propose a modification in that clause to meet their views. I need not go into the matter now as I shall have to explain the nature of the difficulty when the time comes to move that amendment. We considered carefully all the suggestions put before us by the Trustees, and one or two firms interested in the port. I think effect has been given substantially to all of them, or nearly all of them, so far as they were within the scope of the Bill. The Committee has not accepted the suggestions that in clause 103 (old clause 101), the penalty for refusing to appear before an auditor, or produce accounts should be restricted to employees of the Board. There may be cases in which a wider interpretation would be necessary and the clause, after all, only repeats the existing law as to which no objection has hitherto been raised so far as known. The Harbour Board also recommended the insertion of the word "coal" in clause 104, which provides a penalty for the unauthorised deposit of dirt upon the wharves or foreshore. The Board explained that boatmen habitually jettisoned large quantities of coal into the Harbour, and that it was necessary to take special power to stop the practice. It was considered, however, that the matter could be sufficiently and more properly regulated by the by-laws the Board is empowered to make by sub-clauses (2) and (5) of clause 96 which provide "for the safe and convenient use of the docks, wharves, quays, jetties, sheds, warehouses, railways, tramways, and other works constructed by the Board or vested in the Board; for keeping clean the harbour and basins and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon." There is another matter to which I may refer, and that is the publication under clause 82 of the auditors' report and the abstract of accounts in the newspapers. The Trustees object to this because of the excessive charge which is made for the publication. In inserting these words, the Committee, however, only restored the words of section 44 of the present Act. The Committee was of the opinion that publication in the Gazette was insufficient for the general public knowledge. Messrs. Binny & Co. and Messrs. Wilson & Co. also made suggestions, but they related not to the substantive provisions of the Bill, but to the rules and by-laws made or to be made under the Act and, therefore, did not fall within the duty of the Committee. On the consideration of the Bill I shall have to move a few other amendments, but with one exception they are all of a drafting and non-contentious character. Yesterday we received a communication from the Government of India pointing out one or two improvements of this character, to which I shall refer in due course. Only one of these is of a substantial character, and I shall move it with the permission of the President.

These are the only remarks I wish to make. I now move that the Report of the Select Committee on the Bill to amend and consolidate the law relating to the Port of Madras and the Bill be taken into consideration.

The motion was put and agreed to.

The Council then proceeded to discuss the provisions of the Bill.

The consideration of the title and the preamble was postponed.

Clauses 1 to 6.

Clauses 1 to 6 were allowed to stand part of the Bill.

Clause 7.

The Hon'ble Mr. G. S. FORBES :—With reference to clause 7, that is the clause to which I referred a few minutes ago, as requiring, in the opinion of the Government of India, further amendment, they suggested that in clause 13 an amendment should be introduced, but as I shall explain an amendment of clause 7 will best carry out the object of the proposal. Before asking the President's permission to move an amendment, I shall state shortly the nature of the proposal. Clause 13 declares that "any person ceasing to be a Trustee shall, unless disqualified under section 7 (1), be "eligible for re-appointment or re-election". The amendment which the Government of India would introduce is to add imprisonment for an offence as a permanent disqualification for re-appointment or re-election in addition to the disqualification now appearing in that clause; but as an amendment merely of that clause would leave it open to elect or appoint a person who has been subjected to imprisonment, the proper mode of carrying out the intention is, as the Hon'ble the Advocate-General has suggested to me, by amending clause 7.

I will now with the President's permission move that in clause 7 the words "during such time as he" be omitted and that the words "who (a) has been convicted and sentenced to imprisonment for an offence, if such sentence has not been reversed or set aside or" be substituted. I may say that this point was, as a matter of fact, considered by the Select Committee and they thought that, as the Government had the power of approving an appointment or an election under clause 13 as well as under clause 7, it was not likely that they would approve of the election or the appointment of a person, in the case of whom, there was a sentence of imprisonment, involving such a stigma on his character as would disqualify him as a Trustee. The Government of India have however desired that that should specially be mentioned in the Bill. Accordingly I move my amendment of clause 7.

The Hon'ble the Advocate-General seconded the motion.

The Hon'ble M. KRISHNAN NAYAR :—I have nothing to say except to make a suggestion to add after the word "offence", the words "involving moral turpitude".

1-20 P.M.

Suppose a man is convicted of defamation, I should not see why he should be disqualified. I do not propose any amendment, but I only make a suggestion.

The PRESIDENT :—Would it satisfy you if we say "for a non-bailable offence"?

The Hon'ble M. KRISHNAN NAYAR :—It is possible to conceive a case where a person has been sentenced to imprisonment for defamation which, in this country, is punishable with two years' imprisonment.

The Hon'ble V. C. DESIKA CHARIYAR :—There is a similar provision in the District Municipalities Act which says that, "in order to be qualified to be appointed a Municipal Councillor, a person must not have been convicted of any such offence or subjected by a Criminal Court to any such order as implies, in the opinion of the Governor in Council, a defect of character which unfits him to be a Municipal Councillor". If we now pass your amendment, we take away the discretion of the Government.

The Hon'ble Mr. G. S. FORBES :—Out of deference to what the Hon'ble Mr. Krishnan Nayar has said which expresses my own view, I am prepared to alter my amendment thus :—"who (a) has been convicted and sentenced to imprisonment for "an offence which, in the opinion of the Government, disqualifies him from being a "Trustee, if such sentence has not been reversed or set aside or".

The PRESIDENT :—Does that meet your view?

The Hon'ble M. KRISHNAN NAYAR :—Yes.

The amendment as altered was put and agreed to.

The Hon'ble K. VASUDEVA AIYANGAR :—Then sub-clause (d) of clause 7 (2) which says "any Trustee who is sentenced to imprisonment for any offence shall cease to be a Trustee, etc.," must be omitted.

The Hon'ble Mr. G. S. FORBES :—That refers to rather a different state of things, the circumstances in which a person shall cease to be a Trustee.

The Hon'ble K. VASUDEVA AIYANGAR :—Should not that be modified in the light of the other amendment?

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—We have sub-clause (a) which says "that any Trustee who becomes disqualified for any of the aforesaid reasons shall cease to be a Trustee" and among the reasons we have included "imprisonment". Therefore, sub-clause (d) is unnecessary.

The Hon'ble the ADVOCATE-GENERAL :—I think the contention of the Hon'ble Mr. Govindaraghava Aiyar is right.

The Hon'ble V. C. DESIKA CHARIYAR :—A man may not cease to be a Trustee simply on account of sentence of imprisonment, until that sentence of imprisonment is confirmed on appeal. The object of sub-clause (d) is that the moment he is sentenced he should cease to be a Trustee, and if his conviction is set aside on appeal he may be restored or renominated by Government.

The Hon'ble the ADVOCATE-GENERAL :—The moment he is sentenced to imprisonment he will cease to be a Trustee.

The Hon'ble Mr. G. STOKES :—It will require an order of Government to disqualify him if sub-clause (d) is taken out.

The Hon'ble Mr. G. S. FORBES :—I don't think that sub-clause (d) should go out at all.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—I move that sub-clause (d) be omitted. In view of the fact that conviction and imprisonment of a person on account of an offence which, in the opinion of Government, disqualifies him from being a Trustee, is a reason why a person shall not be appointed as a Trustee, it is not necessary to include in clause 7 (2), which says that a person becomes disqualified for any of the aforesaid reasons which include the amendment which we have just carried, any provision like the one embodied in sub-clause (d).

The Hon'ble K. Vasudeva Aiyangar seconded the amendment.

The Hon'ble Mr. G. STOKES :—I may point out with reference to the amendment that it will make a material alteration if sub-clause (d) is cut out in clause 7 (2), as proposed by the Hon'ble Mr. Govindaraghava Aiyar; because if his amendment be carried, before a man ceases to be a Trustee, there must be a declaration of disqualification by Government, whereas, as the clause stands, as soon as he is sentenced, he will *ipso facto* cease to be a Trustee. The position, therefore, is not by any means the same. Sub-clause (a), as amended, makes a declaration of disqualification necessary. But sub-clause (d) if left in, will *ipso facto* put the man out. It is necessary to retain sub-clause (d), because if he is sentenced to imprisonment, he will have *ipso facto* to go out. Government may subsequently consider that the offence of which he is convicted need not debar him from being a Trustee and may restore him; but that is another matter.

The Hon'ble Mr. G. S. FORBES :—I am sorry I cannot adopt the amendment. Immediately a person is sentenced to imprisonment he should *ipso facto* cease to be a Trustee; but he will, of course, be eligible for reappointment under clause 13.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—Even if he should be released on bail?

The Hon'ble Mr. G. S. FORBES :—Yes.

The PRESIDENT :—The object of that sub-clause is that where a man is sentenced to imprisonment he should not sit on the Board.

The Hon'ble V. C. DESIKA CHARIYAR :—The moment his conviction is set aside he will be eligible for reappointment under clause 13 and the Governor in Council may reappoint him.

The proposed amendment was not pressed.

Clause 7, as amended by the Member in charge of the Bill, was then allowed to stand part of the Bill.

Clauses 8 to 37.

Clauses 8 to 37, both inclusive, were allowed to stand part of the Bill.

Clause 38.

The Hon'ble Mr. G. S. FORBES :—I beg to move that in clause 38 after the words "or completed" be inserted the words "or carried out". The clause will run thus: "The Local Government may cause such work to be restored or completed or carried out or such repair to be carried out or such appliance to be provided" The omission of these words was a slip.

1-40 P.M.

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

The amendment was put and agreed to.

Clause 38, as amended, was allowed to stand part of the Bill.

Clause 39.

Clause 39 was allowed to stand part of the Bill.

Clause 40.

The Hon'ble Mr. G. S. FORBES :—Clause 40 provides: "(1) Whenever any goods shall be taken charge of by the Board under the powers conferred by this Act, it shall, if thereunto required, give a receipt in the form or to the effect prescribed in Schedule III, etc." Schedule III requires a receipt in the form there given. The receipt is required to state the details of any marks which may be on the goods landed. When this clause was before the Select Committee, the Port authorities wrote and explained that there would be considerable difficulties in granting such receipts in the case of bagged cargo. They said that when they had a large amount of bagged cargo it would be difficult to issue receipts in the press of work giving the marks on all the bags. Accordingly they objected to a general receipt of this form being prescribed. The Committee, and the Honourable Member who represented the Chamber of Commerce was a member of it, were inclined at that time to the opinion that it was more or less a matter of getting extra clerical labour for writing out these receipts, and accordingly this clause was proposed and inserted in the Bill, following the Calcutta Act where provision is made for a similar schedule and for a similar form of receipt. The Committee enquired of Calcutta and were told that so far no difficulty had arisen. However the circumstances of Madras are different from those of Calcutta in this form. After the Bill left the Select Committee the matter appears to have been further considered by the Board of Trustees and by the Chamber of Commerce; and representations were sent up which involved a modification of the clause in this respect. To enable the Council to understand the difficulty, I had better read extracts from a letter which Mr. Spring, the Chairman of the Harbour Trust Board, has sent me. What he says is this:—"I invite attention to section 40 of the Bill which would compel the Board to give receipts in the form shown in Schedule III for goods taken charge of. There is no question about the giving of the receipt, nor in regard to the point at which responsibility changes hands as between the Shipmaster or his Agent and the Board." I may explain that one reason of this point being important is that in taking charge of cargo, important obligations devolve upon the Board; and it becomes important that they should not give a receipt which would land them in those obligations. Then Mr. Spring goes on to say: "The present practice is that the receipt is

"given at the point where the joint tally takes place. Nor in the case of most sorts of cargo is there any difficulty in giving receipts by 'details of marks, if any,' as instructed in the left hand margin of Schedule III. But in the case of very heavy imports of bag cargo—the margin between light and heavy quantities being, according to circumstances, something between 4,000 and 6,000 bags per day—it is far from being certain that any practical organisation of the locally available labour, whether literate or cooly labour, will avail to enable the Board to give receipts for bag cargo by marks without inconvenient delay. The practice at present is to give mark receipts for this class of cargo only so long as it is found practicable to do so—say up to 4,500 or 5,000 bags per day; but to give up all attempt to do so, and to issue receipts only for 'marks various,' as soon as it is found to be no longer possible to give mark receipts without seriously delaying the work of issue. There are some who think that it is quite possible, by good organisation and a carefully-drilled and selected staff, to give mark receipts for bag cargo up to an unlimited daily issue—or say up to 20,000 bags per day—an extraordinarily large number, only likely to be worked up to on occasions of severe scarcity. Others, however, including the Board staff who have to carry out the work, think that, in existing conditions at this port, it is impossible to give mark receipts for more, perhaps, than 4,000 to 6,000 bags per day, according to circumstances varying from day to day. . . . The Board's intention is, as arrived at in discussion during the meeting of yesterday, March 10, that if, on trial and after full investigation, it should after all prove possible to undertake the duty of giving mark receipts for bag cargo irrespective of quantity offering, such receipts will be given, whether or not the Act makes the giving of them compulsory. The Trustees fully recognise that their duty to Steamer Agents and importers is that, if the duties of portage are undertaken by the Trust, its customers must not thereby be put in any worse a position than if they did their own portage—indeed rather a better. They deprecate, however, their being forced, at brief notice, into the dilemma in which the Bill, as now drafted, would place them, and hope that means may be found for avoiding so placing them." This matter was discussed between the Chamber of Commerce and the Harbour Trust Board, and they both now suggest that instead of definitely laying down in the Act a general form of receipt as prescribed in Schedule III, the words "from time to time by the local Government" may be substituted in the place of "in Schedule III" in clause 40, so as to leave to the Local Government the power of prescribing what receipt should be given. If the Chamber of Commerce and the Board of Trustees whose interests are more or less in accord are willing to leave this duty to be performed by Government, the Government will not object to undertaking it, until some final arrangement is come to. Accordingly, the Government have accepted the suggestion made and I propose to amend the clause in the manner stated. I therefore move that in clause 40 for the words "in Schedule III" be substituted the words "from time to time by the local Government".

The Hon'ble the ADVOCATE-GENERAL:—I beg to second the amendment. The result of the further discussion which the matter received, after it passed through the Select Committee, showed that it was too much to impose an absolute duty to give receipts in every case which would not be in the interest of ship-owners themselves as it would delay discharge. I may add that clauses 40 and 41 were put in by the Select Committee in order to make clear the terms upon which the Harbour Trust Board is to deal with goods which it receives into its custody. When in 1892 the Harbour Trust Board first undertook the portage of goods, the amending Act omitted to state what were the terms upon which they took charge of the goods. The result of that was to leave the matter in some doubt and a considerable amount of trouble was caused to the High Court in one case that came before it. It has now been put up on a clear basis by these clauses which otherwise follow the model of the Calcutta Act.

The amendment was put and agreed to.

Clause 40, as amended, was allowed to stand part of the Bill.

Clauses 41 to 53.

Clauses 41 to 53, both inclusive, were allowed to stand part of the Bill.

Clause 54.

The Hon'ble Mr. G. S. FORBES:—The next amendment that stands in my name is merely a verbal one, brought to notice by the Port Trustees. They explain that the word "wharves" is necessary to be inserted between "customs" and "warehouses", because certain imports of iron lie in wharves and not in warehouses. Accordingly it is proposed to insert the words "wharves and" between the words "customs" and "warehouses".

The amendment was put and agreed to.

Clause 54, as amended, was allowed to stand part of the Bill.

Clauses 55 to 62.

Clauses 55 to 62, both inclusive, were allowed to stand part of the Bill.

Clause 63.

The Hon'ble Mr. G. S. FORBES:—From clause 63 the Government of India desire the words "raised in the open market" after the words "all loans" to be omitted. The Committee inserted the words because as there are only two classes of loans, those raised in the open market and those obtained from the Secretary of State, it seemed unnecessary that the terms of the latter class should be included as loans needing the formal sanction of the Government of India. However it is not an amendment of substance and there can be no objection to it. I therefore move that in clause 63 the words "raised in the open market" after the words "all loans" be omitted.

The amendment was put and agreed to.

Clause 63, as amended, was allowed to stand part of the Bill.

Clauses 64 to 66.

Clauses 64 to 66, both inclusive, were allowed to stand part of the Bill.

Clause 67.

The Hon'ble Mr. G. S. FORBES:—With regard to clause 67 I have a verbal amendment to propose. It is to omit the clause altogether. I say it is a verbal amendment, because it is superfluous in view of clause 75 (4). Clause 67 declares that, subject to clause 75, all loans shall be a first charge; but as clause 75 explicitly declares what the priority is, clause 67 is obviously redundant and might be misleading. I move therefore to omit clause 67.

The Hon'ble the ADVOCATE-GENERAL:—I second the amendment. The matter appears to be dealt with by clause 75 (4).

The amendment was put and agreed to.

Clauses 68 to 113.

Clauses 68 to 113, both inclusive, were allowed to stand part of the Bill.

Clause 114.

The Hon'ble Mr. G. S. FORBES:—In clause 114 the Government of India desire that for the words "the Secretary of State for India in Council", in lines 49 and 50, and for the words "the said Secretary of State for India in Council", in lines 63 and 64, the words "His Majesty" be substituted. This is also in the character of a verbal amendment and I move the same accordingly.

The Hon'ble L. A. GOVINDARAGHAVA Aiyar:—May I know the object of the change?

The Hon'ble Mr. G. S. FORBES:—The Government of India have asked us to substitute these words, but they gave us no explanation.

The amendment was put and agreed to.

Clause 114, as amended, was allowed to stand part of the Bill.

Schedules.

Schedules I and II were allowed to stand part of the Bill.

The Hon'ble Mr. G. S. FORBES :—I move that Schedule III be omitted for reasons already given. It is a consequential amendment.

The amendment was put and agreed to.

Schedule IV was allowed to stand part of the Bill.

The Title and the Preamble.

The title and the preamble of the Bill were allowed to stand part of the Bill.

The Hon'ble Mr. G. S. FORBES :—I now propose that the Bill, as amended, be passed into law. I don't think it is necessary for me to add anything to what I have already stated.

2 P.M.

The Hon'ble Mr. A. J. YORKE :—I beg to second the motion, and in doing so I wish to place on record the thanks of the Mercantile Community for the considerate treatment accorded by Government especially in connection with the finance and other matters.

The PRESIDENT, in putting the motion to the Council, said :—I do not propose to detain the Council for any length of time, but, as a member of the Select Committee, a word or two is expected of me.

The purpose of the legislation is to convert the Harbour Trust into a Port Trust, to extend and define its powers and obligations, to embody in the law the altered financial arrangements between the Trust and the Secretary of State : and this by a new Act repealing and replacing the old Acts.

A deal of work has been done by the Select Committee in amending and improving the Bill and in repairing omissions, in rearrangement and in the grouping of cognate matters. The main novel provisions introduced concern the grant of receipts by the Trust for goods delivered to it and the imposition of a defined responsibility upon the Board. There is some question whether these provisions can be given full effect to as regards certain sorts of cargo, but shippers and importers desire them ; the present condition of things is productive of frequent disputes ; it is properly for the Trust to protect others and itself by ascertaining and declaring what it is taking charge of ; and the general opinion seems to be that if the necessary tallying labour is supplied there is no insuperable difficulty. At the same time Government desires to proceed cautiously and therefore will take time to duly consider the objections raised.

The Select Committee met on several occasions and considered the Bill clause by clause more than once. It is only right to say that in its final form it reflects mainly the untiring industry and ability of the Honourable Member in charge and of the Honourable the Advocate-General. It has also down to its latest form received the consideration and direction of the Government of India. The Council may, I venture to think, accept it with full assurance that it will increase the prosperity of the country and develop the trade of the Port.

The motion that the Bill as amended be passed into law was put and agreed to.

2-10 P.M.

The PRESIDENT :—We will now adjourn and meet again at 3 P.M.

The Council re-assembled at 3 P.M.

THE MADRAS LAND ENCROACHMENT BILL.

The Hon'ble Mr. G. STOKES :—In presenting the report of the Select Committee on the Land Encroachment Bill it is now my duty, Sir, to move that the Bill and report be taken into consideration at once. In doing so it is not necessary for me to

particularise or explain the changes which have been made in the Bill by the Select Committee further than the report does so. Several very important emendations have been made in the Bill such as the recasting of clauses 2 and 3, and the addition of clauses 7 and 16, but it is desirable, I think, that I should notice the minutes of dissent which have been appended to the report by the Hon'ble Mr. Sivaswami Aiyar and the Hon'ble Mr. Govindaraghava Aiyar.

The Honourable Members object mainly to clauses 2, 6 and 15. To clause 2 the main ground of objection is that it is capable of being used for the purpose of making encroachments on the rights of private individuals : that the broad declaration made is not justified in fact since it is doubtful whether the property in the land in question is not in the village community.

I gather they think that the village community had some sort of property in the communal lands in former times. The matter is one of fact and history. Prior to the Muhammadan domination the mirasi system prevailed in Southern India. The body of the mirasidars, one or more in number, were however in no respect the village community nor even representative of it and under that system the village community had no right of property either in the waste or poramboke of the village. Not even the mirasidar had such property. He exercised certain privileges over both, but his right even in the cultivable waste was by no means the same right as that now recognised in it. But however that may be it is certain that the mirasi system of landholding was wiped out by the Muhammadan domination in proportion to the extent of that domination. In the whole of the Telugu country it was so utterly eradicated that Munro reporting on the Ceded Districts declared there was no trace of it left. At the time of the British occupation it survived in the Tamil country to a larger extent. It prevailed not much modified in Tanjore and much modified in Chingleput but elsewhere it had practically disappeared.

The position which we found almost universal was that established by the Muhammadans that the State is the exclusive proprietor of the soil. Dealing with a situation where individual private property had been obliterated and was non-existent the object of our early ryotwari system was to create it. A property was recognised in the occupier in regard to what he occupied and paid for. The rest was sirkar and could only be entered on with permission. Or to put it otherwise in the instructive words of Sir Subrahmanya Aiyar "it was declared that the ryot was the proprietor of the kudivaram right and that such right is indefeasible so long as "what is due in respect of the melvaram right is duly paid". Thus was effected the passage from a system when the property in land was and was measured by a right of cultivation to a system when the property in land is a right to occupy for the purposes of cultivation.

Not only was it not desired to preserve the mirasi tenure in those early settlements or to continue its indefinite claims but several Collectors deliberately destroyed it and more than 60 years ago the Court of Directors declared it undesirable in any way to try to revive it. That has been the policy for the last 60 years and I have no hesitation in saying that the mirasi system of landholding is now everywhere as dead as the Dodo or Manu for that matter. Between the old system of landholding and the present there is a great gulf fixed. The new system it is true has adopted as far as possible the methods of the old but the one is no more the successor of the other than the railway train is the successor of the stage coach. The mirasi system is absolutely inconsistent in principle with individual ryotwari property which our early settlements have created. It is impossible to combine the two and certainly it is better to retain the ryotwari system as we now have it. I would only ask any Member of the Council to point out a single instance of joint village property now held in any part of the Presidency. If he goes up-country to look for it and asks to whom a vacant space which is not ryotwari land belongs, the answer will be "sirkar". While the fact is that no such thing as communal property exists in the village community anywhere I cannot think it desirable to endeavour to create it. The village republic as it existed in the olden time has melted away before the tide of modern progress. We regret it and endeavour to buttress up the old institution, but it is not a foundation on which to build. In whom then are we to vest this property? There is no possible answer.

The nature of the communal lands in villages will be obvious when I point out that Government is constantly assigning new land for communal purposes and as constantly taking it back when no longer needed for such purposes. It is certain that under no phase of property in land hitherto known in Southern India has it been ever recognised that the property in the communal lands of the village vested in any form in the village community.

The declaration in the clause is a necessary corollary of the ryotwari system. Were it otherwise, I cannot see that under cloak of it any attack can possibly be made on private rights which it must be remembered can always be defended in Court. In my opinion our system of administration is too much based on rules not very definitely laid down which any unscrupulous person can deny, which as time goes on become less understood even by revenue officers themselves and harder to prove and for my part I welcome this definite declaration of a broad and basic truth as tending to the benefit of all by making our foundation sure. There is in it no injustice, no confiscation and no interference with any private right.

The Honourable Members also object to the powers of confinement given to the Collector by clause 6. I cannot help saying that I think in this matter the ryot may well exclaim "Save me from my friends". For what is the position? This confinement is to be inflicted after inquiry. I may take it therefore that there has been resistance and that the act of the ryot has been within the Penal Code. Now surely it is more merciful to the ryot that the Collector should be able to say to him "You have lost your temper and have no right to this land; just sit here in the taluk catcherry till you recover your equanimity; you can eat your own food and see your friends—only you must not go to that land and get yourself into trouble", than that he should have to hale the poor man before the Magistrate who will give a smart fine, say 10 or 15 rupees, which the ryot must pay in addition to at least Rs. 50 to a vakil. If the Magistrate does not fine the ryot he must put him into simple imprisonment where he will have to eat prison food and wear prison dress and the ryot may get rigorous imprisonment. In the one case the ryot goes away none the worse. In the other, he goes away ruined in pocket and at least stained in reputation.

The third point to which Honourable Members object is clause 15 which validates the acts of the Collector in connection with the levy of penal assessments in the past. I think there is some misapprehension as to the scope and effect of the judgment of the High Court and of the clause objected to. The judgment of Sir Bhashyam Aiyangar which covers all the ground taken up by the other two Judges lays down that the imposition of a demand with a view to compel the surrender of land is not the imposition of land revenue and cannot be recovered under Act II of 1864. It also contains a dictum as to arable land, a matter not in issue before the Court in the case in which the judgment was passed, nor in regard to this clause, since penal assessment has never been imposed on assessed arable lands. Having regard to the history of taxation in this country and to the rulings of other High Courts cited in the judgment itself, the High Court could not possibly rule, especially in the absence of any evidence or discussion of the point in the case before it, that it is not the prerogative of the Crown in India to fix the assessment on the land. In fact Sir Bhashyam Aiyangar expressly says, it is, and it seems clear, therefore, that it is only when the assessment has been imposed with a view to compel the surrender of land, that the High Court hold, not that the imposition of assessment is illegal, but that it cannot be recovered under Act II of 1864. It is only when the assessment is both prohibitive and has been recovered under Act II of 1864 that the judgment would apply. Though the amount of penal assessment, i.e., of assessment imposed on unassessed waste land, in cases where the occupation is objectionable, is large, yet in a large number of the cases the assessment is not imposed with a view to compel surrender of the land. In many cases the crop has been reaped and the land vacated before the assessment is imposed at all. In many others no objection to vacating the land is raised and so on. The large number of cases of assessment on unassessed waste thus do not, I believe, come within the judgment at all. To separate those cases which do from those which do not would be an heavy labour not lightly to be undertaken.

It is necessary now to turn to the scope of the clause. What it is intended to do and what the Advocate-General assures me it does is simply to legalize the past

levy of assessments imposed on unauthorised occupation, and their recovery under Act II of 1864. It does not, I am assured, take away the right to go to Court to try the liability to assessment. Thus the validation certainly does not go too far.

The position, then, is this. For thirty-five years the High Court held on many occasions that the levy of prohibitory assessment was legal. Suddenly the Court has turned round and ruled that it is not legal, and for the sake of the cases to which the ruling applies, we are asked to upset the whole administrative coach and throw it in the ditch. It is not necessary for me to decide whether the former or the present opinion of the High Court is correct. Government, in view of the fact of the judgment, have deemed it expedient to undertake this legislation. But it seems to me that under the circumstances there is no need for such fantastic justice as the Honourable Members seem to desire, and that the natural and proper way to deal with the matter is to validate what has been done. *Factum valeat* is a well-known legal maxim, and it seems to me to provide the proper solution of the difficulty in this case. I hold, therefore, that this clause is necessary and proper.

The Hon'ble Mr. A. E. Castle Stuart seconded the motion.

The motion was put and agreed to.

The PRESIDENT:—I presume it will be convenient to defer for the present the consideration of the title and the preamble, and to proceed to clause 1 of the Bill.

Clause 1.

Notice was given of the following amendment by the Hon'ble M. Krishnan Nayar:—That in line 13, after "Madras" be added "and to lands in the district of Malabar which are the property, or under the control, of Government. Except as is provided in this section, this Act does not extend to the district of Malabar."

The Hon'ble Mr. G. Stokes:—Before this amendment is moved by the Hon'ble Mr. Krishnan Nayar to clause 1 of the Bill, to save discussion, I would ask the Honourable Member whether it will meet the object of his amendment, if in sub-clause (c) of clause 2 as proposed to be amended by me the following words are introduced after the words "ryotwari settlement":—"including that of a janmi in Malabar or of a wargdar in South Canara".

The Hon'ble M. KRISHNAN NAYAR:—That will satisfy me. I am prepared to withdraw my amendment.

The Hon'ble Mr. G. Stokes:—This definition of private rights will have to come into the Bill, even if the amendments of other Honourable Members be carried. I undertake that this declaration shall be put in in sub-clause (c) which will make it perfectly clear that any land claimed under janmi's rights is excluded from the operation of the Bill.

The Hon'ble M. KRISHNAN NAYAR:—In the circumstances mentioned by the Honourable Member in charge of the Bill, I withdraw my amendment.

With the President's permission the amendment was withdrawn.

Clause 1 was allowed to stand part of the Bill.

Clause 2.

The Hon'ble P. S. SIVASWAMI Aiyar:—May I know with regard to clause 2 in what order the amendments will be put. I think the amendments ought to be taken in their logical order.

The PRESIDENT:—I wish to take the opinion of the Council as to the order in which the amendments to clause 2 shall be taken. At present I will move that clause 2 do stand part of the Bill. As there are several amendments to this clause and as they will have to be considered, the question for the Council to decide is in what order they should be taken.

The Hon'ble M. KRISHNAN NAYAR :—With reference to that, I beg to make a suggestion. I find that there is one amendment which goes to the very root of the clause, viz., that the whole clause be omitted. If that amendment is carried, there will be no necessity to consider the other amendments to this clause; if not, we shall have to consider them. I think, therefore, the amendment which relates to the omission of that clause may be taken into consideration first.

The PRESIDENT :—I am prepared to accept the suggestion, if the Council has no objection. I will now call upon the Hon'ble Mr. Sivaswami Aiyar to move his amendment.

The Hon'ble P. S. SIVASWAMI AIYAR :—The amendment that I wish to move is that the whole of clause 2 be omitted. Of the various provisions of the Bill the one which has been subjected to most criticism in the press and among the public is the declaration which is contained in clause 2, and I shall briefly state the reasons which have led me to move this amendment. In the first place, it is considered an unessential part of this Bill. It will be remembered that this Bill is the outcome of the decision of the Madras High Court, in regard to the levy of penal assessment. In consequence of that decision, the Government found that their powers of dealing with encroachments were not adequate and that the most suitable way of dealing with them was to eject the trespassers summarily. The Government, therefore, desired to take to themselves by means of an enactment the power to evict summarily a person who has trespassed upon a land belonging to Government or set apart for public purposes. The power of summary eviction conferred by this Bill is, I consider, a most essential and vital part of the Bill; and the conferring of this power will be open to no objection at all. All the other provisions of the Bill are of comparatively secondary importance. The whole object and scope of the Bill is to provide the Government with adequate powers for checking encroachments upon lands which are the property of Government and which have been set apart for public purposes. If, for the purpose which the Government has in view, it is necessary to find a basis in some declaration of the kind mentioned in clause 2, I concede that there may be a justification for introducing some such definition as that contained in clause 2. But a declaration of the kind introduced is altogether unnecessary as a basis for the powers which it is proposed to confer upon Government by this Bill. That it is possible to achieve the end in view without any such declaration can be easily demonstrated and I have proposed certain modifications in clause 3 to which I now merely refer in passing for the purposes of showing that it is possible to check encroachments without introducing

3-20 P.M.

any definition as to what is private property and what is Government property.

In the framing of this Bill, recourse has been had to the provisions of the Bombay Revenue Code, Act V of 1879; and clause 2 of the Bill, as it originally stood, was copied from the provisions of section 37 of the Bombay Revenue Code. At present it has been, to some extent, modified, but in substance it is a reproduction of the declaration contained in section 37 of the Bombay Code. If you examine the provisions of the Bombay Code, you will find that the declaration contained in section 37 is inserted there, not as a necessary prelude to the conferring of any powers for checking encroachments, but it stands, by itself, as a part of the general scheme of the land revenue law. The subject of encroachments on Government properties is dealt with by section 61 of the Bombay Revenue Code. The wording of that section is simply this: whoever unauthorisedly occupies any land set apart for special purposes or any unoccupied land which has not been alienated shall be dealt with in such and such a manner. It deals with the whole matter in a simple way. Notwithstanding the declaration in section 37 of the Bombay Revenue Code, we find that it is not made use of for the purpose of preventing encroachments and that section 61 of the Bombay Revenue Code proceeds independently of section 37. That this clause finds a place in the Bombay Revenue Code is therefore no justification for the introduction of this declaration in this Bill.

Now the real objection on the part of the public to this declaration is that it is of a sweeping character and that it may not save some kinds of private property, though it may not now be possible for us to suggest the exact description of property which ought to be, but has not been saved. It is the difficulty of defining what is

private and what is Government property that constitutes the real objection to the enactment of a clause like this. If it were a simple matter at all to define what private property and what Government property is, there would be no objection to a definition of the question; but the subject is beset with great difficulty and it is impossible to frame any really satisfactory and exhaustive definition of what is private or Government property and what is not. As one proof of the difficulty of the subject and the necessarily unsatisfactory character of the attempts made to define private and Government property, I may refer to the fact that though the Bill has been considered by the Select Committee in great detail, the Mover of the Bill himself has found it necessary to introduce further amendments to this clause. It shows how complicated the subject is and how impracticable it is to frame a satisfactory definition of private and Government property. Under these circumstances, the fear that is entertained by the public is not unreasonable that perchance some species of private property may be left out of the saving clauses and that at some future time the declaration which is contained here and which confers very large rights upon Government may be used to their disadvantage. If this declaration were really necessary, then it might be our duty to solve the question and frame some definition or other of what is private property and what is Government property. But I venture to submit that we are not really called upon to lay down any such definition of private and Government property. There is another reason for the fear that is entertained by the public; and that is, that underlying this clause there is an assumption that all land in the country is the property of Government and that there can be no private property, unless persons have derived title thereto from the Government, or unless their title to it has been recognised by the Government. All the words used in excluding private property are words of Revenue terminology, such as registered holder of land in proprietary right, zamindars and so on. They are all words intimately associated with the fiscal arrangements of Government; and it has often been observed that the fiscal arrangements made by Government have generally a tendency to affect rights of property and sometimes to create them. For instance, in the case of zamindars, it has been remarked that persons who originally were merely recognised by Government as farmers of revenue have since come to be regarded as owners of property. When the Government deals with a particular class of persons as those liable to pay revenue, there is necessarily a tendency on the part of Government to look upon them as owners of the soil. As I have said the terms used to exclude private property are terms of Revenue administration. The assumption made herein is that there can be no private property unless it is recognised by Government or is derived from Government. This assumption has, no doubt, been advanced by some, but at the same time it has also been combated by others and I venture to submit, Sir, that the assumption has really no historical foundation. Whatever may be the right of Government to the waste lands in the country, about which I shall have to make one or two remarks later on, I do not think that it can be contended that the Government is the owner of all the land in the country. This theory of universal proprietorship is an entirely feudal conception and is foreign to the country. It is not warranted by the ancient Hindu law nor by the Muhammadan law. According to the Hindu law, the subject was the owner of the soil and the King's right was merely a right to a share of the produce. The question has been discussed at very great length in what is known as the South Canara land assessment case, reported in 12 Bombay High Court Case appendix, page 1, and the conclusion arrived at by the Chief Justice Sir Michael Westropp and Mr. Justice West, both of them eminent jurists, was that the universal proprietorship of the sovereign derives no warrant from the Hindu law. That is a conclusion arrived at by those eminent authorities after an elaborate examination of the texts of Hindu law and of the commentaries thereon. If we turn to the Muhammadan law books and Muhammadan lawyers we find that the same doctrine prevails among the Muhammadan lawyers as among the Hindu lawyers. Their doctrine was that when a country was conquered, the land became the property of the sovereign unless the subject paid his tribute or tax or became a convert to Muhammadanism. If the subject paid this tax or khiraj, he was regarded as an absolute proprietor of the soil. That is a statement which will be found in many of the books which deal with the doctrines of Muhammadan law, and which will also be found in the book by Neil Baillie upon the system of Land Tax under Muhammadan rule. I do not think it necessary to quote any further authorities with regard to the views held by Muhammadan writers on the subject of State ownership of land in

India. The subject has been examined by Mr. Baden Powell in his *Systems of Land Tenure* and the conclusion he arrives at is that, so far as the Hindu Rajas were concerned, they were not entitled to universal proprietorship over the lands of the country. The same view is also propounded with reference to Muhammadan rulers. If this doctrine is not supported by the ancient Hindu theory or by the theory of Muhammadan rulers, what foundation has it in fact? If the British Government said that they conquered the country, confiscated all property in the land and became the owners of it, it would be intelligible; but I am not aware that the Government has ever put forward the theory of confiscation and contended that all land in India is the private property of Government. It cannot be justified by any appeal to the past circumstances of British conquest. I submit that it would be really an unfounded pretension on the part of Government. I admit that in some books, papers and enactments this assumption has been made, but what authority there is in fact or in history for this assumption, I have not been able to see. Seeing that this theory finds so little warrant in history, is it expedient or justifiable to introduce any declaration of this sort in clause 2, more especially when there is no necessity to introduce it? I venture to submit, Sir, that there is none at all.

Then again, there is another aspect of the question to which I would call your attention and it is as regards the powers of this Government to deal with this matter. Under the Act for the better Government of India, 21 and 22 Victoria, Chapter 106, property which was vested in the East India Company became vested in the Crown, all lands and hereditaments, and all real and personal estates of the East India Company were transferred to the Crown. By the Councils Act the Governor General in Council was prevented from passing any law which would affect any of the provisions of the Act for the better Government of India. Among the provisions of the Act for the better Government of India in addition to those I mentioned whereby all real and personal estates were transferred to the Crown, there is another provision, namely, that the Secretary of State for India in Council alone can dispose of any property belonging to the Crown or acquire any property for the Crown. Then there is another Act passed in the very next year, in 1859, 22 and 23 Victoria, whereby the power given to the Secretary of State for India in Council was also conferred upon the Governor General in Council and also upon Local Governors in Council, so that Local Governors in Council were empowered to dispose of property belonging to the Crown or acquire property for the Crown. When the Statute speaks of "the Governor General in Council", it is not the Council for making Laws and Regulations, but it is the Executive Council. If, under the Councils Act, the Local Legislative Council has no power to pass any law which shall affect any of the provisions of the two Acts for the better Government of India, it follows that the Local Council cannot, by an act of legislation, make certain properties the properties of Government which were not previously so. It may be said that this clause merely declares that what was the property of the Crown is the property of the Crown. If that is so, the clause is superfluous. If, on the other hand, this clause is to declare that certain properties which were not previously vested in the East India Company and were not transferred

3-40 P.M.

to the Crown must now be regarded as the property of the Crown, the declaration will be *ultra vires* of this legislature. When the Act for the better Government of India declares that the Governor in Council can alone acquire property, it is not competent for any third party to acquire property for the Crown. It will be incompetent for the legislature to acquire property, when the power to do so is conferred solely upon the Governor in Council. In one view, it will be a surplusage and in another view it will be creating rights or acquiring rights in favour of the Crown which this legislature has no power to do.

Then again with regard to details in clause 2, there are certain portions of the clause which have excited very considerable apprehension, for instance the statement that all standing and flowing water is the property of Government. I wonder whether the East India Company laid any claim to standing and flowing water wherever situated; I wonder whether the Acts for the better Government of India transferred to the Crown all standing and flowing water, wherever situated. With regard to the claim to all standing and flowing water wherever situated, it is one of the instances in which apprehension is entertained that the clause may produce great hardship. We have an instance of it in a recent case in Chingleput, where we learn from the papers some people who stored up in their fields the rain water which fell on their own lands

have been subjected to penal assessment for so doing. I am not quite certain as to what the facts of the case are, because there seems to be some difference in the versions which appeared in the papers. If it was cultivation within the waterspread of the tank, it might be liable to penal assessment. If the ryot stored up rain water falling on his own land and put up ridges to prevent that water from escaping, no lawyer can understand how it could possibly be contended that he was exceeding his rights or doing anything that was unlawful. It has been stated that ryots who so stored up rain water on their own land have been subjected to penal assessment under instructions from the Board of Revenue. That is one of the instances of the way in which the provisions of this clause may be worked so as to cause hardship to the people. Then again it is difficult to understand what is meant by the claim over flowing water. Who ever thought that flowing water could be subjected to ownership? There are of course rights in respect of flowing water. You have a right to the flow of water in its natural course. A riparian proprietor has a right to insist that upper proprietors shall not make any material subtraction from the flowing water before it reaches his land. Beyond that, I do not think it can be said that a person is the owner of flowing water in the sense that if another person abstracted a quantity of water, he will be guilty of theft. As the clause stands, flowing water and every other water is Government property, and any person who dips a bucket into a river for the purpose of taking a bucket-full of water, will be technically guilty of theft. We cannot always rely upon the application of the maxim *de minimis non curat lex*. If the Government has a right to flowing water, it can prevent any person from using the water lower down the stream or anywhere else. Then again there is another instance that I may adduce to show the hardship likely to be caused by this Bill. A riparian owner is entitled to certain rights, one of them being that he is entitled to the bed of the stream *ad medium filum*. It may be said that is a doctrine of English Law. But there are numerous decisions that in India that doctrine should be applied. In a case which came up from Madura and related to an alleged encroachment upon Municipal property, it has been laid down by the High Court with regard to streets that owners of adjacent houses may have a right to the subsoil *ad medium filum*, provided the property was previously theirs. The doctrine of ownership *ad medium filum* in a stream or a river is thus not unknown to the Law of India. I am not aware of any reason for restricting the application of that doctrine to zamindaris only. A ryot holding land is as much entitled to riparian rights as a zamindar. In some early cases the view was taken that the ryot was merely a tenant-at-will of Government and could not therefore have riparian rights. That view is not now held and the correct view now is that a ryot is the owner of the land and is not to be regarded as a tenant under the Government. The Honourable Mr. Justice Subrahmanya Aiyar in which he said that the ryot is the owner of kudivaram interests. What the melvaram interests may mean and whether they mean anything more than a tax, it is not now necessary to discuss. The owner of a kudivaram right cannot be treated as a tenant. His position will be made clear by a reference to the provisions of the Estates Land Bill which has just been published. Ryots in zamindaris are not treated as tenants of the zamindar and they are spoken of as ryots. What is due by them is spoken of as shist and not rent. The relation between them is not that of a landlord and a tenant. Under these circumstances, the ryot being the owner, if not of the entire proprietary right in the soil, at any rate of a substantial interest in the soil, there is no reason for denying to him the same riparian rights that may be exercised by zamindars and proprietors of estates. These rights will certainly be affected by this declaration. It may be said that in the interests of the public it is necessary to take away such riparian rights from the ryots and it is necessary to declare that all streams vest in the Government. The fact that a person is a riparian owner or that he may be entitled to the bed of the stream *ad medium filum* will not in any way enable him to interfere with the flow of water, to the prejudice of the lower riparian proprietors, or to interfere with the right of navigation or with free passage over the river. He has his right, only when the bed of the stream is not covered with water or when the stream changes its course. In these circumstances, it seems to me that the proposed declaration will make an encroachment upon the rights of ryots. There are other ways also in which this declaration may affect the rights of private individuals. In the Bombay Code there were certain words used, viz., excepting so far as rights may be established in or over certain properties by private individuals. Though we have copied the Bombay Code, we have omitted this saving

clause. It is, therefore, possible that this Bill may be so worked or used as to make encroachments upon the rights of private individuals. While we are anxious that there should be no encroachment upon Government property, we are equally anxious that there should be no handle to any encroachment upon private property at some future time. For these reasons, I move that the whole of the clause be omitted.

The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR :—In seconding the amendment, I shall confine myself to clause 2 in so far as it is calculated to affect the ancient rights and privileges of zamindars and other landholders. Though the clause in question excepts from the category of lands, etc., to which the Bill is intended to apply, the lands, etc., which are the property of landholders as defined in section 1 of the Rent Recovery Act, the remarks of the Select Committee with reference to communal lands in zamindaris show how illusory and inadequate is the protection extended to zamindars by this saving provision. The Select Committee observes as follows: "Since zamindars are expressly mentioned as proprietors in the definition of 'landholders' in Madras Act VIII of 1865 the provisions of the Bill will not apply to communal lands in zamindaris if such lands are the property of the zamindar. If, however, such lands are not the property of the zamindar, then this Bill will apply as it obviously ought to apply to such communal lands. At present the question of the ownership of these lands remains undecided and in the absence of further legislation a judicial decision can alone define the legal position of such lands with reference to the applicability of the present Bill". Here a doubt is sought to be thrown on the undisputed ownership of zamindars to communal lands within their estates and room given for endless litigation. It has been recognised from time immemorial that the zamindars are the proprietors of the soil, both waste and cultivated, within the limits of their respective zamindaris. Regulation XXV of 1802 distinctly conferred on the zamindars, whose estates have been permanently settled, proprietary right in the soil in all lands in their estates, subject to certain reservations on behalf of the Government. None of these reservations makes any mention of any class of poramboke, waste or communal lands as excluded from the settlement. The term Lakhiraj used in one of these reservations was intended to apply and can properly apply only to lands on which the payment of revenue is either remitted or assigned in favour of a grantee in the shape of sanad and service inams, and cannot by any stretch of language be made to comprise waste lands, tank beds, grazing grounds, etc. Whatever proprietary right in the soil might have been possessed by the Government prior to permanent settlement has been absolutely relinquished by the permanent settlement in favour of the zamindars. The Regulation IV of 1822 did in no way limit or affect the rights which were transferred to zamindars at the time of the permanent settlement, but only declared that the permanent settlement did not authorise any infringement or limitation of the established rights, if any, of the cultivating tenants. The provision contained in clause (4), section 11, of the Rent Recovery Act as regards the terms on which the occupation of waste lands was to be allowed clearly shows that the waste lands in a zamindari are at the unrestricted disposal of the zamindar subject to any special rights which by law or usage having the force of law are held by any class or person in such waste or unoccupied lands. In mining rules published by Government in 1882 defining their rights to minerals, it is said that the State lays no claim to minerals in estates held on sanads of permanent settlement. Again in the rules for the sale or lease of waste lands, it is declared that in zamindaris the waste lying within their limits belongs to the zamindars or landlords. It is clear from these declarations that no claim can validly be put forward on behalf of Government to poramboke, waste or communal lands in zamindaris, as the rights of Government to such lands, if any, were absolutely alienated to the zamindars at the time of the permanent settlement. The rights of zamindars in their zamindaris were sufficiently ascertained and settled when sanads were granted to them by the Government confirming their previous rights. In pursuance of those rights and privileges they have been enjoying all the lands comprised in their zamindaris absolutely and free from interference, subject of course to the pre-existing rights of communities and individuals. It has been judicially held that all lands within the boundaries of a zamindari are *prima facie* to be considered part of the zamindari (*vide* X Moore's Indian Appeals, p. 174—*Wise v. Bhooban Moyee Devia*), and the lands described in clause 2, falling as they do within the zamindari, and in the absence of any statutory exclusion, should be

considered as belonging to the zamindar and not to Government. In paragraph 2, subparagraph 3, of the Select Committee's report, the Select Committee says that the provisions of the Bill will apply to communal lands in zamindaris if such lands are not the property of the zamindar. Lands in zamindaris could be classified under only four heads (i) lands belonging to the zamindar, (ii) lands in which the individual ryots have a right, (iii) lands in which a community or class of persons has a right and (iv) lastly lands which belong to the Government. The first class of lands, that is, lands belonging to the zamindar include according to the terms of the permanent settlement sanad every inch of land within the limits of the zamindari, subject to such right or rights as individuals or class of individuals might have acquired in them by prescription, grant or custom. All lands held by tenants under a patta without reservation, express or implied, of the zamindar's ownership in them come under the second class. The third class might, on the analogy of what prevails in ryotwari tracts, be said to consist of public roads, streets, paths, drinking-water ponds, burning and burial grounds, markets, etc., the control over which is vested in the Local Boards and Municipalities. And the property of Government in a proprietary estate could therefore only be that which has been acquired by purchase under the Land Acquisition Act or by private arrangement or by escheat. The Bill *prima facie* seeks to protect the encroachments on communal and Government lands wherever they may be situated. In so doing it has gone to the length of declaring that all communal lands are the absolute property of Government, shifting the burden of proving the contrary on the shoulders of the proprietors, without either defining in unmistakable language the term communal lands or enumerating the classes of land that come under the term and even without saving beyond the possibility of doubt the pre-existing rights of persons or classes of persons in them. The Honourable Mover in his reply to the criticisms that were passed on the Bill at the time of its introduction into the Council on the 27th January last admitted that the definition of Government

4 P.M.

property given in clause 2 of the Bill was a negative one, that it was no definition of Government property to say that whatever is not private property is Government property, and that the scope of the Bill ought to be made more precise and accurate not only by adding to it a clear and comprehensive definition of private property but also by providing a positive definition of Government property, so that there may be no manner of doubt as to its extension and applicability. It is to be observed that clause 2 of the Bill, as amended by the Select Committee, still continues to be of a negative character, and is far from being precise and accurate, and contains no positive definition of private and Government property. I would respectfully submit that it has come out of the hands of the Select Committee more mystified and consequently more dangerous in its application than it ever was. If I may say so, by clause 2 in its amended form, the sword of Democles is made to hang over the heads of the proprietors; as they cannot be certain what property of theirs might or might not be declared by the executive officers of Government to be Government property, and whether the penal provisions of the Bill might not be tried against them any day in pursuance of such one-sided declaration. Of the several classes of property specified in clause 2 of the Bill, the first eight belong to a class of communal lands, the control over which is vested in Local Boards. In zamindari estates the limits of the roads and streets used as such by the public bodies extend only as far as ditches by their sides and not as far as avenues or fences put up about them. Lands over which the public roads are constructed in such estates are in most cases free grants by zamindars for charitable uses, and in a few cases acquisitions from the proprietors by the local bodies on payment of compensation. And it is not therefore proper to fix the limits of roads beyond the ditches and extend them up to the avenues or fences unless it could be proved that the lands on which the avenues or fences stand are those acquired by public bodies by payment of compensation. The bed of the sea, and of harbours and creeks below high water mark may be conceded to be the property of Government. Rivers, streams, nalas, lakes, tanks, canals, water courses or standing or flowing water and all lands except patta lands including house-sites not being the property of private individuals must from their very nature belong either to Government or proprietors according to their situation in ryotwari tracts or proprietary estates. It is difficult, I submit, to comprehend how the Government could lay claim to any of the abovementioned classes of property when they are situated in proprietary estates, seeing that all of them except house-sites

are the sources of water-supply for irrigation purposes in these estates. It is apprehended that the claim however remote it may be on the part of the Government to rivers and other irrigation sources within zamindari limits will ultimately develop into a claim by them for the water-rate and the rents on wet ayacut to the prejudice of the proprietors. It might be said that drinking-water ponds must, in the interests of sanitation and public health, be vested in local bodies. If the local bodies should wish to have an absolute control over drinking-water ponds, they must acquire lands and dig wells and ponds of their own on the same. It may be observed here that in some cases the drinking-water ponds are also real sources of irrigation. I know of no instance where house-sites have been granted in proprietary villages by anybody other than the proprietors themselves. Even in the case of estates under the Court of Wards applications for house-sites in proprietary villages have been disposed of by the Court of Wards as representing the proprietors and not by the Government. Further it is not the Government but the proprietors that have met the growing need of ever-increasing population in their estates for fresh and extended house-sites by grants from time to time of vacant house-sites in the nattam limits, and if need be by the allotment of suitable sites in the assessed or unassessed waste of theirs without claiming from Government either compensation or deduction of peshkash. While Government exercises unlimited control over house-sites in ryotwari tracts and lays down rules for their assignment to assert its prerogative over them, it is really hard that the proprietors' ownership in unoccupied building sites in zamindari towns and villages should be called in question. To come to the phraseology in clause 2 of the Bill "all lands wherever situated," I submit it is so vague that it may include burning and burial grounds, reserve forests, quarries, hills, sites for markets, fairs and bazaars and all other assessed and unassessed waste in a proprietary estate. The Local Boards have never exercised any control over burning or burial grounds in zamindari villages nor have they paid any attention to their upkeep, extension and improvement. These matters have been from time immemorial in the hands of zamindars. The Local Boards generally do not care to take charge of markets and fairs which are not sufficiently remunerative and they have never hitherto attempted to include sites allotted for such purposes among their properties even if they be in Unions. It is the proprietor or some one of his tenants owning suitable sites that controls the markets and fairs and gets rents for sites on which the stalls are located. The burning or burial grounds, and the cart-stands in zamindaris are the property either of the zamindar or of a private individual. They are brought under the control of the Local Board only when it has acquired such grounds by purchase or gift. Markets as well as burning and burial grounds in estates can in no case become the property of Government unless they have been acquired by purchase or gift. Whenever the Government wanted lands in proprietary estates for quarrying, building or other purposes, they invariably acquired the same by paying compensation to the ryot if the land is owned by him under a putta with a saleable right, or to the zamindar if it should be any other land, in either case allowing a deduction in the peshkash amount to the extent of the rent that may be derived from such lands. The question of ownership therefore to the several classes of lands in zamindaris is not an undecided one as the Select Committee pointed out in its report, but an indisputable one in favour of zamindars, except in the case of public roads and streets vested in any Local or Municipal authority and of lands acquired by Government under Land Acquisition Act or otherwise, which may include cantonment lands in zamindaris. Express declarations made by Government from time to time in its executive capacity, as well as the Regulations and Acts dealing with the rights and privileges of zamindars and other proprietors, and the practice and custom obtaining from time immemorial in zamindari tracts all point to this conclusion. And we do not believe that by means of an enactment, the Government will summarily annul long established rights and privileges. It is no doubt the duty of Government to safeguard the rights and interests of communities and protect them from infringement; but this can be done without interfering with the rights of third parties. The Bill does not seem to show that the Government proposes to act on behalf of the communities and the public. The whole tenor of it indicates that the Government wants to act on its own behalf as the proprietor of all lands in the country with a few vaguely defined exceptions. The rights of communities and classes of persons are sufficiently protected by

clause (iv), section 11 of Act VIII of 1865, and the only thing that now remains to be done is not a sweeping declaration like the one that has been put forth in clause 2 of the present Bill, but an elaboration of the abovementioned clause (iv) of section 11 of Act VIII of 1865 specifying in detail the several classes of land in an estate and the rights of persons or classes of persons in each of them. An attempt in this direction being sought to be made in the recently published Madras Estates Land Bill it seems only proper that the scope of this Bill is not extended to zamindars in view of the disastrous results already adverted to as likely to happen to them. I am sure it is considerations like these that must have induced the Hon'ble Mr. Stokes to hold out the assurance at the time of introducing the Bill into the Council that it would not be extended to zamindari tracts. When the Hon'ble Mr. Stokes, to whom the whole exposition of the Government case was entrusted, made the admission that clause 2 was clumsily worded and assured that it would be made precise and accurate so that there might be no doubt as to the exclusion of zamindaris from the operation of the Bill, I as well as the body of landholders whom I have the honour to represent felt relieved from a great anxiety and thought what the Government had said through its fair-minded spokesman would be acted upon. The President may very well conceive the disappointment that was caused throughout the landholding community of the Presidency by the extraordinary course adopted by the Select Committee. The danger lurking in the Bill is immense though subtle. It may subject respectable landholders to unnecessary worry, irritation and loss of dignity at the hands of the over-zealous subordinate revenue officers of Government who may take into their heads to apply the provisions of the Bill to zamindari tracts under the pretext that the Select Committee which gave the final shape to the Bill itself threw doubt on the ownership of zamindars to communal and other waste lands in zamindaris. I have heard it said that some years ago at a time when nobody ventured to dispute the right of zamindars to all the waste lands within the limits of their estates a well-known civilian head of a district made the audacious proposal that all poramboke, waste and communal lands in zamindaris should be declared to be the absolute property of Government, and that the then Government after an exhaustive discussion knocked this proposal on the head. I have no doubt if the Bill is allowed to stand as it is, its provisions will be attempted to be enforced in zamindaris, with the result that the poor and helpless zamindar will be put upon his defence and driven to try conclusions with a formidable and well-equipped opponent as the Government. I therefore support the proposal that clause 2 of the Bill, which I believe cannot from its very nature be freed from vagueness, and is in consequence capable of inflicting immense hardship on zamindars and other proprietors of estates, be omitted altogether.

The Hon'ble K. VASUDEVA AIYANGAR :—Mr. President, I venture to support the view put forward by the Honourable Mover of the amendment, as I believe that the object of this Bill would be sufficiently served even without the elaborate definition contained in clause 2. No doubt the lands which are the property of the landholders as defined in section 1 of Act VIII of 1865 are excluded from the provisions of the Bill. But what those properties are is not clearly defined in any place. For instance, it is not clear whether communal lands, lands set apart for public purposes in villages, are the property of mirasidars or of the village community. Referring to the ancient history of the mirasi rights, I may submit that, when the British took possession of this country, this question was largely looming before the eyes of the authorities and elaborate instructions were issued to District officers asking them to make enquiries and to report upon the several land tenures that prevailed in the various parts of the Presidency. I find from a perusal of those reports, that the District officers bore eloquent testimony to the nature of the mirasi tenure held by the hereditary cultivators of the soil and were struck with the regularity in which those rights were exercised by the village community and the tenacity with which the mirasidars were found clinging to their rights. All these lands were distributed among mirasidars by the drawing of lots and the village waste lands were held as common property. No less an authority than the Board of Revenue noted it down that poramboke lands which included all the lands set apart for common purposes were entitled to be participated in by mirasidars; they were declared to enjoy all the advantages to be derived from mines, quarries and fisheries in porambokes and all the benefits accruing from waste lands, such as the cutting of fuel and grazing of cattle.

This right was acknowledged by superior authorities and was recognised by Sir Henry Maine in his book on "Village Community." He notices in it the strong personal interest which the village communities had over the village common land and he distinguishes it from the vague feeling that characterises such communities in Europe. Even after that great statesman Sir Thomas Munro wrote his famous minute disapproving the continuance of such mirasi rights, the Government were found issuing orders to subordinates not to infringe the rights of mirasidars. They were held in such esteem that even though a mirasidar did not live within his estate, and neglected the cultivation of his land and his common interest in the waste, he was supposed to have preserved his rights over the village waste, so that, on his return, he was granted the cultivation of his land which was brought under the plough by outsiders, provided he paid all the expenses for the reclamation of the land. The rights of mirasidars over the waste lands were recognised by Government in every way. Even if outsiders were brought in, the mirasidars were entitled to have some fees as their swatantrams, that is, for their mirasi rights, over the waste. A proposal was made in the early part of the last century that the lands which were profitable could be put to auction and sold, but the Government of the day thought that it would not be proper. They said it would neither be proper nor politic to have recourse to that, inasmuch as that would lead to great discontent and inconvenience to the ryots, not to speak of infringement of their long established rights. I may submit that in the fifties of the last century, when the Advocate-General was consulted as to whether the claim of the Government to lease or sell the immemorial waste land to strangers as against mirasidars of the village could be supported, the Honourable gentleman dealt with the question most exhaustively and came to the conclusion that the claim of Government could not be supported, inasmuch as mirasidars were found to be selling their rights over village waste for a long time, and the Government also participated in those transactions in several instances. During the latter part of the last century, the policy began to change. The mirasidar not having been found to pay as much attention to village waste as before, it was thought by Government that inducements should be offered to more enterprising stranger claimants to occupy them; and it was thought that too much clinging to mirasi rights without being able to enjoy them would only put checks and would throw obstacles in the extension of cultivation. It was also considered that assignees would have greater security, if the lands were assigned by Government and it was also considered that the Government would be better able to dispose of the lands than the body of mirasidars who could not be expected to act in unison. These and other considerations affected mirasi rights and this led to the dismemberment of village communities; and the ryotwari system which began to come into force during that time began to strike at the root of the mirasi system, the principal and most important incident attached thereto was the periodical interchange of lands and the joint ownership of village lands. The ryotwari system dealt with the holding of these lands severally and the sense of ownership in the cultivated lands began to grow and the interest over the village waste began to decrease. Even under the altered circumstances these mirasi rights were not considered as having become entirely extinct. I may submit that even to this day some remnants of mirasi rights have been preserved. Under these circumstances, while admitting the absolute right of Government to protect their revenue, I submit that it may not be expedient to declare that the Government has absolute ownership in these lands. As regards communal lands in zamindaris, I don't think it can be seriously contended that the Government has any right or can in any manner interfere with communal lands which have been assigned to zamindars by a permanent sanad.

4-20 P.M.

The Hon'ble M. KRISHNAN NAYAR :— In supporting the amendment I wish to make one or two observations. The reason for the introduction of this Bill is the decision of the High Court. The decision of the High Court dealt with only the procedure that was being adopted till the date of the decision with reference to the levy of what is known as penal assessment or prohibitory charge. That decision declared that the procedure was illegal and the practice of collecting what are known as penal charges under the provisions of the Revenue Recovery Act was illegal and that there was nothing in the Revenue Recovery Act which legalised the practice of Government in collecting this amount from the various persons who trespassed upon Government property. But the

decision of the High Court dealt with only the procedure that was being adopted and said nothing as to the rights of Government in respect of various properties. The question of proprietary right or otherwise in lands was not touched upon by the decision of the High Court. So that, the only necessity that there was to introduce this Bill was to legalise the practice which hitherto prevailed of levying penal assessment. I submit there is no necessity for making any formal declaration with reference to any proprietary right of Government in lands. The only necessity brought about by the High Court's decision was to legalise the particular form of procedure which the High Court said was not legal. So that, the High Court's decision had not led to the necessity of introducing this Bill for the purposes of declaring that such and such land belongs to Government and that such and such land does not belong to Government. I submit, Sir, that there is no necessity for any declaration, such as is contained in this clause. Having regard to this aspect of the question and to the necessity which brought about the introduction of such a Bill as this, I agree with the Honourable Mover of this amendment in thinking that the whole of this clause, the object of which is to establish a particular declaration with reference to the ownership of certain lands, should be omitted altogether. There is also another aspect to which I wish to refer in connection with this amendment. The burden of proof is cast upon the owners of the various lands when their ownership comes into conflict with that of Government. The clause declares that everything is Government property unless a particular thing comes under a particular head. So long as the clause declares that all the property is the property of the Government unless any particular thing comes under definite categories, the onus of proving it is cast by the clause upon the person who brings this claim against the Government. That is rather hard. I may just in anticipation refer to the amendment which the Honourable Mover of this Bill wishes to make to this clause later on. That is the amendment standing against his name in page 11. He says: "save in so far as they are owned as house-sites, etc." Everywhere, property is declared to be Government property, unless it comes under a particular head, and the burden of proving that it comes under a particular head is thrown upon the private owner. That, I submit, is rather hard. It is but right that, where a land is alleged to be Government land, the burden of proving that it is Government property should be thrown upon Government. Much has been said on the disputed question, whether the Government is the owner of the land in general or whether the proprietary right in the soil belongs to the community. As to the State ownership of the lands under the Muhammadan and Hindu rule, much has been said. So that, I do not wish to take up the time of the Council by saying anything on it. The only thing I wish to say is that I desire to associate myself with everything that the Hon'ble Mr. Sivaswami Aiyar said in regard to this matter. With these observations I support the amendment.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—I beg also to support the amendment that has been moved by the Hon'ble Mr. Sivaswami Aiyar and I also beg to adopt the arguments that he has advanced in support of the motion he has made. In offering the few observations that I propose to do to-night, I shall take it that the amendment of the Honourable Member in charge of the Bill to this clause will be accepted by the Council, so that I shall confine my discussion to the merits of clause 2 on the basis that the clause will be amended as suggested by the Hon'ble Mr. Stokes in the amendment printed on the agenda paper. I may point out that there is really not much difference between clause 2 as amended by the Select Committee and the clause as proposed to be amended by the Hon'ble Mr. Stokes. I believe it is to obviate the difficulty that might later on suggest itself in the interpretation of this clause, if the Bill be passed into law, that reference to the particular section of the Rent Recovery Act, the definition from which is sought to be imported into this Bill, has been taken away and that the definition itself, as contained in the Rent Recovery Act, with slight modifications, has been imported into the clause itself. That is the effect of the amendment suggested by the Honourable Member in charge of the Bill. I notice that in clause (a) of the proposed amendment, there are the words "poligar", "mittadar," not to be found in section 1 of the Madras Rent Recovery Act. But that, I take it, does not alter the scope or the principle of the clause. Therefore, whatever observations can be directed to the clause, as it stands in the Bill, as amended by the Select Committee, appear to me to equally well hold to the clause with the amendment as suggested by the Honourable Member in charge of the Bill. As has been pointed out by the Hon'ble Mr. Sivaswami Aiyar, it appears to me, Sir, that in drafting the clause,

as it has been done, there is an assumption that the State is the owner of all property in this country. That point has not been touched in the speech of the Honourable Member in charge of the Bill; and I do not propose to take up the time of the Council in discussing that aspect of the matter. I believe it is now to be taken as undoubted that, so far as the Hindu Law is concerned, it is not the Government or the State that is the proprietor of the soil, but it is the subject, who is the occupier or the tiller of the soil, that is the owner of it, and the only right that the State has is to have a share of the produce, in consideration of its protecting the subject. So far as the Hindu Law goes, there can be no doubt that land revenue has been considered in the light of a tax and not in that of rent. But it has been said that the Muhammadan occupation of the country has brought about a change in the conception of the proprietorship of the soil and has vested in the State properties, which prior to this occupation, vested in the subject. It is one thing, Sir, for Government to possess the power, but it is another thing for Government to exercise it; and in places, especially in Southern India, wherein the hold of the Muhammadan Government has been weak and its occupation has not been continuous, it may well be a problematic matter whether it can be said that the original institutions of the country have been so completely changed as to give place to one theory as to the ownership of the soil for another that has already existed. By way of supporting my statement, I shall only refer the Council to certain observations that are found in the case that has been decided by the Madras High Court and that is reported in page 306 of volume IX of the Madras High Court reports. But before I read those observations, I may perhaps draw the attention of the Council once again to the observations that have been made by the Hon'ble Mr. Sivaswami Aiyar that it was not obligatory, on the part of the Muhammadan Government, to assume its proprietorship of the soil, and that in return for the tribute, the Government might allow the proprietorship of the soil to vest in the subject. This is what is stated in the decision to which I have referred a little while ago:—

“Under the Muhammadan rule it was no doubt asserted (and it was part of the Muhammadan Law as applied to infidels) that the property in the soil was in the State, but the influence of this rule was not felt practically in Tinnevely as is shown by the fact that Tinnevely is one of the mirasi districts in this Presidency. It is further shown that, owing probably to the distance from the Capital of the Nawab of the Carnatic, his authority was often ignored and even set at defiance, as will appear from the political history of the district, and detachment of troops had frequently to be sent and British officers to enforce the payment of tribute due by the turbulent Tinnevely poligars of that time. The probability is that the Muhammadan rule never materially influenced the notion of property which prevailed in this district during the rule of the Pandian Kings and of the Nayaks. At their inception these poligars were feudatory chieftains—practically they were petty chiefs who paid a tribute to the central power at Madura. The Hindu traditions, as shown by the immemorial existence of mirasi rights in the district, have been in favour of the proposition that property is acquired by occupation as owner. Manu and other Hindu writers have rested private property on such occupation.”

Then the question will be whether there has been any law which has been passed by the British Government after its assumption of power by which it can be said that the old laws have become abrogated. The Council will see that, so far as this clause goes, whether with or without the amendment that has been suggested by the Honourable Mover of the Bill, it purports to be declaratory of the existing law and not to be enacting a fresh law which, in the altered conditions of things in this country, appears to the Council or the Government expedient in public interests. We shall require some evidence of there being something in the law, as it stands, from which it would appear that the State is unambiguously the owner of the property in the soil. I submit that, so far as I was able to see, while various attempts have been made from time to time to whittle away the proprietary right of the subject in the soil, there has been no complete attempt made in any law, common law or statutory law, from which it could be considered that the property in the soil vests in the Crown or the Government and not in the subject. Then the next point—and it is to this one that the Honourable Member in charge of the Bill has addressed his observations—is whether there are any village communities in respect of which it may be said that

they might possess some property in the soil which did not belong to Government. The question whether the village community now exists or no is a large question. It appears to me certain that expressions used in the Statement of Objects and Reasons and in the Report of the Select Committee and the minutes of dissent, themselves, go to justify my contention. Although it may be possible that village communities do not exist now in all their pristine purity and vigour still it cannot be said that the village communities have been wiped out of existence altogether. We have communal lands—lands for communal uses. There is a certain conclusion to be drawn from it. There are aggregates of individuals who are entitled to use certain properties in a particular fashion and those are some of the functions of the village community. I, therefore, think that it cannot be strictly accurate to say that the village communities are no longer in existence nor can it be denied that even now we have the pasunkarai system which goes to show that there are still some of the elements existent which go to make the village community. Writers on the subject don't think that village communities have completely died out. What we are now trying to do is to legislate for a state of affairs in which the village common needs play an important part. I may refer to certain observations of Sir Henry Maine, a respected writer on questions such as this, which are imported into a note by the late Diwan Bahadur Srinivasa Raghava Aiyangar, appended to his book on the “Progress of the Madras Presidency for the past forty years.” I am unwilling to take up the time of the Council by reading any large extracts from it. I will, therefore, content myself by referring you to the pages where the observations I rely upon are to be found. I refer to pages 263 and 264 of the appendix. I shall content myself with reading certain observations from a Government Order, which is quoted in the book. That is to be found in page 264. It says:—

“The waste land in this country, in the villages of the plains at least, is certainly not the property of Government or the State in the absolute sense in which the unoccupied land in the United States and some of the British Colonies is so. The village communities claim an interest in it, and that interest has been universally admitted though not accurately defined. To put up the waste to sale, entirely ignoring that prior right of the village communities, would be to introduce a totally new practice; and it would certainly be regarded by the common feeling of the country as an invasion of existing rights.”

These are the portions of the Government Order of 1856. In 1856 there were village communities in existence which had rights, well recognised, interference with which would be viewed with anxiety and displeasure by the people. I ask, Sir, whether these 45 or 50 years that have rolled by have constituted such a change in the whole system as to wipe the village communities out of existence, especially when anxiety is felt on the part of the Government to as far as possible give permanency and life to village communities. It appears to me that the enactment of a clause such as this is not one which is best calculated to further the intentions of Government in this matter. As pointed out by the Honourable Member who moved the amendment, whatever might be the theory with reference to waste lands, it appears to me that so far as the communal lands, lands intended for communal uses, are concerned, they cannot be regarded as the property of Government.

In proceeding to consider the various provisions in the clause itself I take it that the expression “law” in “except as may otherwise be provided in any law for the time being in force” refers not to the common law either of India or England but refers to statutory law. My reason is simply this. If it refers to the existing law, even if be not the statutory law, seeing that this clause is intended not to create a fresh law but to declare the old law, I do not see the utility of such a proviso as this. It will probably give rise to discussions which the Government is anxious to avoid and for the avoiding of which this clause has been enacted and put forward as it has been. Therefore, restricting ourselves to the consideration of the law herein referred to as merely statutory law, the Council has to see whether, even if it is worded in the manner suggested by the Honourable Member in charge of the Bill, it is not likely to make inroads upon private rights. As has been pointed out, the reason why this Bill came to be introduced into the Council does not justify the sweeping declaration made in this clause. If the Government did not find any difficulty in carrying on the administration of the country till now, surely there is nothing in the decision of the High Court to which this Bill owes its origin, which would have

rendered the position of Government more difficult, so as to necessitate the introduction of this clause. Apart from that question, I believe, I should be able to point out to the Council that the clause, as it stands even with the amendment, will be productive of great hardship, if one is only minded so to interpret it. The Council will see that the bed of the sea, all standing and flowing water, etc., will be the property of Government. I do not know whether, so far as the sea goes, any State can assert its

4-40 P.M.

rights to the bed of the sea, further than three miles from the foreshore. That a local Government can legislate and say that the bed of the sea wherever it might be is the property of Government appears to me, Sir, to contravene a principle which may not be accepted by other Governments which are also in the concern. It might be said that the clause is not likely to be construed in the way suggested, but there is nothing in that clause which will prevent one from construing it in that manner.

The next point to which I would request the Council's attention is in respect of standing and flowing water.

But since there is an amendment in my name with respect to it I do not wish to take up the time of the Council by giving out my observations on it at this stage. Taking the clause with the amendment, that which is saved is the property of the zamindar or inamdar. The settled Estates Land Bill and the law even prior to the decisions of the High Court have made it clear, as has been pointed out, that so far as the permanently-settled estates are concerned, the presumption is that the land is in fact possessed by two persons, one not deriving the right from the other. There is the kudivaram and melvaram right. The zamindar cannot say that he is the owner of the kudivaram right, so that the effect of the clause will come to this. That it will give the property in the kudivaram right of all zamindari lands to the Government instead of to the tenant whose admittedly it is.

The Hon'ble Mr. G. STOKES :—Look at clause (b).

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—There again, I was referred to clause (b). I submit that clause (b) does not make the matter any better, because, according to the decision of the High Court, according to the principles recognised in the Bill which we will have to consider later on, I submit that the kudivaramdar is considered a distinct person, possessing distinct rights from the melvaramdar. He cannot be said to hold under him, because any title that he has is not one which he has derived from the melvaramdar. The position accepted by the decision, accepted by the Government, when it framed the Land Bill, is that in very many instances the so-called ryot or tenant has been in occupation of the land for a period very much longer than the zamindar has been the proprietor of the estate, so that it appears to me that on that point the clause will be found to be defective at any rate in the practical working of it.

Another point to which I may draw attention is we have what are called temple porambores, and in some places it will not be strange if a contention is raised that even the sub-soil under the street which may be adjacent to the temples is vested in the temples themselves. No doubt a street as a street might be vested in the local authority, or it might be that the public have a right of way over it; but the sub-soil under it may belong to the temple. It will be difficult to bring the temple under any of the clauses herein mentioned, unless there has been a title-deed issued in its favour. In the case of temple porambores, I do not know if title-deeds have been issued, recognising the right of the temples. There are certain inams in respect of which title-deeds have been issued. But as regards temple porambores which have been excluded from the ayacut, if there is a mine to be worked underneath the street, which is on temple porambores the sub-soil will belong to the temple. But according to this clause the temple will lose that right and the Government will have it. But this is not what the Government intend. As regards inamdars, Act III of 1895 makes it clear that the presumption ought to be, in the case of emoluments. In the case of lands given to a village officer by way of emoluments, he has the right to the revenue that is derived from his inams, and not the right to its occupation, that is the kudivaram right. The observations that I have made with respect to zamindars will apply to inamdars equally well. Even in ryotwari tracts we have some samudayam property in respect of which it cannot be said that a patta has been issued.

The Hon'ble Mr. G. STOKES :—That will come under ryotwari property.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—We have some trees standing on poramboke lands for which no tree-tax is specifically levied. But they may be all owned by a number of people. No patta might have been issued for them and the people cannot be said to hold them under the ryotwari system. We do not exclude the cases of such persons who own trees on poramboke lands. The position will come to this: If one is so minded to take it, the Government will have a right to these trees which are situated on poramboke lands, which lands do not belong to particular individuals, while trees belong to particular persons. I have no doubt that if one only thinks over the matter, having the necessary wide experience which many of the officers of Government can command, there will be other instances found in which it will appear that this clause gives right to Government which neither the framers of the clause nor the Council which may ultimately adopt it could have ever thought of or intended. Then again, with reference to the application of the Bill to zamindari tracts, I think, Sir, that it is a question of very great difficulty whether the Government will be justified in taking advantage of this occasion that has offered itself to declare that lands set apart for communal purposes in zamindari tracts have become the property of Government, especially when we see that there are provisions relating to this very matter in the Estates Land Bill which provisions will, I am sure, be discussed with that fulness which the Select Committee have not been able to give to this clause. I submit, Sir, that it is perhaps desirable that the Government should, without abandoning its position, whatever it might be, exclude zamindari tracts from the operations of this clause, leaving the question to be considered and settled when the Estates Land Bill is to be gone into. But apart from that, it may be a question whether, on the merits of the case, even the Government can, in any case, assert its right to communal lands in zamindari tracts. By Regulation XXV of 1802, whatever right the Government had possessed in respect of these lands, that right which has become vested in the zamindar was parted with in favour of the zamindar. No doubt we have the reservation with respect to lakhiraj lands, lands which pay favourable rent. But lakhiraj lands mean lands specially exempt from payment of public revenue. They can refer only to cases which are assessable for the public revenue; I do not know whether it can at all be said that so far as communal lands are concerned they are assessable to public revenue. I, therefore, think that by Regulation XXV of 1802 the Government parted with its right to the zamindar, so that it can only have the right to the assessment on this land. In many of the permanent settled estates, it cannot be denied there has been no survey, such as we understand survey to be in tracts administered by the British Government, so that it will be found to be a difficult question as to where exactly communal lands in village stand. It will be competent for a person, if only he is so minded, to say that plot A is communal land and the zamindar will be in great difficulty to say that it is not so, because to do so he will have to look into the whole accounts and fix the position of various lands referred to in the accounts. That he will not be in a position to do, because if some of the accounts were looked into you will find that they do not give an accurate idea of the position of the various lands referred to therein. It is a common thing in zamindari accounts to describe the position of the lands as further east from this land or further south from that land. It may be 200 yards or 500 yards or one yard. It depends largely upon experience or inspection of the locality to determine to what place the reference is made. This is a point well worthy of the attention of the Council especially in view of the fact that, under this Bill, whereby Government officers are allowed certain powers which they can exercise independently of any executive rules or orders, it is the zamindar who thinks that his property has been unsided, that has to go to Court. With this clause in support of Government, it will be for him to make out a case. The cases to which I refer will be such as, whoever be the plaintiffs, they will fail. It may be a great hardship to the zamindar to have his tracts included within the scope of this Bill. All the clauses of the Bill refer to lands and it is only in clause 2 of the Bill that you find other objects referred to, other than land. That I find is an additional argument for saying that this clause is not at all justified or necessitated by the exigencies of the case. I, therefore, submit, Sir, that even with the amendment that has been proposed by the Honourable Member in charge of the Bill, which amendment will ultimately

be carried, this clause will not fail to be of, what I cannot help considering, mischievous effect. That will be likely to result from it, if one is so inclined to work it so as to cause mischief. It ought to be the purpose of any legislative body to as far as possible define the exact scope of the particular provisions enacted, so that those who have to work and interpret them might have something definite and tangible on which to base their views or conclusions. I submit that it will be taken that we have given here enough indications as to what should be the scope of the clause, but it is sure to cover a very much larger number of objects than what the Government might have originally intended; and if, on the other hand, the matter is taken to be left indefinite, there will not be that benefit accruing from the enactment of this clause which the Government expect. I am, therefore, compelled to support the motion that is now before the Council.

The Hon'ble G. SRINIVASA RAO :—I do not propose to take up much of the time of the Council. For the excellent reasons which the previous speakers have given for the amendment, I beg to support it. I hope that the reasons which weigh with me will also weigh equally with the Honourable Member in charge of the Bill and the other Members of the Government and they will kindly see their way to omit clause 2 in whichever form it may come up.

The Hon'ble V. C. DESIKA CHARIYAR :—Mr. President and Honourable Members, you remember, when the Bill was first sought to be introduced, a clear and lucid statement of objects and reasons was made. In the Statement of Objects and Reasons, the Honourable Member in charge of the Bill said that there were only two classes of cases of encroachments against which he wanted to provide in this Bill. If the matter stood there, I don't think that there would have been a single dissentient voice in this Council or outside it that encroachments against those two sets of land should not be provided against. But it is this that, by a sort of side wind, quite unnecessary for the purposes of this Bill, a sweeping and general definition should have been introduced in clause 2—it is that which has created a certain amount of heart-burning and a certain amount of unrest in the minds of the public. I am sorry to observe that even to-day the Honourable Member in charge of the Bill has not given us any reasons or shown any necessity why this clause should find a place in this Bill. Of the two classes of cases mentioned in the Statement of Objects and Reasons “the first and more important is that which is termed ‘poramboke’, that is, unassessed land set apart for public purposes or for the communal use of the villagers as village-site, threshing floors, roads, paths, water-courses and the like.” I am sorry that the Honourable Member was kind enough to say to-day that the village communities ceased to exist. I cannot accept that statement as correct in the face of samudayam lands and samudayam topees existing even to-day in the Tanjore and Chingleput districts. In this view I am fortified by the decision of the Bombay High Court reported in Indian Law Reports, 28 Bombay, page 276, at bottom of page 283 and top of page 284. The second class of cases is “assessed waste”. In the Statement of Objects and Reasons, we have it that it is not of much importance, because that must be cultivated if not by A, B, C or D. The only thing that the Government wants is that it should be at least with the permission of Government and that by squatting upon the land cultivated, not acquire the right of occupation without the consent of Government. As everybody knows, these are lands which are set apart for being allotted to villagers. Others who might apply for them under darkhast rules. These are the two cases intended in clause 2? Does it at all touch either of the two cases? When definition introduced, last occasion I said that by slightly amending clause 3 we can

5 P.M.

I gave notice and which printed in the agenda paper, and if that amendment is carried the absence of a provision like clause 2 would not be felt at all. When there is no necessity for that and nobody's interests will be served, where is the need for the introduction of this clause? These are lands set apart for public use. Can it be said that the sections of the community for whom these lands are set apart have no interest in such land? Take, for instance, the burnt

community, say Brahmins. Suppose a member of another section burns a corpse there, can it be said that the Brahmin community for which this ground was set apart cannot maintain an action in a Civil Court? If they have a right, I say they do possess that right, it is too late in the day to say that by simply passing a general clause such land becomes the property of Government. What is the necessity for making such a declaration as that? Everybody, both within and outside this Council, and every member of the public is anxious that encroachments upon communal lands must be prevented; and that can well be prevented if you adopt my amendment to clause 3. With reference to assessed waste also this sweeping definition is hardly necessary. In the recent decision of the Bombay High Court above referred to they say not only communities but sections of a community or aggregates of individuals may possess rights in particular pieces of land. The Chief Justice of Bombay bases it not upon statutory law but upon the common law of the country which was well recognised and which was all along recognised by the British Government. There can be no doubt that the law of the country recognised fluctuating communities as legal persons capable of owning property, for instance the caste and the village. The question raised there was whether a certain set of Gosayis or mendicants could own any lands. The absurdity of introducing a clause like this was shown by one of the speakers with reference to the bed of the sea. People may laugh and say that we never meant the whole sea, and it will only be such portions of the sea as will be within the jurisdiction of the British Government.

The Hon'ble Mr. G. STOKES :—Don't you notice the words “below high-water mark”?

The Hon'ble V. C. DESIKA CHARIYAR :—What about the other side of the sea. The high water-mark will be on the land adjacent to the sea, and not the high water mark of the seas beyond. You don't limit the land on the other side as to what length and breadth it will go. It is that which exposes the wideness of the definition. High-water mark is all right, so far as the land adjoining the sea is concerned, but the absurdity of it is shown when you take the other side into consideration. Then with reference to the right which a tenant claims, decisions have recognised that in many cases the tenant never claims through or under a melvaramdar. The right of a tenant is not subordinate to that of a melvaramdar. The two are co-owners, one claims the kudivaram and the other the melvaram, and their rights are co-ordinate. You will find, especially in the case of zamindaris, it has been so recognised (*vide* Indian Law Reports, 26 Madras, page 252 at page 254). Whenever a zamindar wanted to eject a tenant, it has been shown that, prior to the permanent settlement and prior to the recognition of the right of the zamindar to the zamindari itself, there might have been tenants who might have come into existence under former Governments and whose rights can in no way be said to be subordinate to those of the zamindar. Then again take the case of a temple site. You will see that the site on which a temple stands is Government property, because that would fall under this definition. There will be no patta, it is no ryotwari land, it is a land which might have been given either by the British Government or by any former Government for the building of the temple. We should very much like to have an amendment whereby encroachments on temple properties could be guarded against. But we should not like that by a definition of the kind contained in clause 2, the site of a temple should be declared to be land belonging to Government. One other reason why you ought to omit the definition is that in the Estates Land Bill which is going to be introduced on the 4th proximo, you have all these provisions. That will be the proper place to discuss a definition like this. It is quite unnecessary to introduce such a definition in the Bill now before us. When it is necessary, you may take the bull by the horn as some Honourable Member seems to have suggested. But when there is no bull how can you take it by the horn, and when there is no necessity why should you introduce such a sweeping definition as this? It has been observed by one Honourable Member that as between zamindars and Government, he would rather leave the Courts to decide whether the zamindar has any right in poramboke lands within his zamindari. Why not the same thing be done as between Government and other people? Whether all these lands belong to the Crown may well be left to be decided by the Civil Court. Again you throw the burden of proof

on the private owner. Though it has been repeatedly held that even the Crown, when it is a party plaintiff, has to bear the onus of proof and discharge the same before it can succeed in an ejectment suit you are going to declare by one stroke of the pen that all this property shall be Government property, thus throwing the onus of proof on the wrong party. The moment a Collector or a Revenue officer acting under this clause declares that a particular property is Crown property, look at the chances of success of a person who might have been in possession of the property for 59 years if he has to go to Court as plaintiff. If it is 60 years he might keep the Crown at bay. But what would be his position when he appears as party plaintiff before a Civil Court? What chance can he have with reference to this property especially in the mufassal? In the case of the Presidency towns such as Madras, there is a piece of paper called the Collector's certificate which stands in the place of a title-deed; but in the case of mufassal properties there is hardly anything of the kind. It may be that people might have enjoyed them for two or three generations, and might have been in undisputed possession of the lands. The moment that a Collector says that it is the property of Government what would be the position of those men. They may not be able to produce a scrap of paper to prove that they have any title to the land. In that case, they will be turned out of possession and though they might have been in possession for 59 years, that would not avail them at all. They may prove to the tribunal before whom they appear, possession for 59 years. If the defendant had been a private party, they would have a clear and indefensible right, but as the defendant is the Crown, they must prove possession for one more year. No necessity has been shown either to-day or on the previous occasion for the introduction of a definition like this for the ostensible purpose for which this Bill has been introduced. I say we have shown it conclusively that it is not only not necessary, but undesirable to retain this clause.

5-10 P.M.

The PRESIDENT.—I think it will be convenient at this stage to adjourn till to-morrow 12 noon.

The Council then adjourned.

H. D. TAYLOR,
Ag. Secretary to Government, Legislative Dept.

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 Vic., cap. 67, and 55 and 56 Vic., cap. 14.

The Council met at the Council Chamber, Fort St. George, at noon on Wednesday the 22nd day of March 1905.

* PRESENT:

The Hon'ble Sir JAMES THOMSON, K.C.S.I.—*Presiding*.
The Hon'ble Mr. G. STOKES, C.S.I.
The Hon'ble Diwan Bahadur R. V. SRINIVASA AIYAR Avargal.
The Hon'ble Mr. A. G. BOURNE, D.Sc., F.R.S.
The Hon'ble G. SRINIVASA RAO Avargal.
The Hon'ble M. KRISHNAN NAYAR Avargal.
The Hon'ble K. VENKATA RAO Garu.
The Hon'ble GHULAM MUHAMMAD ALI Sahib Bahadur, Khan Bahadur, Prince of Arcot.
The Hon'ble Mr. H. P. HODGSON.
The Hon'ble Mr. H. BRADLEY.
The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR Avargal, Zamindar of Chunampet.
The Hon'ble Mr. E. CASTLESTUART STUART.
The Hon'ble P. S. SIVASWAMI AIYAR Avargal.
The Hon'ble V. C. DESIKA CHARIYAR Avargal.
The Hon'ble Mr. J. E. P. WALLIS (Advocate-General).
The Hon'ble Mr. J. TWIGG.
The Hon'ble Mr. G. S. FORBES, C.S.I.
The Hon'ble L. A. GOVINDARAGHAVA AIYAR Avargal.
The Hon'ble Mr. A. J. YORKE.
The Hon'ble Mr. M. HAMMICK, C.I.E.
The Hon'ble K. VASUDEVA AIYANGAR Avargal.
The Hon'ble Mr. W. B. DEWINTON, C.I.E.
The Hon'ble Mr. C. J. WEIR.

THE MADRAS LAND ENCROACHMENT BILL.

The PRESIDENT:—Honourable Gentlemen, we will now resume the discussion on clause 2 of the Bill.

The Hon'ble Mr. M. HAMMICK:—I am not prepared, Sir, to follow the Honourable Members who spoke yesterday in their interesting but certainly somewhat irrelevant discussion as to the historical merits of the case, which they put forward. We all of us have read the masses of literature which exist on this subject, beginning with the minutes of Cornwallis, the obscure writings of Wilkes, the clear and definite writings of Munro, and the researches contained in the Fifth Report, besides the pages of literature which exist in all our up-country offices, letters of Collectors at the beginning of the last century. What, however, I would put forward to the Council in connection with this matter is that both in the speeches which were made by the Honourable Members yesterday and in the amendment which has been put forward by the Hon'ble Mr. Sivaswami Aiyar, it is impossible for them to get rid of the notion which they combat so severely, that after all the whole of the waste land in this country is under the control of the Government and that the Government must have rights—we may call them rights of property or any other rights—in that waste land. We all

know that the word "property" connotes different rights in different countries. But surely, Sir, when the amendment of the Hon'ble Mr. Sivaswami Aiyar talks about land "set apart by Government for public or communal purposes," how can Government set apart land, if it has not the right of property in that land? Again, when he talks of land held under grant from Government, how can Government grant land, if it has not the right of property in it? Whether "property" is or is not the right word to be used is another question. To the lay mind the common attributes connected with property certainly seem to be acknowledged to exist in the amendment which has been put forward by the Honourable Member. I think all of us who have read the literature that I was referring to in my opening remarks must have been often amused and interested to see how difficult it was for the men who wrote with the knowledge that they had in those days, how impossible it was for them, to get away from the English technical words which relate to property in describing the relations of the Government to the land in this country.

I object, Sir, to the amendment which has been proposed by the Hon'ble Mr. Sivaswami Aiyar on the ground that they will leave the question in many cases open to as great doubt, as it is now. I say, Sir, that in many cases it will be impossible to say whether a piece of land over which there can be no doubt private rights do not exist was ever granted by Government for public or communal purpose. Why, Sir, on the theory of land tenures, laid down yesterday by the Honourable Member, Government could not have made grants of land to village communities, which he speaks of in the amendment which he brings forward. In sub-clause (c) of his amendment, he talks of "any land under grant other than a license from Government"; and in that connection it is impossible to say whether that land was granted by Government. Again, the further difficulty put forward by another Honourable Member as to sites occupied by village temples is left in the same condition under the amendment brought forward by the Hon'ble Mr. Sivaswami Aiyar, as it is under the clause, as it stands in the Bill. One Honourable Member prophesied that village temples would be affected by the clause as it stands in the Bill or even as it is amended, as suggested by the Hon'ble Mr. Stokes. The same difficulty will exist, if the amendment put forward by the Hon'ble Mr. Sivaswami Aiyar is carried. Lands on which the village temples stand are not owned by private owners nor do they form part of communal or public lands of the village, nor have they been set apart by Government for public or communal purposes. I am therefore of opinion that the amendment put forward by the Hon'ble Mr. Sivaswami Aiyar leaves the matter that he deals with in the same nebulous condition that it is in at present. What clause 2 of the Bill seems to do and what it will more clearly do, if the amendment proposed by the Hon'ble Mr. Stokes is carried, is to lay down once for all that Government has clear and distinct rights, which we call rights of property, over all lands, not falling under any one of the categories mentioned in the clause. What it does is this; it virtually throws the onus of proving that land is subject to private right on the man who asserts it and for my part I think that is a position that the Government may perfectly reasonably take up in this country. I consider that some amendment is necessary to protect the numerous small village temples standing on village sites; and this can easily be effected by the insertion of words "temple sites" or the insertion of such words as "sites of village religious or charitable institutions" after the words "house sites" in the amendment brought forward by the Hon'ble Mr. Stokes.

As regards the question, Sir, of Government right in those lands, as I have remarked already, it is hardly profitable to discuss this question in this Council Chamber, either from the legal or historical point of view. In connection with this matter, I would, however, point out in this Council that beginning from the preamble of Regulation XXV of 1802 down to the present time Government has consistently claimed and exercised rights which, to my lay mind, amount to proprietary rights in waste lands. In the preamble to that Regulation, the Government distinctly talk of granting proprietary rights and from that time and from before that time, Government have never hesitated to exercise, at their discretion, all the rights of property, as we commonly understand them, in regard to all the waste land of the country. I am, of course, not referring to lands inside zamindaris; that matter can, I think, be better discussed in connection with another Bill. As regards waste lands, Government have perpetually curtailed or added to village sites as might be

necessary; they have altered the classification of village communal lands as seemed fit from time to time. They have uniformly insisted on and maintained their rights to all the revenue from fisheries in ponds existing on all village sites. That is done all over the country. Unless private rights exist over trees, they put into the public exchequer the revenue from the sale of trees and from the lease of fruits on trees which stand on village sites. Then again for many years past, they have alienated by sale, gift, grant and lease any portion of the waste as to them seemed fit, and nobody has ever ventured to controvert that right which they have assumed to themselves. They have again at each different settlement of thirty years re-mapped and re-allocated all the village sites, as was made necessary by the changes brought about in the thirty-year period of settlement. Then again as regards darkhasts the High Court have said that darkhasts are merely executive orders, dealing with lands which vest in the Secretary of State, who, according to the High Court, holds them in trust for the Government of India. Let us take such cases as the lands under the Periyár project and under many other projects of the same character. What do the Government do? The right that they have exercised has never been controverted there, the right of selling such lands as have come under the irrigation project, lands which could be improved by the water brought in by the use of public money. I saw the other day in one of the newspapers a criticism on this point, in which they said that the Government were now making an insidious encroachment upon private property, owing to their having inserted in the Periyár leases a condition,—I did not know it existed but a most suitable condition—in behalf of the interests of the local villagers and general tax-payers, viz., that persons who bought lands under the Periyár project should agree in the sale-deed to surrender such lands as might be required for public roads and channels which might be found necessary later on under the project. A more suitable provision could not be imagined than that, and yet the critics of this Bill misread that provision as an insidious attempt on the part of Government to destroy private rights. What they meant, I was at a loss to conceive. Looking at the history of the last century and the way in which the Government have dealt with these lands, it is too late in the day for Honourable Members to come forward and assert that these lands belong to village communities for whose use they have been set apart. One Honourable Member looks forward to the time when our Courts will be full of cases brought by enterprising ryots to protect village sites. Any of us who know up-country life know that a picture of that sort can never be realised. I was the Collector of one of our districts in which the number of small pattadars is larger than it is in any other district in the Presidency. It was only two days ago that, out of curiosity, I took out my diaries which I maintained as Collector, and there I found that time after time I was called upon to make local inspections of encroachments on village communal lands, called upon not by the Tahsildar or the Revenue Inspector or the corrupt karnam, but by the ryots, who attended my tent while I was doing jamabandi. No section of the population of this country will be more glad to see the hands of the revenue officers strengthened in dealing with encroachers on the village common than the peaceful and law-abiding ryots with whom we have dealings. Every revenue officer of the country will, I am sure, support me when I say that it is one of the chief duties of jamabandi officer every year to inquire into cases of encroachments in which his aid is invoked by the ryots themselves in large numbers. To my mind it has always seemed that this question of prohibitory assessment was beset with difficulties. Even in the early days when I was a Divisional officer, I was not satisfied with the existing arrangement. There is no Bill for which I will give my vote with greater pleasure than a Bill which will regulate and give more authority to our up-country revenue officers in their laudable endeavours to assist the village community in keeping out the ryot who encroaches upon village lands. The Bill before us is such a Bill and I shall therefore gladly vote for it.

The Hon'ble Mr. A. E. CASTLESTUART STUART:—Sir James Thomson, as a Member of the Select Committee, who had to consider the various proposals made in connection with this Bill, I think, however unwilling I may be to take up the further time of the Council in discussing this amendment, I am bound to say a few words with reference to what has fallen from some of the Honourable Members, who are in favour of this motion. When this Bill was introduced, it was said at first that this was a revenue-making Bill. A part of the criticism outside the Council Chamber was to the effect that this measure was designed by Government to enable its Revenue officers to make revenue.

On the face of it, such a statement is absurd and it must have been known to be so to any one who knew the real facts of the case. I may mention that in fasli 1311 the total land revenue of the Presidency was Rs. 5,89,23,176 and the penal charge levied was Rs. 2,39,067 and the proportion of the latter to the former was 406. In the following year the total land revenue of the Presidency was Rs. 6,00,81,865 and the penal charge Rs. 2,59,986 and the proportion 43. For the last fasli (1313) the total land revenue of the Presidency was Rs. 6,08,63,967, the penal charge was Rs. 2,87,303 and the proportion was 47. I think if the Honourable Members who are under the impression that this Bill is a design on the part of Government to enable larger revenue to be collected will only reflect for a moment what enormous trouble the imposition of this charge means to land revenue officers of this Presidency, they will at once see that if the charge could be abolished altogether, with safety to the public whose interests the Government are bound to protect, how gladly every officer would avail himself of the opportunity of getting rid of this penal charge. The amount of trouble involved in imposing a penal charge of this sort is enormous. The Hon'ble Mr. Hammick has just told us his own experience in the course of his service as an up-country revenue officer. I myself have been a revenue officer and have also served in the district to which he refers. I can assure you, gentlemen, that there is hardly a more troublesome duty to perform at each successive jamabandi than to arrive at a proper decision in regard to the matter of levying penal assessment. Another point that I would wish to refer to is the assumption or the apparent underlying current of thought on the part of some of the Non-Official Members that Government are acting on their own behalf and not on behalf of the people, and that you, gentlemen, on the opposite side of the table who are supporting the motion are the true representatives of the public. In this matter of endeavouring to put down by law all public encroachments, the Government are acting as trustees of the public, and the public are represented in this matter not so much by the distinguished lawyers that we see around us and the inhabitants of Madras, as by the Revenue officers of Government throughout the whole Presidency. Who are the "village communities" in the sense in which some of the Honourable Members mean to speak of them? I have been at some trouble to find this out. I do not wish to waste the time of the Council in going through a historical *resumé* of what is called the "village community," which has been disintegrated in recent times. If we go back far enough into the dawn of ancient history, we find that the population was at first pastoral and then it became nomadic and agricultural, and the land lying waste in the country was taken up by a system of shifting cultivation, a system which is still resorted to by the jungle tribes in some portions of the Presidency. The cultivation was of a fugitive character, being taken up year by year. It was not till a later stage in the progress of civilization that a more settled system of cultivation came to be established and these lands were held more or less permanently. Who were the members of the village community in those days? As far as I have been able to read and find out from the history of the subject, I find that the members of the village community in those days—the real village community to which Sir Henry Maine referred—were mostly kinsmen, closely related to each other. They had under them a certain class of men who were, in fact, only slaves. They did the actual toiling and moiling of the cultivation for their masters; and the object of these communities living in close association was primarily, in those days, protection of property and person—in other words, what I may call, police purposes; they lived in that way to guard against gangs of marauders and banditti for mutual assistance. Gradually, as during the Muhammadan period, when protection of both life and property was insecure, we find that there was an attempt to combine more strongly than before in preserving the rights of those village communities. In the eighteenth and early part of the nineteenth century, the question of miras was a question of considerable importance in this Presidency, and the communal system, I may say, as far as I can see, has been declining ever since order has been more or less maintained in this country, and one of the chief factors in bringing about the present state of the village community has undoubtedly been the ryotwari settlement introduced by Sir Thomas Munro. As the Hon'ble Mr. Hammick has informed you, so far back as the year 1802, it was stated in the early part of the preamble of Regulation XXV of that year, that one of the objects in view was to grant proprietary right to certain individuals. In the

12-20 P.M.

preamble it is brought out clearly that previous to the passing of the Regulation the State had reserved to the ruling power the implied right and the actual exercise of the proprietary possession of all lands whatever. One of the Honourable Members who spoke yesterday referred to the question of waste lands and to the views taken about mirasi rights. I should like to refer to the views of Sir Thomas Munro, who said: "The Sirkar from ancient times has everywhere even in Arcot as well as in other provinces granted waste in inam free of every rent or claim, public or private and appears in all such grants to have considered the waste as being exclusively its own property. It may be objected, that if this were the case it might give away the whole waste lands of a village and injure the inhabitants by depriving them of their pastures. It certainly might give away the whole; but whether the exercise of this right would be injurious to the inhabitants would depend on circumstances. If the lands according to the general custom of the country were left unenclosed, there would be no injury, as the cattle of the village would graze on them whenever the crops were off the ground. If the lands were enclosed, the inhabitants would be no worse off than those of many other villagers whose lands are entirely cultivated and enclosed and who are in consequence often obliged to send their cattle during the dry season to graze in distant jungles and to incur a trifling expense for the wages of the herdsmen and the tax on pasturage. This expense, even where greatest, could never have affected the right of the Sirkar to dispose of the waste, though it might probably have induced it to compensate the mirasidar inhabitants for their loss by some reduction in the assessment of their arable lands. It has been supposed that in miras village in Arcot, in the original compact between the Sirkar and the first settlers, the exclusive use of the waste was secured to those settlers; but it has already been shown that in all villages whether miras or not, the inhabitants reserve to themselves the exclusive use of the waste. But this right is only good against strangers, not against the Sirkar, which possesses, I think, by the use of the country, the absolute right of disposing of the waste as it pleases, in villages which are miras as well as in those which are not. In the Deccan in miras villages the corporation has not the right of disposing of unoccupied lands but the Sirkar has."

That is contained in a minute of Sir Thomas Munro, dated 31st December 1824. Coming to later times, the same principle has been upheld during the whole of the last century. The Settlement department in this Presidency was organised, as you are aware, in 1858, and the question of how assessments were to be based was then a matter of considerable debate. The Government of Madras at that time proposed that assessment should be fixed at a rate representing 30 per cent. of the gross produce. In the following year the proposal was sent to the Secretary of State, Lord Stanley, who laid down the principles which have practically been the guiding principles of the Settlement department ever since. You will find that in the literature of that period the question of the right of Government to dispose of unassigned land was found to be absolute. In connection with these unassigned lands, some were assessed and some were not assessed according to the probable requirements of the people. When the settlement came on, certain areas which were jungly and not likely to be taken up for some time and the survey of which was therefore too remote a necessity to justify the expenditure, were left unassessed and they were the "unassessed" waste. Such portions of the land as were likely to be required within the period of settlement for cultivation and occupation were assessed in accordance with the principles of the settlement. Out of that unassigned land, whether assessed or unassessed, it has always been the duty of the Settlement department during the period of revision of settlement to set apart lands for the gratuitous and communal use of the inhabitants of the village. Those lands so set apart are termed "poramboke" and the fact that the Government transferred land from "unassessed" to "poramboke" cannot, I say, be a fair reason for saying that the State has given the property in these lands to any particular people or individuals. They are "set apart" by Government for the benefit of the people and the Government are very tenacious of the rights of these people. It is absolutely necessary in the interests of these people that their rights should be protected. Up to the date of the decision of the High Court which has given rise to the introduction of this Bill, the revenue practice of this country has been to carry out what is obviously the right thing to do in the interests of the public and the community. It has been the practice to levy a charge which has been called penal assessment. That charge has been only recently declared to be illegal; but this charge was often recognised by several decisions of the High Court to be perfectly right. As the Bench which delivered this

judgment found that it was illegal, and there is no legal justification for it in the executive and administrative needs and requirements of this Presidency, this Bill has been introduced, not with any malicious motive, not with the motive of aggrandizing revenue or to take away the rights of anybody, but to secure the rights of those for whom this Bill is intended. The main objection to this whole Bill is, as we are told in the proposal put forward by the Hon'ble Mr. Sivaswami Aiyar and other Honourable Members, although they say that in principle poramboke lands should be protected, the main reason why they object to this particular clause is because of the definition it contains. One Honourable gentleman mentioned yesterday how improper it was that certain words should appear in the clause, for instance, in describing the property in the bed of the sea and over all standing and flowing water. He also referred to temple-sites and so forth. I think he overlooked the limitations of the clause itself and the definition. All that is subject to various restrictions. In the Bill, as amended by the Select Committee, you will find "save in so far as the same are the property of landholders as defined in section 1 of the Madras Rent Recovery Act, 1865, or held under grant from Government or owned by any person as house-site or backyard, and except as may otherwise be provided in any law for the time being in force, are and are hereby declared to be the property of Government, subject to any natural right, easement or customary right." All that adjectival portion of the clause and the definition was lost sight of or at any rate was not considered sufficiently by the Honourable Members who took exception to the definition. Speaking for myself—I may say for some of the other members of the Select Committee also—I may assure the Council that we have endeavoured to do our best to so frame clause 2 as to render it as little detrimental as possible to any sort of private rights. Under the Bill any person who feels aggrieved by the definition has still got his right for redress in the ordinary way. The Select Committee have, as far as possible, hedged round the definition. It may be true, as some Honourable Members say, that every possible form of property may not have been considered in connection with this clause. If so, it is still open to any person who may feel aggrieved to come forward and try to assert his rights. I don't think that there can be many such cases, because the definition, as far as we have been able to frame it, is exhaustive. Another objection that was made is that it throws the onus of proof on the plaintiff instead of requiring Government to prove its right. The reasonable view to take is that Government in this country are the public representatives and when any claim is made by anybody against the rights of that public, the burden of proving it rests on the individual who asserts it. Here the public is a more or less indefinite congeries of individuals and if any individual has a particular right which is not specifically covered by this clause, let him come forward and prove it. The onus of proving it rests with him and if he fails, it is quite right that he should go to the wall. There is nothing startling or wrong in throwing the onus of proof in that manner. This principle has already been recognised and adopted by this very Council, in the Madras Forest Act for instance. With regard to that Act—if for a moment I detain you—I may explain that the procedure therein laid down, when forests are reserved, is the same as that laid down here. The great necessity of having forests reserved having forced itself upon Government the question was how it was to be done. There was not the slightest doubt that unassigned waste lands, whether reserved or unreserved, were "at the disposal of" Government. The Forest Act defines what is "at the disposal of the Government". All the reserves that exist at the present moment, what are called forest reserves, have been formed out of unassigned waste, whether assessed or unassessed; and these lands were at the disposal of the Government. In the Forest Act in the definition and the interpretation of the class of "lands at the disposal of Government" we find that it "includes all unoccupied lands whether assessed or unassessed; but does not include land the property of landholders as defined by section 1 of Act VIII of 1865, Madras, namely, all persons holding under a sanad-i-milkiyat-i-istimrar, all other zamindars, shrotriendars, jagirdars, inamdars, and all persons farming lands from the above persons or farming the land revenue under Government; also all holders of land under ryotwari settlements or in any way subject to the payment of land revenue direct to Government, and all other registered holders of land in proprietary right": except the lands which are held by these people all other lands are at the disposal of Government. There is a very close analogy between that and the Bill we are now dealing with. We assume that all the unassigned waste, including poramboke, is the property of Government. That is supported by the whole history and the literature on waste lands and is strongly supported by the procedure laid down by the Forest Act.

Whenever a reserve is about to be made, it is enough, under section 4 of the Forest Act, to say that it is proposed to constitute into a reserve forest a certain block of land which is assumed to be at the disposal of Government. A notice is issued by an authorised officer calling upon any person who claims a right to the land to prove that he is the owner of it. It is not there considered wrong to throw the burden of proof upon a person who makes the claim. The Government cannot know all the rights or the assumed rights that people may have in the waste. If people come forward and try to establish their rights, the officer empowered holds an enquiry to dispose of the claim. If within a certain period fixed by the Act such rights are not established the whole property becomes the absolute property of the Government and then it is constituted into a reserved forest. Honourable Members have been pressing the argument somewhat too far in saying that in throwing the burden of proof on the person who claims the right the Government was acting somewhat unfairly. I trust that on reconsidering the matter in the aspect which I have ventured to put forward they will come to the conclusion that it is not such an extraordinary thing after all. There is one point about the legality of the Bill. One Honourable gentleman seems to think that the introduction of the Bill is *ultra vires*. I daresay the Honourable the Advocate-General will go into that point. I am not a lawyer and all that I can say is what strikes an ordinary lay individual. The introduction of the Bill has been sanctioned by the Viceroy and the Governor-General in Council and I think that is sufficient for many of us to suppose that it is perfectly legal. I do not think that the Viceroy and the Governor-General in Council would have allowed the local Government to introduce a Bill which, on the face of it, as the Hon'ble Mr. Sivaswami Aiyar said, is absolutely *ultra vires* and illegal. The only other point that great exception was taken to is the inclusion of running water in the clause. Reference was made by one Honourable Member to the iniquities of the "perfidious" Board of Revenue that is always being held up to so much obloquy, that they have done something extraordinary in what is known as Achukattu question, as if it was a recent case. The question of Achukattu has been on the records of the Board of Revenue for 40 or 50 years, and if, in any way, the inclusion of water in this Bill can save the rights of people in the way of getting water that is at present held up, it is of interest to the public. This Achukattu affair has been considerably misrepresented outside the Council Chamber. Certain lands are assessed at dry rates, the object being that dry crops should be raised thereon. Certain other lands are registered as wet and the undertaking on the part of the Government is that they will provide sufficient supply of water to raise wet crops. A wet land pattadar is, therefore, entitled to get a certain amount of water or receive a remission. It is, therefore, in the interests both of the wet land pattadar and of the Government that the water which would flow into the tank which is a source of irrigation is not diverted. The revenue practice of the Presidency has been to recognise that right. The dry land pattadar cannot store up water that falls from the heaven by constructing high ridges or building walls. If the land owned by him forms part of the catchment area of the irrigation source and if he is allowed to put up a wall all round, he might dam up all the water. If every ryot did that, he would be practically converting the dry lands into wet, thus injuring the irrigation source, invading the rights of wet land pattadars and damaging the interests of Government in the matter of their wet assessments. I do not propose to say anything about the bed of the sea. Three miles of the bed of the sea is as much as any Government would want. For these reasons, I am unable to support the amendment and I must therefore oppose it.

The Hon'ble the ADVOCATE-GENERAL:—I am not going to detain the Council after the very exhaustive speeches that have already been delivered. But there are a few points of a legal character in the criticisms which have been directed against this Bill, on which I should like to say a word or two. First, it has been suggested that this legislature which is empowered by section 42 of the Indian Councils Act to legislate for the peace and good government of this Presidency has no power to pass this clause 2, declaring that certain lands are the property of the Crown. For my part I fail to follow that argument. Sections 39 and 40 of XXI and XXII Victoria, chapter 106, do not seem to me to be in any way intended to limit the legislative power of this legislature; and the High Court of Madras has held that this legislature has the right to legislate with regard to the prerogatives of the Crown. Further, this right of Government to waste lands appears to be one of those rights which are expressly declared to be vested

12-40 P.M.

n the Crown in the first section of the very Act which is relied on. This, however, is not a matter which can be usefully argued here. If clause 2 is *ultra vires*, no one will be better pleased than the Hon'ble Mr. Sivaswami Aiyar. For my part I don't think that is an objection which really has any foundation. With regard to another objection urged against clause 2, I would like to deny that there is anything specially feudal about the notion that all property which is not the property of private individuals is the property of Government. On the contrary it is, I think, a conception which exists in all civilised countries. What are the competing theories put forward by the opponents of the Bill? It is said that under the old Hindu law waste land was *res nullius*, a sort of no man's land, and became the property of the first man who occupied and cultivated it. "The sages who knew former times . . . pronounce cultivated land to be the property of him who cut away the wood, or who cleared and tilled it, and the antelope of the first hunter who mortally wounded it." That is the dictum of Manu. What would be the result of declaring that all unassessed waste lands are the property of no man, until some one cultivates them? Pure disorder and confusion. Take the other competing theory put forward, the theory of mirasidar ownership and mirasi rights. In the old days, we are told, it meant the distribution of cultivable lands by lots and the payment of fees to those mirasidars who did not happen to cultivate them. Is that a system which could possibly exist at the present time? We know that the mirasi system has died a natural death; it may be impossible to say at what precise moment it gave out its last breath, but it is long dead. On the other hand, as has been pointed out in this debate, Government has in the fullest manner and in every possible way exercised rights of ownership for many years over all these waste lands. The right of Government to waste lands throughout the Presidency was recognized only a few days ago in the judgment of the High Court in the South Canara Forest case. Then, too, as pointed out, the Forest Act embodies the whole principle of this clause. Then there is the Boundaries Act IV of 1897 in which "estate" is defined very much as the exceptions are defined in this clause and it is said that "Government land" means any land not forming an estate or any portion thereof. There is absolutely nothing new in this clause 2. With reference to the objection that clause 2 is unnecessary, it is to be observed that the Bill deals not merely with protection against encroachments on poramboke lands, but also with control which the Government exercises over the cultivable waste. It affords a statutory basis for such control without leaving it open to further question by declaring that Government has the right to control the distribution of waste lands and has property in them. Another criticism was that this clause has not fixed any seaward limit to the bed of the sea which is vested in Government by this clause. In my opinion it is unnecessary to do so. That is a matter of international law and it is certainly unnecessary to burden this Bill by giving any such boundary. The boundary may change with the increased range of modern guns and heaven knows how far that range may ultimately reach. With regard to standing and flowing water there is an amendment which deals with the question and it will be discussed later on. Whether it is desirable to have this definition or not, we have certainly taken good care in the exception at the end of the clause to safeguard the rights of every one by providing that the rights of Government shall be "subject to the natural and easement rights of other land-owners". In the section of the Bombay Code there is a similar provision as to water, but as interpreted by the Courts it has not helped Government much, and I do not think this provision will help Government much if it is allowed to stand. As to the rights of zamindars, I deny that Government has declared that all communal lands in zamindaris are the property of Government. That is a proposition put forward by the Honourable Member who represents the zamindari interests. If the zamindars have such a tremendous case, as he is convinced they have, to show that these communal lands were granted to them and therefore are their property, there is absolutely nothing in the Bill to interfere with that. As to the statement that we have confiscated the whole of the kudivaram rights in zamindaris, there is absolutely no foundation for such a contention. It is distinctly provided in the amendment of the Hon'ble Mr. Stokes that lands which are the property of zamindars or persons holding under them are excepted. How can it be said that the ryot does not hold under a zamindar when he pays shist or rent to him? If he fails to pay it he is liable to be evicted by the zamindar. If that is not the relation of "holding under", what is? A point was made with regard to temple-sites. For my part, I admit that it is an omission and it would be advantageous to put in "temple-sites" after house sites. There can be no objection to it. I think I have dealt with the chief technical points which were raised in the criticism of this clause.

The PRESIDENT:—Before the Honourable Member in charge of the Bill replies to various observations of the Honourable Members, I should like to say a word or two. Clause 2 is declared unnecessary, unessential, too sweeping in character, creating a fear in the mind of the public as the assumption underlying the clause is that all land is public property and that no property is private property till it is recognized by Government. It is said also that definition is impossible and should not be attempted. The sense of death, Shakspeare says, is most in apprehension, that is, in the fear or expectation of death. But the owner of property rights in this country has no reason, so far as I know, in apprehending the extinction of those rights on the head of anything Government is seeking to do by clause 2. I am a large believer in the doctrine of letting things alone in legislation that need not be stirred, and the Government of Madras did not venture on any explicit statement regarding property in the nature of present clause 2 when originally dealing with the matter. It is now in the Bill by direction, and it has to remain there. At the same time I confess a total inability to understand the outcry that is raised against the Bill on account of this declaration. The Honourable Member in charge of the Bill has endeavoured in every way to accommodate the wording of the clause to suit the wishes of every one who could legitimately claim a hearing for any private right; and it seems to be beyond the power of Honourable Members who have objected to it to give reasons of any value for their alarm. I shall only provoke scoffing if I say that the attitude of objectors exhibits a preternatural suspicion of Government's motives and action; but what and whose rights is it that Government can intend to steal or to usurp and why? On the other hand, one does not require to live long in this or any other well-populated country before he has good reason for concluding that land uncared for and worth appropriating—as most communal lands are—is not long before it finds an ostensible owner either by fraud or through pure bravado and the cowardice of those who should protect their own interests. I have seen the thorn fence between a paddyfield and the margin of an irrigation channel made to advance cautiously year by year till next to no margin was left, and I have seen a Municipal Chairman run a pial and a paling round it into the absolute roadway in front of his house. If those more immediately affected by such lawless acts are unequal to defending common rights, it is well that Government, which has the care of all, should not hesitate to declare that it is the owner and to act as becomes an owner in the circumstances. Much of the argument that is paraded against Government in these days is apparently born of the opinion that Government is not the representative of the people or of the people's interests, but something apart, battenning on the people and extending its privileges by limiting the people's rights. Is there any pretext for such an opinion in the present matter? A clause of the sort is necessary and will have to stand part of the Bill. The Hon'ble Mr. Stokes will now conclude this debate.

The Hon'ble P. S. SIVASWAMI AIYAR:—May I know if I have not the right of reply as the Mover of the amendment.

The PRESIDENT:—Under what rule do you claim the right of reply?

The Hon'ble P. S. SIVASWAMI AIYAR:—Rule 16: I come under the exception therein mentioned.

The PRESIDENT:—The Hon'ble Sivaswami Aiyar has a right of reply.

The Hon'ble Mr. G. STOKES:—Before I proceed to consider some of the objections taken by the Honourable Members, I would first call attention shortly to what the declaration is to which objection is taken. It is the statement that what is not private property is the property of the State. The clause enumerates certain things and it says that all of them which are not the property of certain private persons are the property of the State, subject to certain rights. Now I would call attention to a very remarkable fact in connection with the attitude which the Honourable Members who spoke yesterday have taken up in regard to this clause. Though several have asserted that the assertion in the clause is unnecessary and undesirable and so on, no one has ventured to say that it is not true. In fact any such assertion has only to be stated, for it to be seen that the assertion in the clause must be true. For while we all know that there are large tracts of land which are not private property, I would ask the Honourable Members to whom do they belong if they do not belong to the State. Take the sandy accretion on the beach outside this room. To whom does it belong?

They can only answer Government. It is true that Mr. Sivaswami Aiyar touched the fringe of this aspect of the matter when he appealed to history, but I can only say, so far as I could understand it, his history was as inconclusive as his law. It was attempted by other Members in a feeble way to set up a property in the village communities, but that could not get further than a ruling of the Bombay High Court that village communities might hold property in some conceivable contingency. There is no ruling that it does or did. Let anyone show a single instance throughout the Presidency of property vested in the village community. Samudayam lands were referred to, but that only shows an ignorance of the difference between property vested in the village community and lands held in common. As I pointed out yesterday, mirasi property held in common was in no sense the property of the village community. As I said yesterday, go up-country and ask whose is any vacant plot of land and the immediate answer is Sirkar. I have no desire to confiscate any one's property, nor do I believe the clause does so. If there is any doubt that a particular kind of property does not fall within the wording of the clause, I shall be glad to put in words to make the point clear, and I could wish that the Honourable Members' efforts had taken the direction of helping in that manner instead of that which they have taken.

Now, it seems to me that if the declaration is true many objections taken to it fall to the ground. For example, such an objection as that the clause is unessential seems useless.

It has been said that the clause is unnecessary. In that opinion I cannot concur. The position is peculiar. We have here courts impregnated with the notions of English law. One of the most marked features of English jurisprudence is a tenderness for private rights. The result is that in every case in the courts the rights of the State are being cut down from day to day. Take the application of the doctrine of riparian right to ryots' holdings quoted yesterday by one Honourable Member. The large extension of the doctrine since the judgment of Mr. Innes is a case in point. Now in England irrigation is unknown and such an application of the doctrine which if irrigation were known would never be made would produce no harm, but in this country this tenderness for private rights slavishly copied may prevent the greatest good of the greatest number most effectively. For example, at the present

moment it has stopped the carrying out of the Cauvery project of irrigation. Again, what can be more incongruous in this country than the doctrine of English law that there can be no property in water. It is not the doctrine or conception of Indian Common law. Hear a water dispute between two villages and learn. It never could be the conception in a country where irrigation is all essential, or in a country of tanks. Is not the crux of the Achukattu case mentioned yesterday the claim of one side that the water belongs to the man on whose land it falls? In every Province in India except Madras, the right of Government to the exclusive use and control of water subject to private rights is recognised by statute and the position does not much differ, if at all, from that created by this clause.

I cannot in the least hold that the clause is unnecessary.

The hardship which the clause may cause has been appealed to. I confess this is the only objection taken to the clause with which I have any sympathy, but it is an objection which cannot be accepted. The clause has received much thought, and I believe it covers the whole ground. My amendment to the clause, as pointed out by Mr. Govindaraghava Aiyar, will leave the clause as it left the Select Committee. The amendment is clearer, but nothing has been added to the scope of the clause; not a single instance has been put forward of property which was not covered by the clause as it originally stood. Temple porambores will come under house-site, which is gramannattam when translated, but I see no objection to mentioning that specific instance. But such a danger as that pointed out is not an argument for omitting the clause. All legislation is open to such risk and the remedy is not omission but amendment on proved occasion.

The argument put forward as to the shifting of the burden of proof brought about by the clause, namely, that the side on which that burden lies must lose is a commentary on the administration of justice and is peculiarly an argument of the Advocate; but taking it that the shifting of the burden of proof means that the person on whom it lies must lose, surely that is an argument for not putting it on the State. It is said, of course, that the State is peculiarly powerful and well able to

defend itself; but I can only suppose the Honourable Members who put forward the assertion do so in ignorance of the true facts. It flows from human nature that any Government agency must be less efficient for any purpose than an interested private agency. In Courts impregnated with notions of English law the whole bias is against the State.

With regard to what the Hon'ble Mr. Muttukumaraswami Mudaliyar put forward, which was a line of argument quite distinct and separate from that put forward by the other Honourable Members, I would point out that every word the Honourable Member spoke was an argument in favour of retaining the clause. Whatever be the truth of the matter and as to that I make no pronouncement, he asserted *ore rotundo* that the land, water and everything else in a zamindari was the property of the zamindar. Surely, he was thus demonstrating that the Act could not apply to zamindaris and was thus cutting the ground from under his own argument. If everything is the property of the zamindar, then nothing is the property of the State and there the matter ends. I regret that as no well-founded reason has been shown for omitting the clause, Government is unable to accept the amendment.

The Hon'ble P. S. SIVASWAMI AIYAR:—I am afraid I have been misunderstood with reference to the remarks that fell from me yesterday. With regard to the proposition that what is not private property must be public property, I never intended to quarrel. I think everybody will concede that what is not private property may well be regarded as public property. The difficulty, however, to my mind consisted in defining what is private property and in framing a definition so precise and exhaustive as to exclude every species of private property. The replies that have been made this morning upon the assumption that I contended what was not private property should, at the same time, be regarded as not falling within the category of public property do not require any answer, because I never committed myself to any such proposition. Then, again, with regard to waste lands, it is assumed that waste lands are the property of Government. It is possible that my Honourable friend from Malabar may probably contend that waste lands in that district are not the property of Government. To confine myself to other parts of the Presidency, you remember that I spoke in a guarded way when I dealt with waste lands. I said that whatever may be the theory as regards waste lands, there is no foundation for the suggestion that Government is the universal proprietor of all the lands in the country. It is not my purpose to deny that according to the official literature on the subject waste lands have been for a long time treated as Government property. I knew that I would meet gentlemen well versed in the revenue history of the Presidency, and I have done what I could to acquaint myself with the literature on the subject. I was, therefore, cautious in dealing with the subject of waste lands and I refrained from saying that waste lands were not the property of Government. The whole of the observations of the Hon'ble Mr. Hammick with reference to this question are therefore beside the point. The Honourable Member wanted to turn the tables on me by pointing to an amendment of mine to clause 3 and saying that it assumed waste lands to be Government property. I do not deny that Government can have property in certain species of lands. My amendment does assume that waste lands may belong to Government and may be set apart by Government for public or communal purposes. My contention that all the land in the country is not the property of Government is in no way inconsistent with the amendment that I have given notice of with regard to clause 3. My amendment in regard to clause 3 is "any land set apart by Government for any public or communal purposes, etc." I certainly admit that Government can hold property not only in waste lands but in other lands. They might purchase lands under the Land Acquisition Act or they might get lands by gift from somebody. In the case of lands that are at the disposal of Government, they would have the right of making a grant of them or of setting them apart for public or communal purposes. Therefore, that criticism does not touch my argument. It was remarked that the Preamble to Regulation XXV of 1802 assumed that Government was the proprietor of lands. I have referred to the Preamble of Regulation XXV and the only words which can be referred to as the basis for any suggestion of that sort are the words "whereas the Government is desirous to confer proprietary right in the soil upon certain persons". It may be inferred from that the Government assumed that it had the right to grant permanent proprietary right in the soil to some persons; but Honourable Members will remember that the force of this recital is

neutralised by Regulation IV of 1822 which enacted that this declaration was not meant to take away any existing right from any persons and that it was meant to transfer to zamindars only such rights as the Government possessed. Then again with regard to the necessity for the Bill, the Hon'ble Mr. Hammick remarked that if this clause were not enacted, matters would be very much left in doubt and that there would be several pieces of land with regard to which there would be great doubt whose property they were and that this clause was meant to clear up doubts. That is the very ground upon which my objection to the declaration is based. If the matter were so doubtful that it was difficult to decide, is it a reason to decide by legislation all disputes in a summary manner and to say that it is Government property? The greater the doubt the greater should be the hesitancy of the legislature to pronounce its opinion upon matters where private rights may possibly be affected. Then again with regard to the question of onus, the Hon'ble Mr. Hammick and other gentlemen that followed him observed that it was right that the burden of proof should be shifted. The Hon'ble Mr. Castlestuart Stuart said that it was quite right that the burden of proof should be thrown upon the trespasser. Quite right. You first make sure that he is the trespasser. You beg the question when you say that he is the trespasser. You have to decide whether he is a trespasser or not. Once he is decided to be a trespasser, I for one have no sympathy with him and I am not very anxious that his rights should be protected. But the gist of the objections in regard to the question of the burden of proof is that it is likely to do away with the benefit of the presumption in favour of the person in possession. As pointed out by the Hon'ble Mr. Desika Chariyar yesterday, under the ordinary law a person would have the right to a presumption in his favour from long possession. A person may not be able to prove enjoyment for a period of 60 years, but he may be able to prove 59 years' possession. From that the law would act upon the maxim *presumitur retro*. The same possession that has been proved for 59 years would be presumed to extend back. That being the ordinary presumption of law in favour of the person in possession, we think it a hardship that that presumption should, in any way, be displaced by the conduct of Government. Then, again, it was said in the speech of the Hon'ble Mr. Castlestuart Stuart and also in that of the President that the critics of the Bill assume that there is a conflict of interest between the Government and the people, whereas the Government are really the trustees of the people. We do not deny that government is conducted for the benefit of the people and that the Indian territories are vested in His Majesty for the purpose of the good government of this country. We do not in the least mean to state that the government is actuated by any but the best of motives; but the best of motives and intentions may not always be sufficient to insure a due regard for other people's rights. A want of such regard may proceed from a want of sufficient acquaintance with the subject-matter or from a variety of other causes. The fact that Government are the trustees of the people is an argument that may be pushed too far. Because they are the trustees of the people, would anybody contend that all the properties of the subjects should be put into their hands in trust for them? I don't think that could be contended. Government are no doubt trustees for the people, but there is no reason why a sharp distinction should not be drawn between private property and trust property. It has been said that some of my friends who supported the amendment are not the friends of the ryots and are not guided by the same considerations for the welfare of the ryots as those that guide the officers of Government. We are moved by the very same regard for the welfare of the ryots. Even a trustee may happen to reside at a distance, even a trustee has to act upon the information of his subordinates and sometimes the ears of a trustee are deaf. In those cases, it is only right and proper that it should be brought to the notice of the trustees that the interests of their wards are not being sufficiently attended to and that matters should receive further consideration on the part of Government and we are only discharging our duties in this matter.

Now I pass on to another observation of the Hon'ble Mr. Castlestuart Stuart with regard to the provisions of the Forest Act. It was observed that the Forest Act shifted the onus and that this Bill merely followed the Forest Act. He will find, on referring to the definition of "land at the disposal of Government" in the Forest Act, it is both a negative and a positive definition. It is not merely a negative definition like this which says that land which is not the property of so and so is the property of Government, but it is also a positive definition inasmuch as it says lands, unoccupied, whether assessed or unassessed. If it is unoccupied land, nobody

need object to its being included within the category of property at the disposal of Government. If a similar provision be inserted in this clause, it may be quite different. There is no positive definition of that sort to be found here. Under these circumstances, it may be quite right, at any rate, there may be nothing wrong in the burden of proof being shifted in the Forest Act, where it is only unoccupied land that is declared to be the property at the disposal of the Government. If it is occupied land it is not at the disposal of Government. In the present Bill there is no such definition and that is the reason why anxiety is expressed that the shifting of the burden may cause hardship. The whole question depends upon the fact whether he is a trespasser or not and as to that the burden of proof must be on the Government.

With regard to another observation which fell from more Honourable Members than one, namely, that clause 2 of the Bill does nothing more than declare what is public property, I have this to observe:—If the Bill followed exactly the Bombay Code, I should not object. There it is stated that such and such things which are not the property of individuals or aggregates of individuals are the property of the Government. Those words are very wide. But here property is described as that of certain classes of people who have a definite place in the revenue classification of the administration. If all that clause 2 is meant to effect is to declare what is not private property is public property, I should not be disposed to quarrel with such an innocent definition. But my objection is due to this circumstance, that it goes on to define private property with reference to a particular class of individuals. It does not say the property of private individuals or groups of individuals, but it says "save in so far as the same is the property of any zamindar, poligar, mittadar, jagirdar, shrotriendardar or inamdar, etc." All these provisions are taken bodily from the Rent Recovery Act, which follows the classification adopted in Revenue Administration. The real gist of my first objection to the declaration is that underneath this clause there is an assumption that there could be no private property unless it was recognised by Government. My misgivings are due to the circumstance that we define particular individuals who can hold private property; we define them with reference to their liability to pay assessments. It is because this definition is based upon the fiscal system and the private properties of all individuals are not sufficiently protected by the exceptions in the saving clause, that the clause is likely to lead to difficulty and to misconstruction. If the intention of the framers of the Bill is, what is stated to-day, merely to lay down that what is not private property is public property, why do you not adopt that definition from the Bombay Code. It has been said by the Advocate-General the provisions of the Bombay Code were not serviceable.

The Hon'ble the ADVOCATE-GENERAL:—I was only talking of water.

The Hon'ble P. S. SIVASWAMI AIYAR:—The Members of the Government think that this declaration is very essential, but the Hon'ble the Advocate-General states

1-20 P.M.

that the Government will not be able to get much out of the definition. If that is the opinion of the learned Advocate-General —

The Hon'ble the ADVOCATE-GENERAL (*interrupting*):—I only meant with reference to standing and flowing water.

The Hon'ble P. S. SIVASWAMI AIYAR:—With regard to the objections about the bed of the sea, the learned Advocate-General said, and some others also said, that we were only concerned with three miles of territorial waters and that Heaven only knows who may be entitled to the bed beyond. The bed of the sea literally means the whole bed from the Bay of Bengal to the Pacific Ocean.

The Hon'ble Mr. G. S. FORBES:—You cannot legislate except for this Presidency.

The Hon'ble P. S. SIVASWAMI AIYAR:—I am meeting that argument. It may be said, and I know that it has been said just now, that we can only legislate for whatever is within our limits. The observation that rises to one's lips at once is that so far as the Municipal Courts of this country are concerned, any law which the State passes is binding upon its subjects, irrespective of the question whether the law is passed for application within its territory or outside it. It may be that, according to

THE MADRAS LAND ENCROACHMENT BILL.

international law, other nations may not care for our declaration; they might set the legislative pronouncement at naught. But that is not the question. So far as the Municipal Courts are concerned, the Council would be quite competent to legislate, and whatever the legislature might do, the subjects and the Courts in this country would be bound by the enactment passed. I need only give one instance. Under the Penal Code, the native Indian subjects of His Majesty can be punished for any offence committed in any part of the world, whether in India or elsewhere. One might at first imagine that it would be a great stretch of the legislative authority of the Government of India to declare that persons shall be punished for offences committed in any part of the world. But your subjects are bound to obey any law which your legislature may make. The question is not altogether without a practical bearing. Suppose a man went out four miles into the sea and took something from the bed; whether his act is lawful or not will depend on the question of ownership. I know that in dealing with this matter it may be said that I am dealing with what is of very little practical interest, but it illustrates the difficulty of the subject. The Hon'ble the Advocate-General said that no body would be better pleased than I if this enactment were to be regarded as *ultra vires* of this legislature. I must respectfully protest against that suggestion. Sitting here as a responsible member of this body I should certainly not be pleased if I thought that I assisted in any legislation which was *ultra vires* of this legislature; and far from being pleased I should be very sorry for the part I had taken. The learned Advocate-General then remarked that the legislature has got the power to legislate with regard to the prerogatives of the Crown. It is true that this legislature may pass a law which may affect the prerogatives of the Crown. The question is not one whether the legislature has power to pass laws which may affect the prerogatives of the Crown, but whether the legislature is entitled to pass a law which by the very statute which calls it into existence it is forbidden to enact.

The Hon'ble the ADVOCATE GENERAL:—It is not forbidden.

The Hon'ble P. S. SIVASWAMI AIYAR:—With regard to the prerogatives of the Crown it can legislate, but with regard to the matters which have been provided for in the Acts for the better Government of India, they are taken away by the Councils Act from the cognizance of this legislature, which has no right to interfere with them. The fact of the legislature having got power to affect the prerogatives of the Crown is no answer to my argument. Then with regard to the conflict between the Government and its subjects, we have been told that the people labour under a preternatural suspicion as to the motives of Government. In the first place, this charge is not altogether true; and in the second place, this is not the only country in the world where Government and its subjects are supposed to have antagonistic claims. In most European countries we find that Government and its subjects have claims of an antagonistic nature, and it is always the duty of the statesman to see that neither the rights of Government are curtailed nor are the rights of its subjects infringed upon. If there is any attitude of antagonism at all on the part of public in regard to this matter, it cannot, I venture to submit, be regarded as anything specially peculiar to the people of this country or as one not to be found in other countries. Then again one word more with regard to the last observation of the Hon'ble Mr. Stokes. That is, that a great mistake has been committed in applying the doctrine of English law, that we are all saturated with ideas of English jurisprudence and that such ideas are altogether unsuitable to this country. However, that is a state of things for which we are not ourselves altogether responsible. Rightly or wrongly we have come to entertain the notion that English jurisprudence is the best; and it has been laid down by Courts that rules of English jurisprudence would be applicable to this country, unless there was anything special in the circumstances of this country which required a different treatment, so much so that in one case, the Judicial Committee laid down that rules of English law must be generally taken to be the rules of equity, good conscience and justice. In a case reported in 13 *Madras Series*, Mr. Justice Muttuswami Aiyar and Mr. Justice Shephard laid down that rules of English law with regard to riparian rights ought to be applied and enforced in this country. Then it was said that riparian rights would be a great stumbling-block to the carrying out of great irrigation projects. I do not know what is in store for us in the Irrigation Bill of which we have heard. If there are riparian rights in this country, just as you purchase

rights in land under the Land Acquisition Act, you can also purchase rights of water. You cannot confiscate rights of water, any more than you can confiscate rights to land. The fact of having large irrigation works is no reason for confiscating rights of water or denying the existence of riparian rights in this country. Then, Sir, it has been said that we have not directed our efforts to suggesting in what way the definition may be made more complete, in filling in details and in making the definition more precise. I don't think that charge can with justice be levelled against us. We have made a number of amendments to clause 3, one of which runs on very much the same lines as that of the Hon'ble Mr. Stokes to clause 2, although I am disposed to think that my amendment is a little more complete and more precise. It cannot, therefore, be said that we have been wanting in any desire to assist the Council to arrive at a better definition; but that, however, has to be considered only if this section is not to be omitted. One word more and I shall have done. With regard to the zamindari ryots, it has been said what are they if they do not hold under zamindars? They do not hold under zamindars but with zamindars. It has been held that zamindars and ryots are entitled to have co-ordinate interests and not subordinate interests. One would have thought that "holding under or claiming through" was not the most proper way of expressing the existence of co-ordinate interests. My position is strengthened by the provisions of the new Land Bill. If the position of zamindari ryots is really to be defined, it is that of the position of paying shist. As the Honourable Gentleman in charge of that Bill has stated, in his Statement of Objects and Reasons, that is the most correct and scientific way of expressing the relation between a tenant and a zamindar. The wording "claiming through" or "holding under" would not cover the cases of zamindari ryots. That is a matter which can be discussed when we come to the Hon'ble Mr. Stokes' amendment when it will be considered whether a verbal alteration would not be necessary. I would suggest the insertion of the words after the words "holding under", "or paying shist or rent".

With these words I would commend my amendment to the Council.

The amendment was put and lost.

The PRESIDENT:—The next amendment is that of the Hon'ble Mr. Stokes.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—I would suggest that my amendment about "standing and flowing water" may be taken up before the Hon'ble Mr. Stokes' amendment is taken up.

The PRESIDENT:—I think we made a mistake in not putting forward the amendments which the Honourable Member in charge of the Bill was prepared to put forward. Let us do that now.

The Hon'ble Mr. G. STOKES:—I will now move the amendment which stands in my name.

The PRESIDENT (to the Hon'ble Muttukumaraswami Mudaliyar):—Your motion to omit clause 2 is withdrawn specifically.

The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR:—Yes.

The Hon'ble Mr. G. STOKES:—It is now necessary to move the amendment to clause 2 which stands in my name. In fact, it is a little more than verbal, as I have already tried to explain. I mean that it particularises what is expressed in general terms in the clause as it originally came from the Select Committee. One reason for thus setting out the particulars taken from the Rent Recovery Act is that it is very likely that that Act will be repealed in a very short time, and it was, therefore, thought it would be better to make this Bill self-contained rather than have it refer to a definition in a repealed Act. In setting out the particular forms of property, which are enumerated by the Select Committee in clause 2, I propose to take the opportunity of particularly defining those items of property about which any question or doubt has been raised, by incorporating them in this amendment once for all. I am quite prepared to accept the proposal of the Hon'ble Mr. Sivaswami Aiyar to put in the words "or paying shist or rent to" after the word "under". I now beg to move the following amendment:—

In sub-clause (1), lines 22 to 31, for the words beginning with save in so far as the same to the end, the following shall be substituted, namely:—"Save in so far as

"the same are the property—(a) of any zamindar, poligar, mittadar, jagirdar, shrotriendar or inamdar, or (b) of any person claiming through or holding under or paying shist or rent to any of the aforesaid persons, or (c) of any person holding under ryotwari tenure or in any way subject to the payment of land revenue direct to Government, or (d) of any other registered holder of land in proprietary right, or (e) of any other person holding land under grant from Government otherwise than by way of license, and, as to lands, save in so far as they are owned as house-sites or back-yards, are and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force, subject always to all rights of way and other public rights and to the natural and easement right of other land-owners and to all customary rights legally subsisting."

The Hon'ble V. C. DESIKA CHARIYAR:—Will you add kattubadi, jodi, poruppu.

1-40 P.M.

Kattubadi and jodi are the terms used in the northern parts of the Presidency, while poruppu is used in the southern parts of the Presidency.

The PRESIDENT:—Would not "shist" cover the lot. Shist and rent are the only terms that we make use of in the Land Bill.

The Hon'ble the ADVOCATE-GENERAL:—Surely rent must include favourable or unfavourable rent. It seems to be suggested that Courts will put a sort of perverse interpretation on the clause.

The Hon'ble V. C. DESIKA CHARIYAR:—We are all under Courts.

The Hon'ble Mr. G. STOKES:—In construing the Act, Courts will extend the meaning of those words to everything that they could possibly cover. I should think rent would cover kattubadi or jodi.

The Hon'ble V. C. DESIKA CHARIYAR:—You will see that wording in the Local Boards Act No. V of 1884.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—You have it in the Local Boards Act, section 73.

The PRESIDENT:—I hear that there are many other terms used in the Northern Circars, and if we put in the whole of them I am afraid we shall have to go on to-morrow also.

The Hon'ble Mr. G. STOKES:—I have no objection to put in the words suggested by the Hon'ble Mr. Desika Chariyar namely "kattubadi, jodi or poruppu". I would also insert in sub-clause (c) after the words "ryotwari tenure" the words "including that of a janmi in Malabar or of a wargdar in South Canara". These tenures are very peculiar and the words that I put in will save any difficulty that may arise.

The Hon'ble V. C. DESIKA CHARIYAR:—Will you not introduce the word "also" after the word "save".

The Hon'ble Mr. G. STOKES:—Yes. The object of Government in framing the clause is to include every kind of property.

The Hon'ble P. S. SIVASWAMI AIYAR:—May I ask you to have the words "public rights".

The Hon'ble the ADVOCATE-GENERAL:—Public right is a right which all have, but there may be customary rights.

The Hon'ble P. S. SIVASWAMI AIYAR:—It may be that certain sections may have a right peculiar to themselves.

The Hon'ble Mr. G. STOKES:—Then it will be a customary right.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—I have a small suggestion to make in sub-clause (b). Suppose there is A, the zamindar who lets his land to B. The tenants will pay their rent to B. The amendment will not include such a case as that.

The Hon'ble Mr. G. STOKES:—It will. It is not alienation of property.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—Perfectly so. That is so far as zamindars' rights go. But what about the tenants' rights?

The Hon'ble Mr. G. STOKES:—The property will not come within the purview of the Act.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—A is zamindar to whom the tenant pays his rent. If he sub-lets his land to B the tenants will pay rent to B. I would therefore suggest that before the words "any of the aforesaid persons" the words "claiming from" must be inserted.

The Hon'ble Mr. G. STOKES:—Surely, they must be said to pay shist to any of his assigns.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—But the word "assigns" is not here.

The Hon'ble Mr. G. STOKES:—I am afraid that in these distinctions we get a little lost. I cannot go any further at present. I, therefore, move my amendment as now altered by me.

The Hon'ble the Advocate-General seconded the amendment.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—With reference to this amendment I beg to make only one observation which I hope the Honourable Member in charge of the Bill would find it convenient to accept. I am particularly referring to sub-clause (b) of the amendment as now proposed. I submit that it does not exhaust the cases which may generally arise and to which sub-clause (b) may be applicable. The position that I take up is this. This clause does not cover the case of ryots or tenants who pay rent, not to the zamindar himself but to persons who claim from the zamindar as assignees or lessees. As the clause stands, it refers to zamindars, poligars, etc., who are mentioned in sub-clause (a); but sub-clause (a) does not refer to persons who claim from the poligar or zamindar, etc. Neither sub-clause (a) nor sub-clause (b) will apply to cases wherein the rent will have to be paid not to the zamindar but to one claiming from him. I would, therefore, suggest that sub-clause (b) be amended as follows:—That before the words "aforesaid persons" be inserted "or to persons claiming from". It may be said that it is done in the clause already proposed. But it is not so.

The Hon'ble Mr. G. STOKES:—Do you contend that the land in question ceases to be the property of the zamindar?

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—I don't say so.

The Hon'ble Mr. G. STOKES:—Surely then you will see that the clause will not apply to that land.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—It could not apply to zamindar's interests in the land. If it is said that there is some necessity for these words, then there is necessity for adopting my phraseology. My position is this: so far as zamindari tracts go it is not right to say that the tenant or the ryot holds under the zamindar. Both of them hold co-ordinate interests. If that is accepted, we should see that sub-clause (b) is so worded that whoever possesses zamindari interests, the tenants' interests are not affected. This clause applies to cases where the zamindar is in possession. Suppose there is a lessee, if the tenant has to pay rent to him, this clause will not cover that case. So I want that to be specifically provided.

The Hon'ble the ADVOCATE-GENERAL:—I understand that this difficulty has arisen from an endeavour which we have made to meet the views of Honourable Members in the Select Committee. It is

2 P.M.

very easy to avoid the difficulty by going back to the wording of the section in the Bombay Code and say that lands which are not the property of any body are the property of Government, save in so far as temple sites, house-sites and backyards are concerned. That will get rid of all these minutiae.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—I may say that is not my difficulty. My position can be easily met. I think that the position of the Honourable Member in charge of the Bill need not be changed. If what is now in sub-clause (b) is added to what is contained in sub-clause (a), it will meet my purposes, that is, by adding the words "of any person claiming through or holding under any of the aforesaid persons" at the end of sub-clause (a).

"the same are the property—(a) of any zamindar, poligar, mittadar, jagirdar, shrotriendar or inamdar, or (b) of any person claiming through or holding under or paying shist or rent to any of the aforesaid persons, or (c) of any person holding under ryotwari tenure or in any way subject to the payment of land revenue direct to Government, or (d) of any other registered holder of land in proprietary right, or (e) of any other person holding land under grant from Government otherwise than by way of license, and, as to lands, save in so far as they are owned as house-sites or back-yards, are and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force, subject always to all rights of way and other public rights and to the natural and easement right of other land-owners and to all customary rights legally subsisting."

The Hon'ble V. C. DESIKA CHARIYAR:—Will you add kattubadi, jodi, poruppu. Kattubadi and jodi are the terms used in the northern parts of the Presidency, 1-40 P.M.

while poruppu is used in the southern parts of the Presidency.

The PRESIDENT:—Would not "shist" cover the lot. Shist and rent are the only terms that we make use of in the Land Bill.

The Hon'ble the ADVOCATE-GENERAL:—Surely rent must include favourable or unfavourable rent. It seems to be suggested that Courts will put a sort of perverse interpretation on the clause.

The Hon'ble V. C. DESIKA CHARIYAR:—We are all under Courts.

The Hon'ble Mr. G. STOKES:—In construing the Act, Courts will extend the meaning of those words to everything that they could possibly cover. I should think rent would cover kattubadi or jodi.

The Hon'ble V. C. DESIKA CHARIYAR:—You will see that wording in the Local Boards Act No. V of 1884.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—You have it in the Local Boards Act, section 73.

The PRESIDENT:—I hear that there are many other terms used in the Northern Circars, and if we put in the whole of them I am afraid we shall have to go on to-morrow also.

The Hon'ble Mr. G. STOKES:—I have no objection to put in the words suggested by the Hon'ble Mr. Desika Chariyar namely "kattubadi, jodi or poruppu". I would also insert in sub-clause (c) after the words "ryotwari tenure" the words "including that of a janmi in Malabar or of a wargdar in South Canara". These tenures are very peculiar and the words that I put in will save any difficulty that may arise.

The Hon'ble V. C. DESIKA CHARIYAR:—Will you not introduce the word "also" after the word "save".

The Hon'ble Mr. G. STOKES:—Yes. The object of Government in framing the clause is to include every kind of property.

The Hon'ble P. S. SIVASWAMI AIYAR:—May I ask you to have the words "public rights".

The Hon'ble the ADVOCATE-GENERAL:—Public right is a right which all have, but there may be customary rights.

The Hon'ble P. S. SIVASWAMI AIYAR:—It may be that certain sections may have a right peculiar to themselves.

The Hon'ble Mr. G. STOKES:—Then it will be a customary right.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—I have a small suggestion to make in sub-clause (b). Suppose there is A, the zamindar who lets his land to B. The tenants will pay their rent to B. The amendment will not include such a case as that.

The Hon'ble Mr. G. STOKES:—It will. It is not alienation of property.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—Perfectly so. That is so far as zamindars' rights go. But what about the tenants' rights?

The Hon'ble Mr. G. STOKES:—The property will not come within the purview of the Act.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—A is zamindar to whom the tenant pays his rent. If he sub-lets his land to B the tenants will pay rent to B. I would therefore suggest that before the words "any of the aforesaid persons" the words "claiming from" must be inserted.

The Hon'ble Mr. G. STOKES:—Surely, they must be said to pay shist to any of his assigns.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—But the word "assigns" is not here.

The Hon'ble Mr. G. STOKES:—I am afraid that in these distinctions we get a little lost. I cannot go any further at present. I, therefore, move my amendment as now altered by me.

The Hon'ble the ADVOCATE-GENERAL seconded the amendment.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—With reference to this amendment I beg to make only one observation which I hope the Honourable Member in charge of the Bill would find it convenient to accept. I am particularly referring to sub-clause (b) of the amendment as now proposed. I submit that it does not exhaust the cases which may generally arise and to which sub-clause (b) may be applicable. The position that I take up is this. This clause does not cover the case of ryots or tenants who pay rent, not to the zamindar himself but to persons who claim from the zamindar as assignees or lessees. As the clause stands, it refers to zamindars, poligars, etc., who are mentioned in sub-clause (a); but sub-clause (a) does not refer to persons who claim from the poligar or zamindar, etc. Neither sub-clause (a) nor sub-clause (b) will apply to cases wherein the rent will have to be paid not to the zamindar but to one claiming from him. I would, therefore, suggest that sub-clause (b) be amended as follows:—That before the words "aforesaid persons" be inserted "or to persons claiming from". It may be said that it is done in the clause already proposed. But it is not so.

The Hon'ble Mr. G. STOKES:—Do you contend that the land in question ceases to be the property of the zamindar?

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—I don't say so.

The Hon'ble Mr. G. STOKES:—Surely then you will see that the clause will not apply to that land.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—It could not apply to zamindar's interests in the land. If it is said that there is some necessity for these words, then there is necessity for adopting my phraseology. My position is this: so far as zamindari tracts go it is not right to say that the tenant or the ryot holds under the zamindar. Both of them hold co-ordinate interests. If that is accepted, we should see that sub-clause (b) is so worded that whoever possesses zamindari interests, the tenants' interests are not affected. This clause applies to cases where the zamindar is in possession. Suppose there is a lessee, if the tenant has to pay rent to him, this clause will not cover that case. So I want that to be specifically provided.

The Hon'ble the ADVOCATE-GENERAL:—I understand that this difficulty has arisen from an endeavour which we have made to meet the views of Honourable Members in the Select Committee. It is

2 P.M.

very easy to avoid the difficulty by going back to the wording of the section in the Bombay Code and say that lands which are not the property of any body are the property of Government, save in so far as temple sites, house-sites and backyards are concerned. That will get rid of all these minutiae.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—I may say that is not my difficulty. My position can be easily met. I think that the position of the Honourable Member in charge of the Bill need not be changed. If what is now in sub-clause (b) is added to what is contained in sub-clause (a), it will meet my purposes, that is, by adding the words "of any person claiming through or holding under any of the aforesaid persons" at the end of sub-clause (a).

114

THE MADRAS LAND ENCROACHMENT BILL.

The Hon'ble V. C. DESIKA CHARIYAR:—The Hon'ble the Advocate-General seems to think that the land in zamindaris must belong either to the zamindar or to the ryot. He forgets cases where a portion of a zamindari may be assigned to a junior member of the family for maintenance and the tenants of the zamindar in that portion of the zamindari will pay the rent to the junior member of the family who will be entitled to receive them. To protect the land belonging to him, my Hon'ble friend Mr. Govindaraghava Aiyar wants to introduce this amendment. In addition to the zamindar and the ryot, there may be an intermediate person who, though not paying revenue to Government directly, might still be the owner of the land and be entitled to collect jodi, kattabadi or poruppu from the ryot direct.

The Hon'ble the ADVOCATE-GENERAL:—This results from confusion of thought. If we start from the principle, that we want to exclude certain kinds of property, it will be all right. We don't care how zamindari properties are split up and what relations exist between the zamindar and the people under him. We say that lands in zamindaris which are the property of zamindars or of persons claiming through or under them are excepted, and it is quite unnecessary to go into all these elaborate details.

The PRESIDENT:—I think, Honourable Gentlemen, it will be convenient to adjourn at this stage. We may be in a better position to decide the question when we return. We will meet again at quarter to three.

2-5 P.M.

The Council reassembled at quarter to 3 P.M.

The Hon'ble Mr. G. STOKES:—I accept the proposal of the Hon'ble Mr. Govindaraghava Aiyar. My amendment as now altered will run as follows:—

In sub-clause (1), for the words beginning with "save in so far as the same" to the end, the following shall be substituted, namely:—

Save in so far as the same are the property:—

- (a) of any zamindar, poligar, mittadar, jagirdar, shrotriendardar or inamdar, or any person claiming through or holding under any of them,
- (b) of any person paying shist, kattabadi, jodi, poruppu or quit-rent to any of the aforesaid persons,
- (c) of any person holding under ryotwari tenure including that of a janmi in Malabar or of a wargdar in South Canara or in any way subject to the payment of land revenue direct to Government, or
- (d) of any other registered holder of land in proprietary right, or
- (e) of any other person holding land under grant from Government otherwise than by way of license,

And, as to lands, save also in so far as they are temple-site or owned as house-site or backyard, are and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force, subject always to all rights of way and other public rights and to the natural and easement rights of other land-owners and to all customary rights legally subsisting.

The amendment was put and agreed to.

The Hon'ble Mr. G. STOKES:—The next amendment that stands in my name is that in sub-clause (2), line 33, the words "or municipal" be omitted. According to the General Clauses Act these words are unnecessary.

The Hon'ble the Advocate-General seconded the amendment.

The amendment was put and agreed to.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—Mr. President, the amendment that I beg to propose is that in lines 20 and 21 the words "and all standing and flowing water" be omitted. I do not want to detain the Council, with any lengthened remarks.

The Hon'ble Mr. G. S. FORBES:—Does he read it as bed of all standing and flowing water.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—It cannot be that. I don't think "bed" governs all standing and flowing water. No doubt the Honourable Member in charge of the Bill has pointed out that with respect to water, there is a distinction between the Indian law and the English law, as to the right of property in it; and on that point I shall merely appeal to the Honourable the Advocate-General and ask him whether, so far as flowing water is concerned, the law in India is in any way different from what it is in England. What I beg to submit is that there can be no property in flowing water. But there are certain rights in connection with flowing water which riparian owners possess. The right to property in flowing water will commence only after the water has ceased to be flowing. The only right of the owners of property adjacent to tracts in which the water flows will be to have the water running to them materially undiminished and unpolluted. I do not think it is necessary that I should weary the Council with any authorities on the point. It seems to be certainly a novel position for the Government to take up that flowing water, wherever it may be found, must be taken to belong to Government. So far as the standing water goes, there have been certain observations made in connection with the discussion which has already been had, in regard to Achukattu lands. I submit, Sir, that the discussion was to some extent irrelevant for it will be easy for those who maintain that property in the water which stands on Achukattu lands is in the Achukattu holder—it will be easy for them to say that this clause, as it stands, may not interfere with their rights, because we have the proviso at the end. But that discussion points to this, that even in cases wherein under the ordinary law, as it is understood, the ryots are the owners of the property and of the water that falls thereon from heaven—even in cases where such rights should be allowed to exist—some doubt is thrown and that doubt is recognised by Revenue authorities. If that is so, the question is fraught with difficulty and the likelihood of hardship to the people, when it is said that all standing water, save with the exception of what may be covered by the proviso, becomes the property of Government, is great. As has been submitted in this Council on a previous discussion of this Bill, there is no necessity for the Council to trouble itself with legislating as to rights of property in water, because there are already Acts relating to irrigation. It is also said that a fresh irrigation Bill will be introduced. Under the circumstances, it will be time enough for us to consider, in as exhaustive a manner, as the importance of the case demands, what exactly may be the rights of Government in standing and flowing water. Seeing that there is no other provision in the Bill which relates to any infraction of right in standing or flowing water, there is no necessity to retain it in this clause.

The Hon'ble M. KRISHNAN NAYAR:—As the mover of an amendment to the same purpose down below on the agenda paper at the same page, I beg to second this amendment.

The PRESIDENT:—Do you withdraw your amendment?

The Hon'ble M. KRISHNAN NAYAR:—Necessarily that lapses. It has been referred to in this Council that the necessity for this Bill has been the decision by the High Court; but that decision, by itself, does not deal in any way with water, but only with land. Then again if we look at the title of the Bill—I am aware that the title and the preamble have not yet been considered, but I take it that ultimately the title as it stands will be passed—we shall find that it does not cover the subject of water. It seems to me that there is some inconsistency between the title and the inclusion of water within the scope of this Bill. The title runs this way:—"A Bill to provide measures for checking unauthorised occupation of lands which are the property of Government". It does not say "lands and water" which are the property of Government. It seems to me there is that incongruity between the title of the Bill and clause 2 which includes water. I may also refer to the Statement of Objects and Reasons which, if I remember rightly, does not say anything with reference to property in water. The Statement of Objects and Reasons, which was furnished along with this Bill, has reference to the right of property in land and not in water. For these and other reasons which have been referred to by the Honourable Mover of the amendment, I beg to second the amendment.

The Hon'ble Mr. G. STOKES:—I beg to say, Sir, that the Government does not claim property in all standing and flowing water. What is meant is that Government has the right in all standing and flowing water where there is no right in such water

3 P.M.

in somebody else. That is the position. This position is already accepted in the Bombay Code, and a similar provision as to the right of the Government for the exclusive use and control of water subject to private rights is found in every other Act in the other Provinces of India. I do not mean to take up the time of the Council by saying anything more on the subject. I would intimate therefore that the Government cannot accept the amendment.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—The point that I wished to impress upon the Council was that there could be no such thing as right in flowing water. So far as that matter was concerned, I submit that no adequate reply has been given to my argument.

The amendment was put and lost.

The President :—Apparently the other amendments except that referring to the explanation lapse.

The next amendment which stood in the name of the Hon'ble L. A. Govindaraghava Aiyar was declared to have lapsed as well as the one standing in the name of the Hon'ble M. Krishnan Nayar.

The Hon'ble M. KRISHNAN NAYAR :—The next amendment which stands in my name and which does not lapse is that in line 26 between "back yard" and "and" be added the words "and except in so far as any rights of any persons may be established in or over the same". In explanation of the amendment, all that I wish to say is that this is taken from the Bombay Code. It is quite conceivable that private individuals may have rights which may be capable of being established in a court of law and the object of this amendment is to bring into existence the possibility of recognition of those individual rights. Now, the right of Government which has already been declared by the amended clause will not, in any way, be interfered with, by the incorporation of the wording that I have suggested. On the other hand, private individuals who may have rights as against Government and who are able to establish them in courts of law will be permitted to do so, while the Government is in no way prejudiced. It is possible that private owners may be benefited. There is also a precedent in the Bombay Code for the insertion of this clause.

The Hon'ble P. S. Sivaswami Aiyar seconded the amendment.

The Hon'ble Mr. G. STOKES :—I beg to say that this amendment is, as I am advised, neither necessary nor expedient and the Government cannot accept it.

The Hon'ble the ADVOCATE-GENERAL :—I only wish to say one word. All our trouble in framing the very elaborate exceptions from the general provisions of this clause would be absolutely thrown away and wasted, if these words are accepted. The result would be that this clause would practically settle nothing and would leave everything as it is. Unless waste lands can come under any one of the specific heads that we have mentioned—we have stated every conceivable head—it is declared to be the property of Government. If it does not come under any one of the heads mentioned in the clause, we do not want the people to go to Court and set up rights other than those reserved by the clause. They can establish any rights of easements or public rights or they can show that they have any customary right. The term "customary rights" is a most extensive one, which might cover anything, except the bare ownership which is in the Government.

The Hon'ble M. KRISHNAN NAYAR :—I have only one word to say in reply. The objection raised by the Honourable the Advocate-General is practically removed because there are the words "customary rights" in the clause, as it is passed. The Advocate-General thinks that the expression "customary rights" must necessarily take in all possible cases which may be suggested and therefore there is no necessity for the amendment that I have proposed. As I understand, the objection comes to this. The amendment is only a surplus. But I submit that it is not a surplusage. I submit also that what may be covered by the expression "customary rights" is different from the objects which may be covered by this amendment. Seeing that it can possibly do no harm, I trust this amendment may be accepted.

The amendment was put and lost.

The Hon'ble M. KRISHNAN NAYAR :—My next amendment is that in line 29 between the words "declared" and "to" be added the words "for the purposes of this Act". I need not detain the Council for any length of time over this

amendment. The object of this amendment is to restrict the declaration that is contained in this clause to the purposes of this Bill. As the Bill now stands and as the clause will be ultimately passed, it is declared that certain properties, which do not come under any of these clauses (a), (b), (c), (d) or (e) are the properties of Government. The object of this amendment is to say that no doubt they are the property of Government but only for the purposes of this Act, the right which the Government may otherwise possess in respect of these properties remaining untouched by these words. If, on the other hand, the Government have no right to these properties, the introduction of these words will have the effect of preventing new rights from coming into existence.

The Hon'ble P. S. Sivaswami Aiyar seconded the amendment.

The Hon'ble Mr. G. STOKES :—I beg to say, Sir, that the reasons which the mover of the amendment has urged are such as the Government cannot accept. The declaration is purposely quite general. Every caution has been taken to prevent its working in any way harshly and there is therefore no reason to limit it to the purposes of this Act. The Government cannot accept the amendment.

The Hon'ble the ADVOCATE-GENERAL :—As this Act empowers the Government to evict from the land anybody who goes upon it without authorisation, it is difficult to see what object there could be in further restricting the rights of Government. As the Government can prevent anybody else from making use of the land, there is no object in imposing any further restriction.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—I submit that this amendment is entitled to consideration and acceptance at the hands of the Council. It is best calculated to effectuate the policy of letting things alone to which reference was made. I may say that, the High Court decision being the reason of this Bill, there is no necessity pointed out why any provisions that are to be contained in this Bill should relate to objects further than those that are comprised in the matters to which the working of this Bill relates. It is not possible to think of any other amendment which will go to show the exact scope of the Bill.

The Hon'ble V. C. DESIKA CHARIYAR :—I will just add one word to what has been said. The Honourable Member in charge of the Bill distinctly told us that the object of clause 2 was to make a declaration, because what is declared there is everything true. I mentioned in one of my speeches that it had not been shown by the Honourable Member in charge of the Bill that this definition was necessary for this Bill and all that the Honourable Member in charge of the Bill said was "is it not true? Are any of the facts controverted?" Now that the declaration has been passed, I don't want to controvert the truth or otherwise of the facts contained therein. Let me for a moment assume that it contains the truth, the whole truth and nothing but the truth. What is the object of this definition? Except so far as the Bill is concerned, that definition will be of no use. If you simply introduce the definition without saying what necessity there is for introducing it and for what object it is introduced, except that it explains the existing state of things, this amendment would do away with the fear in the mind of the public, that this declaration is intended not merely for purposes covered by this Act, but for some other unknown purposes also. If this amendment is passed, nobody could say that the working of this Act would suffer. It is to remove the fear that exists in the public mind that the Honourable Member has moved this amendment.

The amendment was put and lost.

The Hon'ble M. KRISHNAN NAYAR :—My next amendment lapses.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—I beg to withdraw my next amendment for the insertion of the word "public" between "easement" and "or" in line 31.

With the permission of the President the amendment was withdrawn.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—My next amendment is—

"After explanation to the clause add:

Explanation II.—In this section building-site means any land held for building purposes whether any building be actually erected thereon or not, and includes the open ground or courtyard adjacent to any building erected thereon."

If you are prepared to have the word "building-site" in the Bill, this amendment is necessary; otherwise not.

The Hon'ble the ADVOCATE-GENERAL:—There is no "building-site" in this Bill.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—Then I beg to withdraw the amendment.

With the permission of the President, the amendment was withdrawn.

The Hon'ble the ADVOCATE-GENERAL:—The word "right" ought to be "rights" after the word "easement".

The alteration was agreed to.

Clause 2, as amended, was allowed to stand part of the Bill.

Clause 3.

The next amendment on the agenda was the following, and it stood in the name of the Hon'ble V. C. DESIKA CHARIYAR:—

For the words "unauthorisedly occupy any land which is the property of Government" substitute "occupy or use any land set apart by Government for a public purpose or for the communal purposes of a village community or a section thereof for any purpose other than that for which it was so set apart or unauthorisedly occupy any unoccupied waste land whether assessed or unassessed".

The Hon'ble V. C. DESIKA CHARIYAR:—If the President thinks that this amendment lapses, I will not move it.

The PRESIDENT:—It will rest with you to say whether you withdraw it or not. I do not take upon myself any such responsibility.

The Hon'ble V. C. DESIKA CHARIYAR:—Then I beg to withdraw the amendment.

With the permission of the President, the amendment was withdrawn.

The Hon'ble P. S. SIVASWAMI AIYAR withdrew the following amendment with the permission of the President:—

For the words "any land which is the property of Government" in lines 41 and 42 substitute the following:—

(a) Any land set apart by Government for any public or communal purposes, or

(b) any land not belonging to a landholder or comprised in his holding, or

(c) any land held under grant other than a license from Government, or

(d) any land not owned by any person as a building-site or a backyard."

With the permission of the President, the Hon'ble M. Krishnan Nayar withdrew his next amendment which proposed to insert the word "or under the control" before "of" in line 42.

The Hon'ble V. C. DESIKA CHARIYAR:—My next amendment is that in page 2 of the Bill and line 19 be inserted after the word "Explanation" the figure "1".

I would ask your permission for moving first the insertion of the following as Explanation 2:—

"Nothing in this section or sections 5 and 6 shall apply to any land situate within the limits of an "estate" as defined in section 4 of Madras Act II of 1894, except to public roads and streets vested in any Local or Municipal authority."

If this amendment is not passed, there is no object in my moving the first amendment.

The permission having been accorded by the President, the Honourable Member continued:—I now move the amendment. The reasons for this have already been stated with reference to another amendment moved by the Hon'ble Mr. Sivaswami Aiyar for the omission of clause 2. Most of the reasons have also been given by the seconder of the amendment, the Hon'ble Mr. Muttukumaraswami Mudaliyar. The object of this amendment will be apparent to you all. It is only to make it clear that nothing in the penal clauses 5 and 6 shall apply to land within an estate as defined in section 4 of Madras Act II of 1894. I may state that there is another amendment

which stands in the name of another Honourable Member which is to the same effect, namely, "Nothing in this section or sections 5 and 6 shall apply to any land situate within the limits of an estate as defined in section 4 of Madras Act II of 1894 except public roads and streets vested in any Local or Municipal authority or any land acquired by Government under the Land Acquisition Act I of 1894 or otherwise or any land situate within the limits of a cantonment". It has been said by the Honourable Member in charge of the Bill yesterday that the question whether waste lands in zamindaris belong to zamindars or anybody else is not so clear, and it will be a matter for the Civil Courts to decide when the question arises. There is nothing more clear in my mind than that all the waste lands in zamindaris belong to zamindars. The question is not left in doubt. It is not a decision of the High Court that supports this view but it is the pronouncement of the legislature itself. You have only to refer to the Rent Recovery Act, Madras Act VIII of 1865, section 11, clause (iv). That places the matter beyond all doubt. Clause (iv) says "in the case of immemorial waste land and of lands left unoccupied either through default or voluntary resignation, it shall be lawful for landholders to arrange their own terms of rent; provided that nothing in this rule shall be held to affect any special rights which by law, or usage having the force of law, are held by any class or person in such waste or unoccupied lands". This is the pronouncement in one of the Acts of this legislature. Therefore, the matter is not, as was supposed by the Honourable Member in charge of the Bill, in doubt; on the other hand, it is very clearly stated and recognised. It is not created by that Act, which merely states the existing state of the law. If you refer to the earlier Regulation XXV of 1802, there too you will find what the Government reserved to itself in granting permanent sanads to proprietors of estates. Section 4 of that Regulation says "the Government having reserved to itself the entire exercise of its discretion in continuing or abolishing, temporarily or permanently, the articles of revenue included, according to the custom and practice of the country, under the several heads of salt and saltpetre—of the sayar, or duties by sea or land, of the Abkari, or tax on the sale of spirituous liquors and intoxicating drugs, of the excise on articles of consumption, of all taxes, personal and professional, as well as those derived from markets, fairs or bazaars, of lakhiraj lands (or lands exempt from the payment of public revenue), and of all other lands paying only favourable quit-rents, the permanent assessment of the land-tax shall be made exclusively of the said articles now recited". That is the only reservation made in the earlier Regulation. The pronouncement of the law in clause (iv) of section 11 of the Rent Recovery Act places the matter beyond all doubt. Therefore, there are ample reasons why we should not have a clear pronouncement of the matter by having this explanation to clause 3.

The Hon'ble M. Krishnan Nayar seconded the amendment.

The Hon'ble Mr. G. STOKES:—With reference to this amendment, I have very little to say. The whole aspect of this question was discussed very extensively in connection with an earlier part of the Bill. I will only say, as I said before, that the stronger the arguments that are put forward to prove that everything within the limits of a zamindari is the zamindar's, the less is the reason to accept the amendment. There is no reason whatever under these circumstances to specially exempt any estate from the operation of the Act, and it seems therefore unnecessary for Government to accept the amendment.

The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR:—I have in the remarks on my amendment to clause 2 of the Bill given my reasons at length why zamindaris should altogether be excluded from the operation of the Bill, and I think it needless to recapitulate them now.

I wish, however, to prominently invite the attention of the President and the Honourable Members to this one point: under the sanad the zamindars have had for over a century undisturbed and undisputed possession and enjoyment of the several properties in their estates, except public roads and streets which are used as such and therefore vested in Local Boards. This circumstance itself, apart from other considerations, confers on the zamindars an absolute legal title as against the Government—such an absolute title as every judicial tribunal is bound to recognize under the existing statute of limitations. It is not therefore fair for the Government by means

of an enactment like this—and especially under the penal provisions of clauses 5 and 6—to summarily oust the zamindar from possession so as to throw on him the onus of proving the property to be his.

Although every inch of land in a zamindari has already been shown by me to be *prima facie* the property of the zamindar, I am individually anxious that long-established and undisputed rights, either customary or acquired, of persons or classes of persons, in them should be saved. As I believe that such rights have been acquired by the public only in roads and streets vested in Local Boards and Municipalities, and as it is an undisputed fact that the Government has right of ownership in lands acquired under the Land Acquisition Act or otherwise, and also in cantonment lands in zamindaris, I have thought it right to bring such lands alone within the purview of the Bill, and except all other lands in permanently-settled estates from the operation of clauses 5 and 6 which embody the penal provisions of the Bill, on the ground that the ownership of zamindaris in them is indisputable and that it is not fair to subject the proprietors to any pains and penalties for the exercise of their due rights. This Bill is purely the outcome of the recent Full Bench decision of the Madras High Court which referred only to unauthorised encroachment in ryotwari tracts. The object of the Bill will therefore be fully attained if it confines its scope to ryotwari tracts only, without entering into the question of ownership to the several classes of land in zamindaris. As assured by the Honourable Mover the Select Committee instead of excluding zamindaris from the purview of the Bill has in a way brought them within its scope; and the zamindari public has had very little time to consider the bearing of the Bill on properties within their estates. Further, provisions similar to those embodied in this Bill find a place in the recently published Madras Estates Land Bill. I believe that this Estates Land Bill which is intended to be an all comprehensive Code about the ownership of lands in an estate as well as the relationship of the several classes of land-owners to one another, is the proper place where the question of encroachments on communal and Government lands in estates should be dealt with. When I sent in my amendment I was not aware that the Estates Land Bill would contain similar provisions about unauthorised encroachments, or I should have proposed the amendment without the exceptions it now contains. I should welcome it, if the President should now allow me to move it in the form I now wish it to assume, (*i.e.*) without the exceptions; for there can be nothing lost, now that the Madras Estates Land Bill containing provisions almost similar to those of this Bill is already on the anvil and is likely to become an Act before another year is over.

The Honourable Member in charge of the Bill remarked that the stronger the reason adduced for showing that the property within a zamindari belongs to the zamindar, the less is the reason for this amendment not being adopted. Between the declaration made by an executive officer of Government and the final declaration of the Court, the zamindar will be subjected to loss of dignity and worry and he must at least be protected from it. With that object I support the amendment.

The Hon'ble Mr. G. S. FORBES:—I have only very few observations to make with regard to the amendment just supported by the Hon'ble Mr. Muttukumaraswami Mudaliyar. The object of this amendment is to have practically a declaration from Government that village communal lands within zamindaris belong to zamindars, and that it is a right conferred in the permanent sanad. I for my part cannot admit that that is the correct construction of the permanent sanad. In the sanad which was given to the Honourable Member, the zamindar of Chunampet, who supported the motion, or rather to the Honourable Member's ancestor, these stipulations are contained. "This permanent assessment of the land-tax on your estate is exclusive of lakhiraj lands (lands exempt from the payment of public revenue) and of all other alienated lands" There is not the slightest doubt that generally these communal lands are lakhiraj lands, being exempt from the payment of public revenue, and that they were in existence long before the zamindaris were created. Lakhiraj lands include not only lands belonging to certain persons revenue free but lands not subjected to assessment which were devoted to public purposes. It is impossible to make any distinction between communal lands in a Government village and those in a zamindari village. When the Government made the permanent settlement with the zamindars, they very carefully excluded these lands for

the very reason that they might not be alienated and that the village-site, burial and burning grounds, cattle stands and temple sites should be all excluded from the interference of the zamindars. There is no revenue derived from them and therefore they were excluded from the permanent sanad. In the sanad it was further stated that, if in any case lakhiraj lands were subsequently appropriated, that could only be done with the specific sanction of Government. It is unnecessary, however, here to make any declaration either one way or the other. The rights which the Government are here assuming are merely those of controlling and regulating house-sites and porambokes, and the amendment suggested might seriously damnify the rights of the villagers. I don't see why the Government should be a party to damnifying the rights of the ryots in zamindaris.

The Hon'ble V. C. DESIKA CHARIYAR:—The Hon'ble Mr. Forbes is under a slight misapprehension. I would request him to read section 4 of Regulation XXV of 1802. It only says "that lakhiraj lands or other lands paying only favourable quit-rents". No reservation is made with reference to any other land.

The Hon'ble Mr. G. S. FORBES:—What the sanad says is "exclusive of all lakhiraj lands (lands exempt from the payment of public revenue) and all other alienated lands with quit-rent which is chargeable".

The Hon'ble V. C. DESIKA CHARIYAR:—No sanad is in contravention of section 4 of the Regulation. It must be *sarva inams* or *partial inams*; it does not mean porambokes; it is not waste lands in zamindaris. If there is such a reservation, it would have been mentioned here. There is a slight misapprehension under which the Hon'ble Mr. Forbes is labouring with regard to my amendment which is in order if you only rightly read the original section. The Honourable Member in charge of the Bill said that everything had been said when we considered clause 2. If he does not think that it applies to zamindaris, then it does not; and I am only making it clear by my amendment. All that the Honourable Member in charge of the Bill says is "I am not for it". If he said "I controvert your position", I can understand it. All that he says is if these lands do not belong to Government, they belong to the zamindar. That is what I want. If you want to controvert my statement by all means do it; but if you concede that the only reservation made by Government with reference to zamindaris is that contained in section 4 of the Regulation, what is the difficulty in accepting my amendment.

3-40 P.M.

The amendment was put and lost.

The Hon'ble V. C. DESIKA CHARIYAR:—My other amendment now falls through, namely, that in page 2 of the Bill on line 19, be inserted after the word "Explanation" the figure "1". I therefore beg to withdraw that amendment.

With the permission of the President, the amendment was withdrawn.

With the permission of the President, the Hon'ble C. Muttukumaraswami Mudaliyar withdrew the following amendment of which he had given notice:—

"Add the following as explanation to the clause:—

Nothing in this section or sections 5 and 6 shall apply to any land situate within the limits of an estate as defined in section 4 of Madras Act II of 1894 except public roads and streets vested in any Local or Municipal authority or any land acquired by Government under the Land Acquisition Act I of 1894 or otherwise or any land situate within the limits of a cantonment."

With the permission of the President, the Hon'ble P. S. Sivaswami Aiyar withdrew the following amendment of which he had given notice:—

"After the proviso to the clause insert the following:—

Explanation (1).—In this section the term landholder means and includes—
(a) All zamindars, jagirdars, mittadars, poligars, inamdars and shrotrjem-dars.

- (b) Persons holding on an under-tenure under any of the persons in clause (a) of this explanation.
- (c) Persons claiming through or under, or holding under, or paying any rent to, any of the persons in clauses (a) and (b) of the explanation.
- (d) All holders of land under ryotwari settlement or in any way subject to the payment of land revenue direct to Government and all other registered holders of land in proprietary right and persons claiming through or under any such holder.

Explanation (2).—In this section building-site means a portion of land held for building purposes whether any building be actually erected thereon or not and includes the open ground or courtyard enclosed by, or adjacent to, any building erected thereon.

Clause 3 was allowed to stand part of the Bill.

Clause 4.

Clause 4 was allowed to stand part of the Bill.

Clause 5.

The Hon'ble Mr. G. STOKES:—The amendment which stands in my name is purely verbal. It is that—

In sub-clause (i), line 36, for the word "should" between the words "penalty" and "ordinarily," the word "shall" be substituted.

I move this amendment simply to make the clause English.

The Hon'ble the Advocate-General seconded the amendment.

The amendment was put and agreed to.

The Hon'ble K. VENKATA RAO:—Mr. President, my amendment is that the word "five" be substituted for "ten" and "ten" for "twenty" wherever "ten" or "twenty" occurs. I submit, Sir, that under this Bill the so-called trespasser, whether he has honestly encroached upon the land, believing the land to be his or has encroached upon others' lands wilfully, has to pay penalties which are altogether numerous. The first penalty is imposed under clause 3, where it is stated that for special reasons "the Collector may impose the full assessment of such number or any lesser sum irrespective of the area occupied." The provisions of this Bill which will be enforced when there are special reasons are for the levy of a penalty, for evicting persons, for forfeiture and for even imprisonment in a Taluk cutcherry. You have first, the levy of the full assessment on the survey number, even if it be that only a small portion of it was cultivated by the ryot. The next penalty is provided for in the same clause in the explanation where it is stated—

"Explanation.—For the purposes of this clause occupation for an incomplete portion of a fasli may be deemed to be occupation for a whole fasli."

When a land is capable of yielding two crops or more and if a man honestly encroaches or usurps a portion of it, say, 10 cents, the man is liable to pay for the whole fasli for all the crops. So I should say that this second penalty is of a light character. The third penalty is the levy of penal assessment and that is provided for in sub-clause (i) of clause 5. If the land is assessed land, in addition to the assessment, the encroacher has to pay an additional sum of Rs. 5 whatever may be the extent of land encroached upon. If Rs. 5 do not cover ten times the assessment payable for one year, then he has to pay ten times the assessment, that he has actually to pay for a year on account of the full survey number, though it is only a portion of the number that he has encroached upon. In addition to that, we find that in the case of

unassessed lands he has to pay, according to the existing provisions of the Bill, twenty times the assessment that he has to pay for one year. Now, Sir, when the principle of the Bill was discussed on a former occasion I had to bring to the notice of this Council that ordinarily these cases of encroachment occurred mostly in regard to dry lands, and very rarely and that to a small extent in the case of wet lands. Encroachments of this character are very common in the Ceded Districts and other dry districts of the Presidency. Of course, there is an exception made whereby power is given to Local Government to exempt the levy of penal assessment on such lands. In spite of that, I submit that the assessment on the land itself is about 30 or 35 per cent. of the net produce of the land. Five times that or ten times that, according to the existing provisions, means at least three years' crop, in the case of assessed lands; and in the case of unassessed lands, it may be four, five or six years' crop or it may be any amount. So far as I understand, the object of this Bill is not to make any revenue for Government, but merely to prevent a person, by holding up this sort of punishment, from committing wilful encroachment, and thus to deter him from committing trespass. So far as the revenue side of the question is concerned, the Hon'ble Mr. Castle Stuart was pleased to give out the figures. For fasli 1311 the total land revenue was five crores and 89 lakhs, while the penal charge amounted to Rs. 2,39,000; for fasli 1312 the land revenue was six crores, while the penal charge was Rs. 2,59,000, and for fasli 1313, the land revenue was six crores, while the penal charge was Rs. 2,87,000. So that, we see that where the land revenue has come up to nearly six crores, the penal charges have come up to 3 lakhs. The Government, it is said, does not intend to make any revenue from these penal charges. If that be the case, it is equitable to make these penal charges as light as possible, knowing as we do that in some of the dry districts ryots, under most extraordinary and unusual circumstances, are driven to the necessity of resorting to this process of squatting upon Government waste lands, for the purpose of cultivation in order to eke out their existence. Even in some cases sometimes mistakes arise and pattadars encroach upon waste lands through ignorance or under an honest belief that the lands belong to them. I, therefore, submit that if revenue is not the object of this Bill, the penal charges may be reduced to as low a limit as possible. Five times the assessment that I have proposed in the case of assessed lands would cover 1½ years' crops or ten times the assessment in the case of unassessed lands will cover about 3 years' crops; and these would be proper charges, though I must admit that they are excessive. I do not like to reduce the figures still further than 5 and 10. That is the third penalty. In my opinion these penal charges could have been omitted altogether seeing that we have provisions for evicting contumacious ryots as well as ordinary persons who have been silly or foolish enough to encroach upon the property of Government. Besides the provision as to eviction, there is also the provision that the crops raised on land shall be liable to forfeiture. That is the next thing. Buildings and cattle-sheds or any other construction that may be on the land will have to be removed by the person concerned or they will be forfeited to Government. That will be the fifth penalty. The sixth penalty is the confinement, in the Tahsildar's cutcherry or the Civil Jail, of a contumacious ryot. No doubt that provision has been introduced to subdue an obstinate trespasser upon public land. But I submit that, in the case of a ryot who honestly believes that he has got the right to use a portion of the field as his own and particularly when he has a crop on it, he is sure to be contumacious till he harvests the crop. To make him forfeit his crops and to confine him in the jail, besides making him pay 10 or 20 times the assessment, is extremely hard. I appeal to you, Mr. President, with your vast experience of the different districts in the Presidency and to the Honourable Mover of the Bill to say that when the object of the Bill is not to make revenue out of these charges, these penal charges may be reduced to the reasonable figure of five and ten times the assessment. With these words I beg to move my amendment.

The Hon'ble V. C. Desika Chariyar seconded the amendment.

The Hon'ble Mr. G. STOKES:—I beg to say that the Government cannot accept the amendment. The matter of this penalty was carefully considered in the Select Committee; and I may say that the figures inserted here were not suggested by Government. They seem to me to be extremely moderate, too moderate if anything. There is certainly no reason to reduce them. If you reduce them, the trespasser can simply laugh at the Bill.

The Hon'ble K. VENKATA RAO :—Then what is the force of “shall” ?

The Hon'ble the ADVOCATE-GENERAL :—That is at the discretion of the Collector. If the Collector chooses to impose upon him, then he shall have to pay it, but not otherwise.

The Hon'ble K. VENKATA RAO :—All that I want is that the words “for any period not exceeding one year” should be omitted. Another thing is that even in the case of encroachments for more than a year the Collector may go on imposing ten times the assessment for each of the others. If a man goes on occupying the land without the Revenue Officers finding it out, if the encroachment continues and the man goes on cultivating the land for five, ten or twenty years, this clause might mean that he will be made to pay penal charges for each of the succeeding years after the first year. I should say that there should be one penal charge for any period of encroachment. Therefore, the word “shall” may be altered into “may”. If the learned Advocate-General thinks that the use of the word “shall” along with the words “at the discretion of the Collector” means that the Collector has got power completely to remit penal charges or not levy penal charges at all or to levy a charge of one pie—if that be the construction of the language used—then I would merely say that the words “for any period not exceeding one year” may be omitted, in order to take away the ambiguity that exists, as regards the levy of penal charges for each of the subsequent years after the first.

The PRESIDENT :—Before anything further is said, I would point out that if you remove these words “not exceeding one year” the clause is perfectly useless. The whole proviso is to go out and not these words only. The proviso, as it stands, was expressly drafted in order to meet your objection, which you put forward on the first occasion when the Bill came up for discussion.

The Hon'ble K. VENKATA RAO :—Thank you, Sir, I hope you will see that the clause, as it now stands, is also being capable of being construed as requiring the levy of penal charges for two, three, four or five years upon unauthorised cultivation of lands, if a man goes on keeping up the land and if he is not evicted out of the land. It is capable of that interpretation. Suppose a man keeps up land for three years without any action being taken under this Act, what is the sort of penalty to be levied? The assessment will be cumulative for three years. That assessment for three years multiplied by 10 will be the penal assessment. I, therefore, appeal to the learned Advocate-General and the President to say if that is not capable of that sort of construction. So far as I have been able to see, the expression “any period not exceeding one year” may mean that for each of the subsequent years, the penal assessment will go on accumulating. So the assessment will become cumulative and the penal charge will be ten times the cumulative assessment. Ten times the assessment may cover three or four years' net produce of the land. I submit that the ambiguity that now exists in the clause may be made clear and the clause made as reasonable as possible and to work with as little hardship as the Government could possibly arrange.

The Hon'ble K. VASUDEVA AIYANGAR :—I beg to second the amendment. I do not know why penalty should be levied if the cultivation extends for more than a year. It is often that good seasons would continue for two or three years and instead of allowing the land to lie fallow during the succeeding years, he may be allowed to occupy it, if the occupation is unobjectionable.

The Hon'ble Mr. G. STOKES :—It is necessary for me to explain what is the meaning of this provision. It is the policy of the Government to permit ryots to take up land when rain falls and to utilise it for growing crops, especially in the cases mentioned by the Hon'ble Mr. Venkata Rao, as occurring in Bellary and other dry districts. But it is not the policy of the Government to permit ryots to go on occupying the land unauthorisedly year after year, as it leads to fraud and confusion and gives the village officers an opportunity which we deem to be undesirable. It has long been the policy of Government that such temporary occupation should either be brought under patta or should be definitely given up. It is, therefore, necessary to retain the clause as it is. These men can protect themselves by getting their pattas

at jamabandi. You cannot have the revenue system upset, because the ryot does not choose to protect himself. To strike out this limitation and to allow a man to keep unassessed waste without getting patta will lead to difficulties and undesirable consequences. The Government cannot therefore accept this amendment.

The Hon'ble K. VENKATA RAO:—In the explanation to clause 3 we have got "for the purpose of this section occupation for an incomplete portion of a fasli may be deemed to be occupation for a whole fasli". There we have "for a whole fasli" and here we have "for any period not exceeding one year". Sub-clause (ii) of the clause says—

"(ii) If the land be unassessed, a sum not exceeding ten rupees, or when twenty times the assessment payable for one year under section 3 exceeds ten rupees, a sum not exceeding twenty times such assessment."

Here also is the limitation "payable for one year". All these may lead to an inference that the penal charges will have to be levied for the subsequent years also. The language of the clause is such that the executive officers are likely to construe it in a way whereby penal assessment will be levied for each of the subsequent years after the first. If the Honourable Mover of the Bill says that the penalty will not be levied for more than a year or that it will not amount to more than ten times the assessment for the year, then it will be clear.

The PRESIDENT:—Do you mean that if a man occupies the land for twenty years, he ought not to pay the penal assessment for more than a year?

The Hon'ble K. VENKATA RAO:—If he occupies it twenty years, it might be that he honestly occupied it. We need not take up extreme cases. In the case mentioned, it may be that the man might honestly believe that the land belongs to him. If the Revenue officers have slept over the matter, honestly believing that the property belonged to the man and allowed him to enjoy the property for five, ten or twenty years, I should certainly say that penal assessment should not be levied from him for any one of the years in which he has been in occupation. Of course the assessment will be levied for these years, but punishment cannot be for more than one year.

The amendment was put and lost.

With the permission of the President, the next amendment standing in the name of the Honourable K. Venkata Rao was withdrawn.

Clause 5 as amended was put and agreed to.

Clause 6.

The Hon'ble M. KRISHNAN NAYAR:—My next amendment is to omit "and" in line 48 and the whole of lines 49 to 59, both inclusive. The first paragraph of the clause deals with two matters, the first relating to eviction and the second relating to forfeiture. According to the clause as it now stands persons who trespass on the lands of which we have been speaking yesterday and to-day are liable to be evicted summarily and they are also liable to have certain things forfeited, which are mentioned in the Act, and which are on the land. My object in moving this amendment is to take away that provision relating to forfeiture and my reason for this is this. Trespassers are punished and the object of this Bill is to punish trespassers in various ways. There is the assessment imposed, the penalty imposed and there is also eviction, and there are other penalties imposed in the subsequent

portions of the clause. The levy of assessment, the levy of penalty and summary eviction are quite sufficient and it is unnecessary to have the other penalty of the forfeiture of certain things that are on the land.

The Hon'ble V. C. Desika Chariyar seconded the amendment.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—I hope my amendment will be considered even if this falls through.

The Hon'ble Mr. G. STOKES:—I must state that the object of the forfeiture clause is this. Encroachment is made upon communal land. Suppose a house is built and it is necessary that the land should be made available for its original purposes, what are we to do? If the house is not liable to forfeiture, it would be impossible to have the land cleared. The object of forfeiture is to enable the land to be cleared and made available in the condition in which it was originally, and to get clear of the encroachment upon it. If the provision as regards forfeiture is not to be included in this clause, then a man might be evicted and yet he might render the land useless for the purposes which rendered his eviction necessary. The Government might be put to considerable loss in restoring the land to the purposes for which it was intended. It is perfectly necessary to have the power of forfeiture and the Government cannot accept any amendment which tends to eliminate this provision from the Bill.

The Hon'ble M. KRISHNAN NAYAR:—The reason for inserting this provision in this clause is, as I understand it from the Honourable Mover, that there must be power reserved to Government of removing things deposited on the land; otherwise there is the danger of the things left there not being removed at all. If that is the only reason, then my amendment may be accepted. If anything that is in the land is worth having, the person owning it will remove it, and it is only those things that are worth nothing that he will allow to be forfeited. Certain concrete things are referred to in the clause, crops, buildings and products.

The Hon'ble Mr. G. STOKES:—He is given the liberty of removing them if he likes.

The Hon'ble M. KRISHNAN NAYAR:—Then I would withdraw my amendment if, before the order of forfeiture is passed, he is given the liberty of removing the things. I shall be satisfied with that.

The Hon'ble Mr. G. STOKES:—There is a difficulty about crops and I cannot accept the proposal.

The Hon'ble M. KRISHNAN NAYAR:—As the clause now stands he is not given the option of removing the crops. The object of the amendment is to take away the provision about forfeiture; or else he should be given the option of removing his things.

The Hon'ble Mr. G. STOKES:—He cannot be given that power as to crops. The crop is the security for the revenue.

The Hon'ble M. KRISHNAN NAYAR:—With reference to that, there is the assessment and the penalty.

The Hon'ble V. C. DESIKA CHARIYAR:—You can attach it under the Revenue Recovery Act.

The Hon'ble Mr. G. STOKES:—I am sorry the amendment cannot be accepted.

The amendment was put and lost.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—The amendment that I shall now propose is more modest than the one proposed by the Hon'ble Mr. Krishnan Nayar and I hope it will share a different fate from that of his amendment. Before I proceed to read the amendment that I have given notice of, I beg to draw the attention of the Council to the fact that clause 6 will cover cases of unassigned assessed waste lands, such as unassessed lands which might be set apart for communal purposes. This Council has been told on more occasions than one that it is not the policy of Government to discourage temporary occupation and cultivation of assessed waste lands. But so far as clause 6 goes, it is applicable to cases wherein according to the views of the Government it is desirable that without previous permission lands should be occupied and cultivated. If it be a case that there is previous declaration that no land shall be occupied, and that, in spite of the declaration, a person presumes to occupy it and cultivate it, there may be something said in favour of the clause requiring

the forfeiture of crops that have been raised in spite of such declaration or direction. But when a person is encouraged to cultivate lands without obtaining previous permission, I submit it would be unreasonable and hard upon him if he should be told at the time he is in a position to realise his harvest, that the crop that has been raised at great pains to himself is liable to forfeiture. I am aware that the expression is "shall be liable to forfeiture" and not "shall be forfeited". I am aware and I shall be replied to that we must expect officers to exercise this power reasonably; and all that is being sought to be done is to give them the power if they choose to exercise it and not to compel them to exercise it in every case in which it could be applied. I submit there is nothing in this Bill which imposes any restriction upon the discretion of revenue authorities. I would in this connection draw the attention of the Council to clause 8. It does not contain any provision for making rules under clause 6, so that the position comes to this: that there may be cases wherein no penalty shall be levied, but forfeiture of crops may be resorted to. The amendment that I propose is that the crop or other product shall be liable to forfeiture, if it be not removed within such reasonable time as the Collector may suggest, that is to say, to apply, in the case of produce, the very same condition that the clause, as it stands, contains in regard to buildings, and I fail to see what reason there is for the difference of treatment in regard to crops and buildings. It cannot be denied especially with the power to impose assessment under clause 3 and power to impose penalty under clause 5, that there is no necessity for its being insisted upon, that the crop shall be forfeited whether the person who raised it is willing to remove it or not. In the minute of dissent appended to the Select Committee's report, I have stated that I see no reason why this liberty to the person unauthorisedly occupying the land, of removing the crop or product that he might have raised on his land, within such time as the Collector might deem reasonable, should not be allowed. I also said that a provision might be made for making the crops or product available for the assessment which, under clause 3, is made payable on the land, so unauthorisedly occupied. I have not proposed anything in my amendment with respect to that suggestion of mine. The reason is that under clause 9, for the purpose of realising the assessment, the provisions of the Revenue Recovery Act are made applicable to cases of unauthorised occupation of land, so that when the crop is on the land, the revenue authorities can issue process and apply the provisions under the Madras Revenue Recovery Act to secure the assessment that may be due on the land in pursuance of the provisions of clause 3. I, therefore, submit that there does not seem to be any reason why a person who may unauthorisedly occupy a land should be deprived of the opportunity of removing the crop especially when we have provided ample safe-guards in the Bill for the payment of assessment. I beg to point out that taking clauses 5 and 6 they may be applied to individual cases cumulatively. The position comes to this: that whereas no penalty is to be levied in a particular case, yet the crop may be liable to forfeiture in that very case. That, I submit, shows the unreasonableness of the position that may be taken up by Government. I therefore beg to propose that in line 50 the words "shall be liable to forfeiture" and in line 52 the word "also" be omitted.

The Hon'ble P. S. Sivaswami Aiyar seconded the amendment.

The Hon'ble G. SRINIVASA RAO:—There is an amendment to the same effect in my name, and so I beg to support it.

The Hon'ble Mr. G. STOKES:—I confess that I have not been able to follow the Honourable Member's arguments. I do not really know what his argument was. In regard to this modified proposal, it seems to me it is open to the same objection as that which was moved for the omission of the whole provision about forfeiture. It has been pointed out that there are no rules in the Act relating to forfeiture. There is nothing to prevent this being regulated by executive orders. It is not a point to be dealt with by rules but by executive orders. There is no difficulty in regulating the question of forfeiture within proper and reasonable limits. I really do not understand accurately what the Honourable Member's arguments were and therefore I cannot reply to them. But I see no reason why this amendment should be accepted, and I therefore decline to accept it.

The Hon'ble V. C. DESIKA CHARIYAR:—The reason given by the Hon'ble Mr. Govindaraghava Aiyar is that you allow buildings to be removed. Clause 7 says: "Before taking proceedings under section 5 or section 6, the Collector shall cause to be served on the person reputed to be in unauthorized occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 5 or section 6." If he does not remove after notice, then you may make an order of forfeiture. Why should he not be allowed to remove the crops, as he is allowed to remove the building?

The Hon'ble Mr. G. STOKES:—The crop or product is the security for the revenue.

The Hon'ble V. C. DESIKA CHARIYAR:—For that you have under clause 9 a sufficient provision. On the other hand, you have now proposed to take the crops and also charge him the assessment. In the case of a building, you allow him to take it away, but in the case of crops you don't allow him to do so. You say that is only liable to forfeiture and that an executive order may be issued that it should not be forfeited. If that be so, why should we not make it clear in the Act itself.

The Hon'ble R. V. SRINIVASA AIYAR:—It seems to me that one reason for making a difference in the case of a building is that it can be removed at any time. But in the case of crops the objection to permit their removal is time will have to be given to occupy the land until the crops ripen. A trespasser might be evicted within one month after issuing the notice, but crops might not ripen till long after. Is he therefore to be allowed to remain on the land until crops ripen?

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—I am sorry that I did not make my remarks as clear as they might have been. The two chief reasons that I begged to urge and which I shall now repeat are that under clause 5 there are certain cases wherein no penalties can be levied although the land might have been unauthorisedly occupied. Whereas even in those cases wherein we have unauthorised occupation and no penalty is levied under clause 5, under clause 6 the crop or product raised thereon is liable to forfeiture. When we remember what the reason is why under clause 5 certain cases have been excepted from the liability to pay penalty—when we see what the reason is, namely, that it is not the policy of Government to discourage cultivation on assessed waste lands without previous permission, I submit that exactly the same reason holds good in regard to a case

4-40 P.M.

wherein a person, who may think that he may, without obtaining previous permission, cultivate unassessed waste lands and who, under that belief raises crops, may, when the time comes to gather crops, be told that he has unauthorisedly occupied lands, and therefore his crop would not be given to him and would become liable to forfeiture. The next point is that the argument that the crop is the security for the revenue is not an argument tenable for the purpose of rejecting the amendment as a whole, for the simple reason that the mere forfeiture of crops does not take away the liability of the person for the payment of assessment under clause 3. There is the condition of the penalty that he has to pay not in substitution of whatever liability he might have under clause 3. That will appear to be very hard especially in cases wherein a person may unauthorisedly occupy lands, technically speaking, because the policy of Government is to encourage people to occupy such land. It is said that the matter will be regulated by executive orders. If there is a likelihood of evil being worked by the provisions of this clause, there is no reason why my amendment should not be accepted. It has been said by another Honourable Member that there is a reason for making a distinction between the crops or other products that may be raised in the land and buildings. It is not necessary for the purpose of discussion to show that the distinction is ill-founded. Taking it that the distinction is ill-founded, that is not going to be preserved or the evil pointed out is going to be obviated by retaining this because the clause simply says "any crop or other product raised on the land shall be liable to forfeiture" and not immature crop. The point is that it will not be a crop until it is mature and as such is not capable of being gathered. Until it matures and is available for gathering, it cannot be a crop, and the point insisted upon therefore falls. Under these circumstances, there is no reason why the amendment that I have suggested should not be accepted.

The amendment was put and lost.

The Hon'ble G. SRINIVASA RAO :—There is a similar amendment in my name which lapses.

The Hon'ble M. KRISHNAN NAYAR :—The amendment that I now wish to move is that the words "reputed to be" in page 3, line 1, be omitted. The object of the amendment is this. We have already seen that the first portion of this clause relates to eviction and forfeiture and it vests in the Government the substantive right of evicting a trespasser and also provides for an order of forfeiture in respect of certain properties. The next portion, that is, the portion with which we are now concerned, goes on to speak of the adjective portion of the law. It says how the process of eviction is to be carried out. It says that that is to be done by serving a notice upon the trespasser or his agent, but the clause, as it now stands, says that the service of notice need not be upon the trespasser or his agent, but upon a person who is reputed to be the trespasser and who in reality may not happen to be the trespasser, or his agent. It is necessary that, specially in the interests of the trespasser, personal service of notice should be effected upon him or his agent. The difficulty that is suggested for personal service is that in some cases it may not be possible to serve the notice upon the trespasser or his agent. If it so happens that the person upon whom notice is actually served does not happen to be the real trespasser, the real trespasser will have a great grievance, inasmuch as orders of eviction will be passed behind his back without his knowing anything of the procedure adopted. It is conceivable that the ultimate duty of serving notice will fall upon the village official. The authorities who report to the Collector about a trespass will ultimately be the village authorities,—karnam, the village magistrate or the munsif. It is conceivable that in certain cases these village authorities may have spite or enmity against a particular person and although he may not be the actual trespasser, the village authorities may make a false report against him and the service of notice will proceed upon that false report and the proceedings will take place behind the back of the real trespasser. The object of this amendment is to remove possible difficulties and contingencies. There can be no difficulty in serving a notice upon a principal or his agent. All that I wish to have is that it must be personal service whether it be on the actual trespasser or his agent. I do not object to the service of notice upon the agent. The best thing will be to have personal service upon the principal, but that may not be always possible.

The Hon'ble V. C. DESIKA CHARIYAR :—I beg to second the amendment. It is stated in the clause "by serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent", that is to say, on a person reputed to be in occupation, without finding out whether he is really in occupation. If the officer who is to give the notice has not ascertained, in the first instance, as to who is the person that committed trespass, it will rather remove the responsibility of even the serving officer. Trespassers will have, in the first instance, to be brought to the notice of the Collector by the village officials; and it may be that in some cases a person who actually trespasses upon the land may be a person living in a neighbouring village or even outside the taluk. It is the person residing there who has to be caught for the purpose of having the penalty imposed upon him. And there can be no doubt whatever as to the person who actually squats on the ground. With the words "on the person in occupation or his agent", it ought to be quite enough to cover all cases. These words "reputed to be" make the whole thing very shady and the decision as to who are trespassers will practically be in the hands of village officers who may bring ruin upon any person if they happen to have any private grudge against him.

The Hon'ble Mr. G. STOKES :—The Honourable Member who has just said down has said that it is well known who the actual trespasser is. With that remark I perfectly agree. Everybody knows in the village who the actual cultivator is. But if you go to a village and serve a notice upon A who is the actual trespasser, he at once says that it is B, and in five minutes one-half the village will say it is A and the other half B; and it will be impossible to prove who actually is the cultivator. But if you say a person "reputed to be," it will be known to everybody in the village and



if you give him notice, the notice will get to the right man, and the man who is to have the notice will have it. You know what in the hands of a skilful lawyer, the legal obligation to effect service of a notice may be. We cannot allow this convenient loop hole for litigation in regard to notice to be opened in this Bill. It will be no injustice to say that the notice will be served on the person "reputed to be in possession," because the person who has made the cultivation and to whom notice ought to go will invariably get it. If you make it a legal obligation to serve notice upon the actual trespasser, you make it liable to proof that it has been served upon him, and then the whole of the flood gates of litigation will be opened. This matter was very carefully considered in the Select Committee and the conclusion arrived at was that these words were necessary and should be put in. I therefore regret that the Government cannot accept this proposal.

The amendment was put and lost.

The Hon'ble M. KRISHNAN NAYAR :—My next amendment is for the omission of portions of this clause. I beg to move that the words "and if the" in line 8 and all the lines from 9 to 31 be omitted. The object of this amendment is this: The second portion of this clause shows how eviction is to be effected. Then it goes on to say how, in cases of obstruction, obstruction is to be dealt with. There is a provision that the Collector shall, under certain circumstances, hold a summary enquiry and he has the power of sending certain persons to jail and of having them there for a period of one month. I don't wish to take up your time by going into the detailed reasons that prompt me to move this amendment. All these reasons I and the other Honourable Members gave at the time the Bill was originally introduced into the Council. The effect of giving this power to the Collector of confining persons in jail is to make the plaintiff the judge. On the day the Bill was introduced, I was told by the Honourable Member in charge of the Bill that the Collector had no interest in the matter and that it was not likely that any personal feeling would be brought into play when he passed orders in sending persons to jail. As for the remark that the Collectors have no personal interest as against the person against whom the proceedings are taken, I admit that they don't have the interest which private individuals have, but, so far as the effect of the working of this clause is concerned, I may say that the Collector may be said to have interest. As I submitted on that occasion, the stage in which the Collector exercises the power of sending persons to jail is the last stage. Before this stage is reached, he has passed various orders and in each stage his conviction that the land belongs to Government and the man is a trespasser becomes, so to speak, more and more intense. In the first place as soon as he receives information of his trespass, he passes an order levying an assessment. Then he comes to a conclusion that the person against whom he passes the order of assessment is a trespasser. The next stage is one in which he passes another order levying the penalty, so to speak. The Collector is after all human and his conviction becomes a little more intense in the second stage. The third stage is when he passes an order of eviction. It may be noted that in these various stages, orders are passed without hearing the alleged trespasser. In the fourth stage he passes an order of forfeiture and later on in the fifth stage he holds an enquiry with reference to the question of obstruction. In the last stage he holds a summary enquiry and passes an order for sending him to jail. After passing the orders in the first four stages, it is not likely that he will refrain from exercising this power of sending him to jail. It is highly dangerous that the power should be given to executive officers, officers who themselves are parties to the case. In these circumstances I submit that this provision should be taken away from this clause.

The Hon'ble G. SRINIVASA RAO :—I second the motion for the reasons which I have given on a former occasion and which the Honourable Mover has given now.

5 P.M.

The Hon'ble Mr. G. STOKES :—I have already alluded to this matter and I can only say that in the interests of the ryots themselves, it is absolutely necessary that this clause should be retained in the Bill. To put the ryot into the hands of a criminal court, merely in obedience to a fantastic notion that the Collector is not likely to be impartial, seems to me cruelty. I regret therefore that the Government cannot accept this amendment.

The Hon'ble V. C. DESIKA CHARIYAR:—I beg to support this amendment. I cannot understand what the Honourable Member in charge of the Bill means by saying that it will be cruelty to expose the ryot to a criminal prosecution by sending him to the criminal court. I would respectfully ask how many such criminal prosecutions have taken place all these years? It is easy to say that the Revenue officers are the true friends of the ryots and we have had a statement to-day from an official Honourable Member that they represent the public better than the lawyers here.

The PRESIDENT:—Who said that?

The Hon'ble V. C. DESIKA CHARIYAR:—The Hon'ble Mr. Castlestuart Stuart said that the officials represent the public as well as the Non-Official Members of the Council. I think I am right in saying that, but I am speaking subject to correction. If that be so, I may say that I don't think that any such representation exists. There are several respectable and honest revenue officials, the members of the Honourable Civil Service for whom I have the greatest respect; but I would not, for one moment, concede that they are in any sense of the word the representatives of the public. It is to-day for the first time I hear it stated in this Council.

The Hon'ble Mr. G. STOKES (*interrupting*):—I rise to ask: Is this in any way connected with the motion before the Council?

The PRESIDENT:—I regret to say that it is not particularly germane, considering the short amount of time that we have at our disposal.

The Hon'ble V. C. DESIKA CHARIYAR:—I would not take up one moment longer than is absolutely necessary. I think that these statements should not go unchallenged. The Honourable Member in charge of the Bill said "we are only doing something in favour of the ryots". There, I say, I do not agree with the Honourable Member. Nobody contends that criminal prosecutions should or would be started in every one of these cases. If it was our case that people should be sent to criminal jails, certainly the Honourable Mover of the Bill would be correct in saying that as between the two, namely, the criminal court and the Tahsildar's or Collector's cutcherry, which is better or worse. But if a man is taken before the ordinary tribunal, you have the safeguard of an appeal; you have the provisions of the Evidence Act being made applicable and the man would be represented by a pleader, by one who can well represent him and his interests will be safeguarded too. It is all very well to say "I am only representing the poor ryot and he will be better taken care of in the Tahsildar's office". What will you do for his food? Suppose he is detained there for two or three days, what provision have you made for his maintenance? In the Civil Procedure Code there is a provision for the maintenance of people sent to the civil jails. Suppose a man is kept for more than a day or a couple of days or three days in the Tahsildar's office, what provision have you made for his maintenance? It only reminds me of a passage in Shakespeare's Julius Caesar where Brutus says "he that cuts off 20 years of life cuts off so many years of fearing death. So are we Caesar's friends that have abridged his time of fearing death". It is the same kind of reasoning here. You take away the land, you charge him ten times the assessment, you evict him from the land and yet you are not satisfied. What is the object of sending the man to jail and keeping him in close custody, as the clause would have it? What is the object to be gained? In his opening speech, the Honourable Member said that this is intended to meet contumacious cases. However contumacious a man may be, I don't think it will be difficult to obtain possession of land from him. What cases have there been in which, with the assistance of the police authority, possession was not obtained?

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—In addition to the reasons that have already been given I have to say that the officer who thinks that the man has resisted his eviction is the person who has himself to commit a person to jail. The proper thing will be to send the man to the criminal court where the whole thing will be judicially tried and the chances are that there will be a smaller number of cases wherein punishment will be meted out than it will be, if the officer whose authority is supposed to have been disrespected is himself allowed to exercise the powers which are proposed to be given by clause 6. That I think is a circumstance which the Council will have to consider in determining the wisdom or otherwise of

retaining these very severe and drastic provisions in clause 6. No doubt it has been said that the ryot might exclaim "save me from my friends"; but I rather think that the ryot would prefer to be dealt with in the ordinary course, when he knows that the person who is to try him is one who has not formed any ideas in the matter and who is not personally aware of what has taken place and has not had his opinions any way warped by the views of other people.

The amendment was put and lost.

Clause 6 was allowed to stand part of the Bill.

The PRESIDENT:—May I know how long the discussion on the remaining clauses of the Bill is likely to last?

The Hon'ble M. KRISHNAN NAYAR:—At least one hour and-a-half.

The Hon'ble K. VENKATA RAO:—As the discussion is not likely to be finished to-day, can we not adjourn the meeting?

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—I think it would be better to adjourn it.

The Hon'ble M. KRISHNAN NAYAR:—May we not adjourn the discussion to the meeting of the 4th proximo?

The PRESIDENT:—No. That cannot be done.

The Hon'ble Mr. A. E. CASTLESTUART STUART:—We may go on and finish it to-night.

The PRESIDENT:—If we sit till 7 o'clock, we may finish it.

The Hon'ble Mr. A. E. CASTLESTUART STUART:—I understand, Sir, that the sole reason why some of the Honourable Members wish to adjourn this meeting is that they may take part in another meeting which is about to be held elsewhere in condemnation of the representative of the Sovereign in this country. If that is the reason, I do not think this meeting should be adjourned for the convenience of those Honourable Members.

The PRESIDENT:—I don't adjourn the meeting for the convenience of any particular person but of the Council.

The Hon'ble V. C. DESIKA CHARIYAR:—If it is the object of the Hon'ble Mr. Castlestuart Stuart to detain us on that account, I hope the President will not listen to it.

The PRESIDENT:—I think the matter may be allowed to drop. We had better adjourn the meeting now, but I hope Honourable Members will understand—and I hope it will be in their power to understand—that I should like the discussion to be finished within two hours to-morrow.

5-10 P.M.

The Council will now adjourn till 11-30 to-morrow morning.

H. D. TAYLOR,

Ag. Secretary to Government, Legislative Dept.

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 Vic., cap. 67, and 55 and 56 Vic., cap. 14.

The Council met at the Council Chamber, Fort St. George, at 11-30 A.M. on Thursday the 23rd day of March 1905.

PRESENT:

The Hon'ble Sir JAMES THOMSON, K.C.S.I.—*Presiding*.
 The Hon'ble Mr. G. STOKES, C.S.I.
 The Hon'ble Diwan Bahadur R. V. SRINIVASA AIYAR Avargal.
 The Hon'ble Mr. A. G. BOURNE, D.Sc., F.R.S.
 The Hon'ble G. SRINIVASA RAO Avargal.
 The Hon'ble M. KRISHNAN NAYAR Avargal.
 The Hon'ble K. VENKATA RAO Garu.
 The Hon'ble Mr. H. P. HODGSON.
 The Hon'ble Mr. H. BRADLEY.
 The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR Avargal, Zamindar of Chunampet.
 The Hon'ble Mr. A. E. CASTLESTUART STUART.
 The Hon'ble P. S. SIVASWAMI AIYAR Avargal.
 The Hon'ble V. C. DESIKA CHARIYAR Avargal.
 The Hon'ble Mr. J. E. P. WALLIS (Advocate-General).
 The Hon'ble Mr. J. TWIGG.
 The Hon'ble Mr. G. S. FORBES, C.S.I.
 The Hon'ble L. A. GOVINDARAGHAVA AIYAR Avargal.
 The Hon'ble Mr. A. J. YORKE.
 The Hon'ble Mr. M. HAMMICK, C.I.E.
 The Hon'ble K. VASUDEVA AIYANGAR Avargal.
 The Hon'ble Mr. W. B. DEWINTON, C.I.E.
 The Hon'ble Mr. C. J. WEIR.

THE MADRAS LAND ENCROACHMENT BILL.

Clause 7.

The PRESIDENT:—We will now resume our deliberations with clause 7.

The Hon'ble M. KRISHNAN NAYAR:—I beg to propose that in line 33 before "5" be added "3 or section". As the clause now stands it says that before penalty is

levied upon a trespasser and also before action is taken with reference to eviction or forfeiture, the Collector should send notice to the alleged trespasser; but the clause, as it stands, does not make it obligatory on him to send notice to the alleged trespasser before the assessment is levied upon him. There are various penalties to which a trespasser is subjected, liability to assessment, liability to penalty and liability to eviction. With regard to liability to pay penalty and liability to be evicted, the clause says that before these two are enforced notice should be given. There is no provision to give notice before liability to pay assessment is enforced under clause 3. No injury or inconvenience can result to anybody by sending notice, whereas there would be a good deal of convenience, resulting from sending notice before he is called upon to pay assessment.

The Hon'ble V. C. Desika Chariyar seconded the amendment.

The Hon'ble Mr. G. STOKES:—The proposal is that before any assessment is imposed on assessed or unassessed lands, notice should be sent to the trespasser. I can quite understand the Hon'ble Mr. Krishnan Nayar's thinking that this would cause no inconvenience to anybody, because he is absolutely ignorant of what goes on in the Revenue cutcherry and how this assessment is imposed. If he knew that the adoption of his amendment would involve the issue of half a million notices, then he

would consider whether it is worth while to give notice for the mere imposition of assessment under this clause. To give notice, it would take the Revenue establishment the best part of a month to do nothing but issue notices and serve them in connection with cases that fall under this clause. As far as I can see, there is no reason why these people should receive notice before they are assessed. The proposal is perfectly impracticable and unnecessary and the Government cannot accept it.

The Hon'ble Mr. M. HAMMICK :—This proposal would place the trespasser in a better position than ordinary sivaijama cultivator, whose cultivation is under the ordinary darkhast rules.

The Hon'ble M. KRISHNAN NAYAR :—The Hon'ble Mr. Stokes says that a very large portion of the Revenue officers' time and that of the village officers will be occupied in sending notices, and that I am ignorant of the fact that it would involve the sending of half a million notices. With reference to that, I suppose half a million is the total number of notices that will have to be served throughout the Presidency.

The Hon'ble Mr. G. STOKES :—Yes.

The Hon'ble M. KRISHNAN NAYAR :—I don't think half a million is necessary in the case of a district. If half a million or a large number is necessary in the case of levying assessment, I suppose the same number of notices will be necessary in the case of penalties and evictions.

The Hon'ble Mr. G. STOKES :—I don't suppose penalties and evictions will be inflicted in every case.

The Hon'ble M. KRISHNAN NAYAR :—The Bill, as it stands, provides for their being imposed in all cases. In the case of a penalty and eviction, the number of notices to be given is large. By that reason, the necessity for giving notice is not done away with. Though the number of notices for penalty and eviction may be large, still the Bill provides for the sending of notices in such cases. I submit that the very same reason exists in the case of *assessment* for sending notices. If there should be a large number of notices to be sent out, printed forms will have to be brought into existence and the only thing that would then be required would be the filling up of the dates and names of persons and the amounts claimed. That would not involve much trouble. Therefore the reason suggested by the Honourable Member in charge of the Bill is, I don't think, applicable to this case. For that reason this amendment need not be rejected.

The amendment was put and lost.

The PRESIDENT :—The next three amendments standing in the names of the Hon'ble M. Krishnan Nayar, the Hon'ble G. Srinivasa Rao and the Hon'ble K. Venkata Rao refer to the omission of the words "reputed to be".

The Hon'ble Mr. G. STOKES :—They lapse by reason of the fact that a similar amendment was thrown out.

The Hon'ble M. KRISHNAN NAYAR :—If it is a matter of pure procedure, it is all right.

The PRESIDENT :—I would rather that you withdraw it yourself.

The Hon'ble M. KRISHNAN NAYAR :—I don't want to withdraw it. If you rule that it lapses, then I will not move it.

The PRESIDENT :—I don't think it lapses.

The Hon'ble M. KRISHNAN NAYAR :—I beg to propose that in line 34 the words "reputed to be" be omitted.

The Hon'ble G. Srinivasa Rao seconded the amendment.

The Hon'ble Mr. G. STOKES :—This amendment is identical in substance to the one which we discussed some time ago, though I do not of course dispute the ruling given by the Chair. There is no reason to accept it.

The amendment was put and lost.

The Hon'ble G. Srinivasa Rao and the Hon'ble K. Venkata Rao withdrew their amendment for the omission of the same words.

With the permission of the President, the Hon'ble M. Krishnan Nayar withdrew the following amendments of which he had given notice :

In line 36, before "of" be added "or under the control".

In line 39, between "section" and "5," be added "3 or section".

The Hon'ble V. C. DESIKA CHARIYAR :—I beg to propose that in paragraph 2 that for the figures and words "25 of the Madras Revenue Recovery Act, 1864, or in such other manner as the Local Government by rules or orders under section 8 may direct" the figures and words "39 of the Madras Rent Recovery Act VIII of 1865" be substituted.

My amendment is a simple one and contains nothing new or unknown to the legislature. I only ask you to take in the provisions of section 39 of Act VIII of 1865, instead of section 25 of Act II of 1864. If you leave the serving of notices to the discretion of the village officer, you leave it to him to serve it personally on the defaulter or his agent or to fix it on the land itself. Why I mention section 39 is that if direct service is impossible then you can serve it in the manner which is called substituted service in law. Section 39 of Act VIII of 1865 says that "the notice shall be served by delivering a copy to the defaulter or to some adult male member of the family at his usual place of abode or to his authorised agent or when such service cannot be effected by affixing a copy of the notice on some conspicuous part of his last known residence or in some conspicuous part of the land to which it refers". Instead of leaving the matter to the discretion of irresponsible village officials as to whether he should serve it directly or indirectly, let him be told that he should serve it directly and if he cannot do it he may serve it indirectly. I trust that the Honourable Member in charge of the Bill would see his way to accept this amendment. He will notice that the serving of notice is not in the hands of any responsible official, not even in the hands of a Deputy Tahsildar but in the hands of the village karnam or the village monigar. The clause says "or in such other manner as the Local Government by rules or orders under section 8 may direct". That will be quite unnecessary. If you will simply accept my amendment it will relieve Government of this responsibility. In the case where the karnam says that he cannot serve directly, if he satisfies the Deputy Tahsildar—he is not to satisfy the troublesome vakil—or the Deputy Collector, then he can serve it in the manner provided in the clause.

The Hon'ble M. Krishnan Nayar seconded the amendment.

The PRESIDENT :—The purpose of your amendment is to get rid of the words "in such other manner as the Local Government may direct". That is the same as section 39 of the Rent Recovery Act.

The Hon'ble V. C. DESIKA CHARIYAR :—With this difference that the words "when such service cannot be effected" are omitted in section 25 of Act II of 1864. There are two provisions, one relating to direct service and the other to indirect service, and there is a difference made between the two. Attempt should be made first to serve a notice directly, and then if it fails indirectly.

The Hon'ble Mr. G. STOKES :—This point was considered in the Select Committee and we took section 25 of the Madras Revenue Recovery Act, Act II of 1864, in preference. It seems to me that Act II of 1864 is an Act *in pari materia* so that service in one case must be in exactly the same manner as in the other. The introduction of the change proposed may lead to considerable amount of misunderstanding among revenue subordinates. In the case of this Act, if they serve the notice as required in the latter part of the clause without necessarily carrying out the first part, it will give rise to trouble. This clause of the Bill was also considered in the Select Committee and it was suggested that service by registered letter sent by post should be allowed or might be convenient. I can conceive of cases in which service could not be carried out if we leave out the words suggested by the Honourable Member. There is no means in the Act by which it could be effected. We do not know how it may be convenient to serve notices hereafter and therefore we cannot omit the provision as to the making of rules.

The Hon'ble V. C. DESIKA CHARIYAR :—Would you pardon me, I will retain those words if you insert the words "if such service cannot be effected".

The Hon'ble Mr. G. STOKES :—Your amendment is not to that effect.

The Hon'ble V. C. DESIKA CHARIYAR :—I merely suggest it to you so that you may not object to it and it is a mere verbal matter.

The Hon'ble Mr. G. STOKES :—The object of the words which the clause contains is that as there may arise hereafter other and more convenient methods for service and if the power to make rules is not provided for in this clause then those methods could not be carried out hereafter. Registered post was, as I said, one of the means suggested and there may be others in future. I do not know what civilization may bring. We may be able to serve notices by telegraph or telephone. I think that to prevent any question that may be raised hereafter it is necessary to retain these words.

The Hon'ble V. C. DESIKA CHARIYAR :—The reason given by the Honourable Member in charge of the Bill is with reference to the latter part of the clause, so that if necessary the Government might be enabled to send notices by post. I have no objection to that portion being retained. As to the other portion being introduced, namely "if such service cannot be effected", he says that subordinate revenue officials can only act in one groove and they are incapable of improvement. I am sorry that they are incapable of improvement. You simply ask him to serve it on the person upon whom you are going to inflict all sorts of cumulative penalties; you are going to leave it in the hands of the low-paid karnam or the village munsif or the village monigar whether he should fix the notice in some part of his property or land instead of making an attempt to find out who the person is and who is to be charged with all these penalties.

The amendment was put and lost.

With the permission of the President the Hon'ble M. Krishnan Nayar withdrew his amendment for the omission of the words "or in such" in line 43 and for the omission of the whole of lines 44 and 45.

The Hon'ble K. VENKATA RAO :—In behalf of the Hon'ble Mr. Govindaraghava Aiyar and in his absence * I beg to move the amendment which stands in his name. The amendment is—

After this clause insert the following :—

"7-A. In any case of unauthorised occupation of land which is the property of Government, the Collector may at his discretion take proceedings under section 5 or under section 6 but not under both in any fasli."

This is almost similar to the one which I withdrew yesterday. Under this Bill we have a number of penalties imposed upon a person cultivating land without permission. The assessment that is levied he must pay for cultivating other people's property. That is provided for under clause 3. Then penalty has to be levied at the discretion of the Collector and that is provided for in clause 5. Then we have got eviction in clause 6. I submit that when a man is subjected to one sort of punishment, he must not be subjected to another sort of punishment for the same illegal or unauthorised acts during the same fasli. Suppose for the first fasli, the annual assessment is collected as provided for in clause 3; in the second year if he persists in occupying the land and cultivating it, the revenue authorities may proceed to impose penalty or to evict him, and any crop or product which is the result of his sowings may be forfeited. But to make him pay ten or twenty times the assessment as penalty and then again to proceed against him under clause 6 by evicting him as well as forfeiting his crops and buildings looks more as vindictive than as required by the circumstances of the case. I submit, therefore, that in any one of the faslis the procedure prescribed in clause 5 or 6 may be adopted and if he still persists in keeping up the land, the other procedure may be immediately followed and if he is obstructive or contumacious the imprisonment provision may be enforced. These proposals are equitable and just and would not work hardship among the ryots and I hope that this amendment will be accepted by the Honourable Member in charge of the Bill.

The Hon'ble P. S. SIVASWAMI AIYAR :—I beg to second this amendment. I do not see any reason why these provisions should be worked cumulatively. If the clause relating to penalties is enforced, it is rather hard that the same person should be evicted. If he is to be evicted, there is no reason why penalties should be levied. The special object of the Bill is to enable Government to turn out a trespasser. It has been said that this Bill is not a fiscal measure. If therefore the man is turned out and possession of the land is obtained by Government there is no necessity to impose

* The Hon'ble L. A. Govindaraghava Aiyar arrived late.

a penalty. This amendment will prevent the Government from evicting a man and at the same time imposing a penalty under clause 5. If the penalty imposed on him in one year is ineffectual, in the second year he may be turned out. All that this amendment attempts to do is that the two remedies, the remedy of penalty and the remedy of eviction should not be pursued simultaneously in the same fasli. The amendment seems to be reasonable.

The Hon'ble Mr. G. STOKES :—Perhaps I shall best deal with the question if I take a concrete instance. If a man encroaches upon poramboke land, it is conclusively objectionable. But his encroachment is such that the assessment under clause 3, the highest dry rate of the village is one rupee. The maximum penalty leviable is Rs. 5, so that it may be perfectly worth his while to hold on to the land at an assessment of Rs. 5. Suppose you evict him and he walks back to the land what are you to do? According to the amendment, in one year you can make him pay assessment of Rs. 5 and you cannot evict him till the next year. It is perfectly worth his while to pay Rs. 5 and then be evicted and then to come back again. He can win by persistence by walking in again. This will be a premium upon encroachment on poramboke lands. I must say I do not at all sympathise with your desire to save an encroacher, as to my mind he deserves no consideration. It is not desirable that he should be able to use his own wrong to his own advantage and to absolutely defeat the Act. He can almost do it, in fact he can practically do it even under the Act as it stands. If this amendment is introduced he can certainly do it; he can hold on to the land for 12 months by paying Rs. 5 and it would give him what he wants. This amendment is a premium on his defeating the Act.

The Hon'ble K. VENKATA RAO :—I beg to correct the Hon'ble Mr. Stokes by saying that taking the same instance of a man usurping or squatting upon poramboke lands for enormous benefit of his own, he can be at once evicted without any penalty being levied for occupation less than a year.

The Hon'ble Mr. G. STOKES :—Suppose he walks back after one month.

The Hon'ble K. VENKATA RAO :—If he walks back he can be handed over to a Criminal Court? Only once he can be evicted.

The Hon'ble Mr. G. STOKES :—How can he be handed over to a Criminal Court?

The Hon'ble K. VENKATA RAO :—The last paragraph of clause 6 says—

"Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 183, 186, or 188 of the Indian Penal Code in respect of the same facts."

The only exemption is that when he is committed to the civil jail or confined in the taluk cutcherry he should not be prosecuted under the Penal Code.

The Hon'ble Mr. G. STOKES :—That clause would not apply.

The Hon'ble K. VENKATA RAO :—In clause 6 is given the power of carrying out eviction as well as forfeiture even during the first year.

The Hon'ble Mr. G. STOKES :—That does not touch the matter.

The Hon'ble K. VENKATA RAO :—It is only under clause 5 that this provision has been introduced, namely for a period not exceeding one year. That is as regards the penalty. But under clause 6 any person may be summarily evicted by the Collector. One year's rule does not apply to clause 6. I hope I am correctly interpreting these two clauses. You say that under clause 5 a man is not to pay any penalty, if his occupation is for less than a year. In clause 6 no such proviso is introduced. Every one of the revenue authorities has got power to evict a person and to make him forfeit his property even during the first year. As soon as he squats upon poramboke or Government land, he can be evicted and if after he is evicted he comes back to the land he comes with the full intention of usurping others' property and therefore he is liable to criminal prosecution. In the first instance there might be a *bona fide* belief on his part that the land belonged to himself. But when he has been once evicted, if he comes back to the land, he will be liable to prosecution.

The Hon'ble the ADVOCATE-GENERAL:—He cannot be prosecuted for coming back. But it is only when he obstructs eviction, he can be prosecuted.

The Hon'ble K. VENKATA RAO:—If a man trespasses upon another man's land, do you mean to say that he cannot be criminally prosecuted?

The PRESIDENT:—It does not follow that the Government desires to criminally prosecute him.

The Hon'ble K. VENKATA RAO:—Suppose a man is evicted half a dozen times and he comes back, is he exempt from criminal prosecution?

The Hon'ble Mr. G. S. FORBES:—Yes, certainly.

The Hon'ble K. VENKATA RAO:—If he is once told that the land does not belong to him?

The Hon'ble Mr. G. S. FORBES:—He *bona fide* thinks it is his.

The Hon'ble K. VENKATA RAO:—If he comes back to the land, I think he will be liable to criminal prosecution, inasmuch as he has been told that the land does not belong to him and he has been evicted from the land. Therefore I say by the existence of this proviso the power of eviction as well as forfeiture can be exercised during the first year as also during subsequent years. But at the same time all that we want is that during the same fasli both the punishments ought not to be inflicted—both the penalty and the eviction.

The amendment was put and lost.

Clause 7 was allowed to stand part of the Bill.

Clause 8.

The Hon'ble Mr. G. STOKES:—I beg to propose that—

in sub-clause (c), line 54, after the word "lands", the words "which are the property of Government" be inserted.

This is merely a verbal amendment.

The Hon'ble P. S. SIVASWAMI AIYAR seconded the amendment.

The amendment was put and agreed to.

With the permission of the President, the Hon'ble V. C. DESIKA CHARIYAR withdrew his next amendment of which he had given notice, and which was the same as that just carried.

The Hon'ble M. KRISHNAN NAYAR:—My next amendment for the omission of sub-clause (d) lapses.

That is consequential upon the amendment already lost.

Clause 8, as amended, was allowed to stand part of the Bill.

Clause 9.

The Hon'ble G. SRINIVASA RAO:—The amendment that I wish to propose is that the words "shall be deemed to be land revenue and" in lines 3 and 4 be omitted. My impression is that that declaration is unnecessary and even after omitting those words the assessment and the penalty will be recovered as land revenue and the consequent omission of the words will clearly answer the purpose.

The Hon'ble M. Krishnan Nayar seconded the amendment.

The Hon'ble Mr. G. STOKES:—One of the points in the judgment is that the assessment imposed on unassessed lands is not land revenue. It is, therefore, to correct that that these words are necessary. It must be regarded as the regular land revenue of the country.

The Hon'ble V. C. DESIKA CHARIYAR:—It is a contradiction in terms. If it is land revenue, it can be recovered as arrears of land revenue. But if it is land revenue, how can you order forfeiture? It is a mistake to suppose that the High Court did say anything like that. They said that it was illegal to recover it as land revenue, when the penalty imposed exceeds the gross produce or outturn and cannot in any sense of the term be rajabhagam.

The Hon'ble Mr. G. STOKES:—Did you read Mr. Justice Subrahmanya Aiyar's judgment?

The Hon'ble V. C. DESIKA CHARIYAR:—Yes. With great deference to you I submit that he does not say that. All that he says is that you have no authority to recover it as land revenue. That was because you had no authority to claim more than a portion of the outturn and certainly not more than the whole. Now that you have authority you can recover it in the same way as land revenue. But if you call it land revenue there can be no forfeiture. Not that we are anxious about the matter, but we are only pointing out to you that it is a contradiction in terms as the clause stands in the Bill.

The Hon'ble Mr. G. S. FORBES:—I think what the Hon'ble Mr. Desika Chariyar has said about the effect of the judgment of the High Court is correct. As pointed out by the Hon'ble Mr. Krishnan Nayar the other day, the whole *ratio decidendi* of the High Court judgment was that as Act II of 1864 was worded, you cannot recover the charge under that Act. One reason was that the Act talked about "holders" of land and so on. The true effect of the judgment was simply that it was a question of procedure and that under the Revenue Recovery Act, as it stands, the charge cannot be recovered. But at the same time I do not see how there is any contradiction in terms. The statements made in the several judgments as to what was land revenue and what was not were not altogether consistent; nor I think were they material to the decision. In any case I do not see why the Government should not declare, so as to make it quite clear, that this is land revenue, and if it is once declared that it is land revenue there is no reason why it should not be recovered as land revenue.

The Hon'ble P. S. SIVASWAMI AIYAR:—I wish to say a few words in support of this amendment. My objection to this provision in clause 9 is based upon somewhat different grounds to those urged by my Hon'ble friend Mr. Desika Chariyar. My objection is that you cannot levy land revenue from land which has been unauthorisedly occupied. If the land has been occupied with the authority of Government or has been lawfully occupied, you are entitled to levy land revenue. But if the land has been unauthorisedly occupied and if the land belongs to Government, the Government has no right to levy land revenue. Just look at the consequences of declaring that it will be due as land revenue. Under the Revenue Recovery Act, the land and its produce are deemed to be security for revenue. These legal terms "security" and "charge" cannot be used with regard to one's own land. You may have a charge upon another man's land for any claim there may be against him. But it is impossible in law for a person to have a charge upon his own property. That is the effect of the declaration that this is land revenue. All practical purposes are served by the declaration that it shall be recovered as arrears of land revenue. That will enable the Government to apply the whole machinery of the Revenue Recovery Act for the purpose of realising this amount, just as in the Abkari and other Acts there are provisions to the effect that certain dues to which the Government is entitled may be recovered as arrears of land revenue. These words will be quite sufficient to confer upon Government the power of realising it in a suitable manner. To go and declare that it shall be land revenue will involve all the consequences of the Revenue Recovery Act, and this among others is that it will be a charge upon the land, which to me is inconceivable, inasmuch as you cannot have a charge upon your own land.

The amendment was put and lost.

Clause 9 was allowed to stand part of the Bill.

Clause 10.

Clause 10 was allowed to stand part of the Bill.

Clause 11.

The Hon'ble V. C. DESIKA CHARIYAR:—Mr. President, the amendment that I wish to move is another simple amendment of mine. Clause 11 reads that "no appeal shall be brought after the expiration of sixty days from the date of the decision or order complained of". My amendment is that the sixty days must run

from the date of the communication of the decision to the party concerned. Before 12-20 P.M. any man can think of appealing he must know that there is an order to be appealed against. I only say let there be communication of the order to be appealed against. Who are the sort of persons that are going to pass orders? Not gentlemen who will be stationary officers like a Civil Court Judge, but persons who, in the very nature of their business, must be here to-day and there to-morrow. They are travelling officers and after hearing a case in one place might go and deliver an order or judgment at another place. It is difficult for a party to go after them. Considering the serious penalties involved in the order, is it at all unreasonable to ask that the order should be communicated to the party concerned and that the time prescribed for appeal should be counted from the date when such communication takes place? I therefore beg to propose that in line 22 after the word "date" be inserted the words "of communication to the party concerned".

The Hon'ble K. VENKATA RAO:—I have a similar amendment in my name and I will withdraw that and second this amendment. The practice in the Revenue Courts is that the Collector hears appeals and sometimes pronounces orders in the presence of the party and sometimes reserve orders. In the latter case he may take the records home and orders may be passed subsequently a few days afterwards or a few weeks afterwards, and in several cases a few months afterwards and the parties are not sent for to hear the decision. The decision is written on the papers and sent over to the office. How is the party to know that an order has been passed against him or in his favour. It may be said that he will know it somehow or other, but I don't think he will be able to know it. If he does know it will be in violation of the Official Secrets Act by getting the information from some of the subordinate clerks of the Revenue Department. That we cannot presume. When they do not get regular information, some provision must be made for communicating the orders to them. We do not find that any such provision has been made regarding communication of orders passed under clause 3, 5 or 6. So what we wish to introduce by this amendment is that at least when order is passed against him he should have the right of appealing within sixty days from the date on which the order has been communicated to him. We do not say in this amendment that the time should run from the date he receives the order and all that we want is that the time allowed for appeal may be made to count from the time the order is communicated to him. If it is posted, the date of posting will be known from the registers and that may be taken as the date on which the order has been communicated, or it may be the date on which the order is sent to the village Reddi and that date may be taken as the date on which the order is communicated to the parties, as the Reddis are expected to communicate the order at once. If they don't do so that will be at their own risk. It is a very modest amendment that has been proposed and it will also save the parties from being hauled up for getting information unofficially, if he gets information otherwise than through the legal channel. I therefore submit that the date of communication should be the starting point for fixing the period during which he should have the right of appeal against orders passed under this Act.

The Hon'ble Mr. G. STOKES:—I would explain that this matter was considered in Select Committee. There are two ways in which you can deal with this matter. You can make the appeal time count either from the date of the order or from the date of the communication of the order to the parties concerned. If you make it run from the date of the order, you must give longer time in order to enable the man to appeal, because there is a risk that he may not know of the order having been passed. If, on the other hand, you make it run from the date of the communication, then the appeal time must be very considerably shortened. Sixty days is a very long time. In the clause the difficulty of knowing when the order was passed is discounted. For if a man does overstep the time, the appellate authority has power to admit an appeal after time for good cause shown, so that the greatest objection to the arrangement by which you count the appeal time from the date of the order is met. As regards the proposal to make the appeal time run from the date of the communication of the order to the parties concerned, there is great difficulty. The Hon'ble Mr. Venkata Rao conveniently said that you can send the order to the Reddi and you can take the date of sending it to the Reddi as the date of communication.

The date of communication is the date on which the order is communicated to the party. The clause will not be complied with unless you satisfy that condition. Then you have to prove exactly when you communicated it to him. Such is a fact which must be independently established and to establish which you must get proof. To get proof is excessively difficult. Another great objection to making the appeal period run from the date of communication is when a man goes to an appellate authority and puts in his appeal petition, the appellate authority should be able, on the face of it, to say whether it is within time or not. It is not for the appellate authority to go and find out on what date the order was communicated to him. A copy of the order is appended to the appeal petition and the appellate authority has simply to see whether the appeal is within 60 days from the date of the order. If, on the other hand, he is to go and ascertain when the order was communicated, it imposes upon the appellate authority a vast amount of trouble, besides causing delay. To fix the date of communication to the parties as the starting point for the appeal time is very objectionable, from the point of view of administration. The clause was framed so as to adopt the other method which seemed to be practically unobjectionable. The question which was raised in the Select Committee was whether 60 days' time was enough. That is longer than the time allowed in other appeals. In this case a man knows that his appeal is pending. He knows when it will be disposed of, and he must look after his own interests. If he does not choose to go to the Divisional officer and ascertain when his appeal is likely to be disposed of, it is his look out. He need not have recourse to proceedings which will bring him within the Official Secrets Act. He has simply to go to the Divisional officer and he will tell him at once when the appeal is likely to be disposed of. If the man will not look after his own interests, it is only fair that he should suffer. To prevent any possibility of the clause working harshly, there is in this clause a provision to enable the appellate authority to admit an appeal after time. Of the two courses proposed that embodied in the clause is very much more appropriate and advantageous both to the Government and the appellant. Therefore, I cannot accept this amendment.

The Hon'ble V. C. DESIKA CHARIVAR:—If these orders are pronounced, as judgments are done in Civil Courts, by giving previous notice, I would not have suggested this amendment. It is assumed that the date on which the judgment is to be delivered is known. Unless a man goes after the Revenue officer from place to place, because there is no particular time within which he is bound to deliver judgment or no particular place where he has to deliver it, the party cannot know when it is to be delivered. The party must be following the foot-steps of the roaming Revenue officer from place to place, and if he should ask the officer concerned for the date when he is to deliver the judgment, I know what the answer will be. It is not proper to expect these people to be hanging on the Revenue Courts. It is bad enough that they should be hanging about till their case is finished. It is entirely at the discretion of the officer concerned as to when he is to deliver the judgment. He will have to take time to read the papers and consider the judgment. If a person without business hangs about an office, we know what the consequence will be. Recently we have heard of a case in which a man was prosecuted for criminal trespass and punished because he was found loitering about the office of the Collector. I submit that my amendment is reasonable. Of the two alternatives suggested by the Honourable Member, the shorter time is preferable. When there is an appeal to a mufassal court, say from a District Munsif to a District Judge, the time fixed is shorter, and there is no inconvenience in it. No doubt there is a provision in this clause that if a man satisfies the authority to whom he appeals that he had sufficient cause for not appealing in time, his appeal may be admitted. But the easiest answer which might be given by the appellate authority would be: you ought to have been making enquiries and you should have appointed a vakil, so that he might have followed the Revenue officer and watched when the judgment was passed. At least to save the rryot from the expense of engaging a vakil for an indefinite number of days this amendment is necessary.

The amendment was put and lost.

Clause 11 was allowed to stand part of the Bill.

Clauses 12 and 13.

Clauses 12 and 13 were allowed to stand part of the Bill.

Clause 14.

The Hon'ble Mr. G. STOKES:—I beg to propose that in sub-clause (b) of the explanation after the word "eviction" in both the places where it occurs the words "or forfeiture" be inserted. It is simply an omission which ought to be supplied. It was intended to be put in the Bill and I think it is not likely to meet with any opposition.

The Hon'ble Mr. P. S. Sivaswami Aiyar seconded the amendment.

The amendment was put and agreed to.

The Hon'ble M. KRISHNAN NAYAR:—The amendment that I wish to move is that in line 60 for "six months" be substituted "one year". Clause 14, as it now stands, gives the party who is aggrieved with the decision of the Collector or other Revenue authorities, that is, the Board of Revenue, the right of bringing a suit in a Civil Court against Government and this clause says that the period for such a suit is six months from the date of the cause of action, cause of action being defined in the same clause. My object is to extend the time of six months allowed by this clause to one year from the date on which the cause of action arises. This provision is similar to the one in section 59 of Act II of 1864. There also, right is given to parties to sue in Civil Courts, but the period mentioned in that section is six months from the date of cause of action. But I submit that there is a particular reason why in the present case the period should be not six months but more than six months, namely, one year. My reasons are these: Suppose a Collector gives a decision against a particular party, the latter has the right of appealing against that decision to the Board of Revenue and he may prefer the appeal at any time before the expiry of two months from the date of the order. It may be that just before the expiry of two months, he might prefer the appeal to the Revenue Board. In that case two months elapse. The Revenue Board may take time to pass their own decision in the matter. It is possible that they may take two or three months. Let us suppose that the Revenue Board takes two months. That comes to four months from the date of the order. Then there remain only two months. Under section 424 of the Civil Procedure Code, when a suit is instituted against the Secretary of State, notice of two months is necessary, so that by that time six months expire. After six months' expiry, the party cannot institute a suit. Therefore, it is necessary that the period of six months allowed by the Bill should be extended to one year. It may be said that as soon as the decision is passed against him, the party should elect the course that he proposes to pursue—either he should institute a suit or be content with appealing to the Revenue Board. I submit it is rather hard that he should be compelled to elect in that way. If the Revenue Board gives its decision in his favour and against the Collector, it is a cheaper and more convenient course to adopt. Litigation in Civil Courts is highly inconvenient and costly, and if he can gain his object by appealing to the Board of Revenue, that is a preferable course. It is only reasonable that he should be allowed to institute a suit after the Revenue Board passes its decision. If the decision be in his favour there will be no necessity for filing a suit. But if the decision be against him, then he must have two months to send notice to the Secretary of State. I may state at once that if the Honourable Member in charge of the Bill and the Government think that the period of one year is too long, I have no objection to the substitution of a shorter period. My suggestion is that six months is too short a period.

The Hon'ble V. C. Desika Chariyar seconded the amendment.

The Hon'ble Mr. G. STOKES:—The Honourable Mover of this amendment said that he is going to bring forward some special reason in this case why one year should be allowed instead of six months which is allowed in the General Act. But so far as I could make out every single thing he has stated applies to the General Act. He gave us no special reason why six months' time which is enough for the General Act is not enough for this Bill. Notice has to be given to the Secretary of State under the General Act, just as under this Bill; and the whole procedure is identically the same. He also said that it was not fair that the man should be called upon to elect what course he is to take. Under this Bill there are two questions, one is as to the imposition of assessment and the other is as to the liability to pay assessment. As to the imposition of assessment it is one entirely for the Revenue authority to decide. The question as to the liability to assessment is one for the courts to decide.

When an order is passed against him, he must know what his case is. It must be either of the two. If it is a case in which he should go to the Court, he should go at once. There is no reason why he should waste the time of the Revenue authorities, the Board of Revenue and the Government, when he can go right up to the Court. There is no reason why he should waste the time of these authorities in a matter in which he can appeal to the District Munsif and set aside the decision of the Revenue officer.

12-40 P.M.

On the order being passed by the Collector, he should elect whether he is to go to the Civil Court or not. Therefore, the idea of six months being too short to enable a man to carry the appeal to the Revenue authorities and then to the District Munsif is not sound. The period of six months is quite enough to enable him to file a suit and to get the facts properly set out for the determination of the Civil Court. As I said, no reason whatever has been shown why the period allowed under the General Act should be extended. Under this Act it seems to me there is no reason why this time should be extended.

The Hon'ble M. KRISHNAN NAYAR:—The Hon'ble Mr. Stokes said that there are two questions that may lead to the institution of a suit—the question of liability to assessment and the imposition of assessment.

The Hon'ble Mr. G. STOKES:—I mean the two questions that may arise out of the order.

The Hon'ble M. KRISHNAN NAYAR:—Yes, and therefore lead to the institution of a suit.

The Hon'ble Mr. G. STOKES:—Only one of them.

The Hon'ble M. KRISHNAN NAYAR:—Yes. One of them does not lead to any suit, as the decision of the Revenue authorities is final. With regard to the other, the liability to assessment, that is a matter which the Civil Courts can consider under this Act. With reference to the liability to assessment, the person aggrieved may appeal to the Revenue Board or the Government. He might say: according to my case this particular land which forms the subject-matter of this petition or enquiry is not the land which is liable to be assessed and therefore I request the Revenue Board or the Government to exempt this land from liability to assessment. It may be that the Revenue Board or the Government may agree with him. If that be the case, there is no necessity for the institution of a suit. In those cases where this is possible, it is not desirable that he should be driven to make his election even at the commencement, for if his request should be granted either by the Board of Revenue or the Government, there is no necessity to go to the Civil Court, which is a costly affair, so that with reference to this liability to be taxed under this Act I submit that he should not be made to elect at the outset.

The amendment was put and lost.

With the permission of the President, the Hon'ble P. S. Sivaswami Aiyar withdrew the following amendment of which he had given notice, namely, that in sub-clause (b) after the word "eviction" in line 6 and "eviction" in line 7 be inserted the words "or forfeiture".

With the permission of the President the Hon'ble K. Venkata Rao withdrew the following amendment of which he had given notice, namely, that in sub-clause (b) be added "or forfeiture" after the word "eviction".

The Hon'ble V. C. DESIKA CHARIYAR:—Mr. President, the amendment of which I have given notice has to be slightly modified in consequence of an amendment which has been passed introducing the word "forfeiture" in sub-clause (b). I would, therefore, ask the permission of the Council to alter my amendment. Sub-clause (b) as proposed to be amended by me will stand thus:—"In respect of eviction or forfeiture from the date of eviction or from the date on which the order of adjudication of forfeiture is communicated to the party concerned respectively." When the penalty is levied nobody can say it is levied without the knowledge of the person, and in the case of eviction nobody can say that it is done without the knowledge of the man. In the case of forfeiture it is an order passed by the Revenue officer, and it is that alone that need be communicated. As I have already stated on a former occasion, when

fixing the time for filing appeals, that the period should begin to run from date of communication to the party concerned, so in the case of forfeiture, the date of adjudication of forfeiture should be communicated to the party and time should run against him only from such date.

The Hon'ble P. S. Sivaswami Aiyar seconded the amendment.

The Hon'ble Mr. G. Stokes:—I do not see the use of this amendment. Under this clause the man has six months to go to the Civil Court. It is not like the case of an appeal. He has six months after forfeiture of property within which to file a suit. If he does not file a suit when his property is forfeited, that would be very curious. The introduction in this clause of the words suggested is more objectionable than in the other case, because it would be a point for legal wrangling as to what is the date of the communication of the order, and the Government will have to prove a fact which is certainly within the knowledge of the man. He knows when the order was communicated, but the Government does not, and it will have to be proved by evidence. To introduce these words, it strikes me, is most unfair; and it is certainly so in this case, whatever might have been said in regard to the other. This amendment cannot be accepted.

The Hon'ble V. C. DESIKA CHARIYAR:—The Honourable Member in charge of the Bill said that this is asking for too much. The Honourable Member forgets that the man must give two months' notice to the Secretary of State. The moment that an order is passed it does not follow that the officer who passes it will follow it up by taking possession of the property. Suppose he delays the execution of the order for a couple of months and that the party has to give two months' notice to the Secretary of State, four months will have elapsed. While the Act allows six months the man will practically have only two months' time. If in the case of eviction or penalty I say notice should be given, I can understand the objection. One strong point which the Honourable Member makes is that there is no end of trouble in proving notice. Why should the Government alone be exempt from proving its case while a private party is called upon to prove it. You are the person who starts the thing, and if you want to satisfy a third person, you must satisfy him in the same manner as a private party does. If it be difficult for you with all your elaborate machinery to prove the simple fact of the communication of an order to the party, how much more difficult would it be for private persons to prove the thing. You have got your registered post and you can get the signature of that man by way of acknowledgment; or when a peon takes it to him it is not at all difficult to get the man's signature. The Civil Courts do it every day, and there is no reason why the Revenue Courts should not do the same. Every day summonses are sent in duplicates and the man's signature is taken. I cannot understand why there should be this difficulty that has been pointed out. I hope the Council will not reject the amendment for that reason only.

The amendment was put and lost.

Clause 14, as amended, was allowed to stand part of the Bill.

Clause 15.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—I submit that my amendment may be considered first, as it is with reference to the omission of the whole clause. If you will permit it, I will move my amendment.

The PRESIDENT:—I think it is better to discuss the clause as the Government would like to have it.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—If the Council would agree to the omission of the whole clause, there is no necessity for them to consider the amendment of the Hon'ble Mr. Stokes. It is only when the Council is agreed upon having the clause and modifying it, that the necessity will arise as to how to modify it.

The PRESIDENT:—The Honourable Member in charge of the Bill would like to move his amendment as printed in the agenda.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—I mention this now in order that it may not be said afterwards that my amendment is out of order, after this amendment of the Hon'ble Mr. Stokes is passed. I want to guard against it.

The PRESIDENT:—That is all right.

The Hon'ble Mr. G. Stokes:—The new clause that I propose to substitute for the existing one contains simply verbal alterations. The Hon'ble the Advocate-General has spent a great deal of time in considering the original clause and he found various difficulties in drafting it. The difficulties caused him a great deal of trouble. He has now drafted a new clause which, in its effect, exactly corresponds with the old. The object of it is, as I said yesterday, to legalise the imposition of assessment already levied and to validate that levy. It does not take away the right to sue on the ground that the property was not liable to be assessed. It seems to me quite clear that the clause, as it is drafted, can only have that meaning. A suit can be brought to try the liability. The question must naturally turn upon the fact whether the property is that of the Government or not. I mean the question of liability to assessment. As that is made a substantive condition of the legalisation under this Act, it is always a fact liable to be called into question. Therefore, it seems to me that the clause, as it stands, reserves the power to any person or assessee of contesting liability to assessment. I think it is essential that that should be preserved and the clause does it. The amendment which I therefore propose is:—

For clause 15, the following clause be substituted, namely:—

"15. Every proceeding taken by a Collector for the recovery of any sum of money by way of penal or prohibitory assessment or charge from any person who has unauthorisedly occupied any land hereby declared to be the property of Government shall, if such sum has been recovered prior to the passing of this Act, be deemed to have been lawfully taken, provided that this section shall not apply to any suits pending when this Act comes into force in a Court of First Instance or in a Court of Appeal or affect the validity and operation of any decree or order already passed by a court of competent jurisdiction."

The Hon'ble V. C. DESIKA CHARIYAR:—If that is the object of the amendment, may I ask you whether you will have the words "lawfully imposed" after the words "for the recovery of any sum of money" as you say that the liability to assessment is still open to the Civil Courts to decide.

The Hon'ble Mr. G. Stokes:—If we said "lawfully imposed" where is the need of validation?

The Hon'ble V. C. DESIKA CHARIYAR:—You simply want to validate the procedure. There is no difference between what you say and what I say.

The Hon'ble Mr. G. Stokes:—The Hon'ble the Advocate-General will probably answer you.

The Hon'ble V. C. DESIKA CHARIYAR:—The Honourable Member has just told us that it is not his intention that the question of liability to assessment should not be taken before a Civil Court, but it is his object that it should be decided by a Civil Court. But to enable the Civil Courts to do it, you must insert the words "lawfully imposed" after the word "money". That will be the condition precedent. If you don't have these words and if you leave the clause as it is, nobody reading the Act would come to the conclusion that what the Honourable Member has just said is intended by the clause.

The Hon'ble Mr. G. Stokes:—Surely it is a question of fact whether a certain property is the property of Government or not?

The Hon'ble the ADVOCATE-GENERAL:—If the assessment is imposed upon a zamindar's property, it can be questioned. But if it is imposed upon any property which is declared to be the property of Government, it cannot.

* The Hon'ble V. C. DESIKA CHARIYAR:—I am sorry I have not made myself understood. What I meant was whether the property belongs to Government or not is not the only question to be decided by the Civil Court. The other question would be whether the occupation was unauthorised. I think it was mentioned that it was a question to be decided by the Civil Courts whether the occupation was authorised or not. If it is not to be, you had better say so in the clause.

The Hon'ble Mr. G. STOKES :—If you take action against any one of the proceedings covered by this clause, it will be open to you to plead that the property in question is not the property of the Government.

The Hon'ble V. C. DESIKA CHARIYAR :—Then it is not “lawfully imposed”.

The Hon'ble Mr. G. STOKES :—Then it is not validated.

The Hon'ble V. C. DESIKA CHARIYAR :—Say so. If you say that it is open to a party to do that, insert the words “lawfully imposed”.

The Hon'ble Mr. G. STOKES :—The Courts will say so.

The Hon'ble V. C. DESIKA CHARIYAR :—They will say that every proceeding taken by the Collector is validated by this clause.

The Hon'ble P. S. SIVASWAMI AIYAR :—I think there has been some amount of confusion and misunderstanding with regard to what is intended to be allowed to be brought before the Civil Court. The land in regard to which occupation has been made may be land which does not belong to Government, or it may be that it belongs to Government, and that it has been lawfully occupied. It may be that the Government may not have any power to impose enhanced assessment or it may be that the Government has power to impose penal assessment, but the provisions of the Revenue Recovery Act cannot be applied. These are the various possible cases in which proceedings by which money has been recovered may be regarded as illegal. I do not know whether the Hon'ble Mr. Stokes intends to reserve to the party the right to go before the Civil Court only in cases where the land is not the property of Government or also in cases where the land is the property of Government but penal assessment has been imposed without the Government having the right to impose the same.

The Hon'ble Mr. G. STOKES :—Certainly it is not that case.

The Hon'ble P. S. SIVASWAMI AIYAR :—If it is intended to validate only defects of procedure in regard to the recovery of the amount imposed, if it is intended to cure only the defect of procedure in applying the provisions of the Revenue Recovery Act, but to leave it open to the Civil Court to decide whether a land is the property of Government

1 P.M.

or not and whether the Government, even supposing it to be its own property, has the right of levying penal assessment, the amendment of the Hon'ble Mr. Stokes does not carry out that intention. If the Hon'ble Mr. Stokes merely meant to preserve the jurisdiction of Civil Courts only in cases where the land that has been occupied is not the property of Government, then it does carry out his intention.

The Hon'ble Mr. G. STOKES :—That is the intention.

The Hon'ble P. S. SIVASWAMI AIYAR :—We were under the impression that you intended to preserve the jurisdiction of the Civil Courts in all cases except those in which the Government has the right to levy penal assessment and to validate merely a defect of procedure in applying the provisions of the Revenue Recovery Act. If what is intended to be cured is only a defect of procedure in the application of the provisions of the Revenue Recovery Act, my amendment will achieve it. If it is not open to the Court to decide whether the Government has the right or not to levy penal assessment, then—

The Hon'ble Mr. G. STOKES (*interrupting*) :—That is closed by the judgment. If the acts done are not validated, then the clause is useless.

The Hon'ble P. S. SIVASWAMI AIYAR :—Then I beg to make a few remarks with reference to this proposal.

The Hon'ble the ADVOCATE-GENERAL :—It is better to put forward your views when the general clause is put.

The Hon'ble Mr. G. STOKES :—There is a motion to omit the whole clause.

The Hon'ble the ADVOCATE-GENERAL :—I think, Sir, there is no ambiguity at all. The clause does save all proceedings in cases where the penal assessment has been levied from any person who has unauthorisedly occupied any land declared to be

the property of Government. If anybody could show that penal assessment has been levied in respect of anything else but the unauthorised occupation of Government land, he can go on with his suit. If the penal assessment has been levied from him for the unauthorised occupation of any Government land, all proceedings in that connection are protected. That was the intention of Government.

The amendment was put and agreed to.

The PRESIDENT :—Will the Hon'ble Mr. Sivaswami Aiyar move his amendment before we discuss the proposal to omit the whole clause made by the Hon'ble Mr. Govindaraghava Aiyar, the Hon'ble Mr. Krishnan Nayar and the Hon'ble Mr. Venkata Rao.

The Hon'ble M. KRISHNAN NAYAR :—There is now the amended clause moved by the Honourable Member in charge of the Bill and accepted by the Council. Our motion to omit the whole clause will now apply to the amended clause. If that amendment be carried there will be no necessity to consider the Hon'ble Mr. Sivaswami Aiyar's amendment.

The PRESIDENT :—I will now call upon the Hon'ble Mr. Sivaswami Aiyar to move his amendment.

The Hon'ble P. S. SIVASWAMI AIYAR :—The amendment which I wish to move runs in these terms :—

For the words beginning with “notwithstanding” in line 8 and ending with legal in line 25 substitute the following :—

“No proceeding of a Collector had prior to this Act by which under the name of penal or prohibitive assessment or charge a charge has been imposed upon any person who unauthorisedly occupied any land which is by this Act declared to be the property of Government and such charge has been recovered under the provisions of Madras Act II of 1864 or Madras Act VI of 1867, as the case may be, shall be deemed to have been illegal by reason only that the provisions of the said Acts were not applicable to the recovery of such charge.”

The principle of my amendment is this. The High Court pointed out that the provisions of the Revenue Recovery Act were not applicable to the realization of the penal assessment, which had been imposed by Government and the amount had therefore been wrongly collected. If there was a defect of procedure and if in consequence of such defect of procedure only the people would be entitled to claim refund, I do not see much objection to validating the collection made, and the object of this amendment is to confine the scope of validation only to cases in which the collection has to be regarded as illegal merely by reference to the procedure adopted. If the provisions of Act II of 1864 were not applicable in fact, but have been wrongly applied, the amendment that I propose will cure any illegality attaching to the collection, but will not legalise any illegality attaching to the collection by reason of the fact that the land did not belong to Government or by reason of the fact that the Government had no right to impose the penal assessment even in cases where the land belonged to Government. In order to confine the scope of validation only to cases where there has been an error in procedure as it is called, I beg to move the amendment. As to the general proposition contained in this clause I shall make my remarks later on when the other proposition is brought forward.

The Hon'ble V. C. DESIKA CHARIYAR :—I second the amendment. I would take this opportunity of removing a misconception. I thought the Honourable Member in charge of the Bill would concede that not only the question of fact as to whether a certain property is Government property should be a matter for adjudication by a Civil Court but also whether any property admittedly Government property has been unauthorisedly occupied. That is another question of fact. But as the clause stands, the only question of fact left to be decided by the Civil Court is whether the property belongs to Government or not; and therefore this amendment is necessary.

The Hon'ble Mr. G. STOKES :—Every question of fact will be taken into consideration.

The Hon'ble V. C. DESIKA CHARIYAR :—If you introduce the words “lawfully imposed”, it would have been sufficient. The Hon'ble Mr. Sivaswami Aiyar's amendment would make it clear not only whether property is Government property or not but

conceding it to be the Government property, whether it has been unauthorisedly occupied. If you leave it, as it is, all that you have to prove is that it is Government property and then you can collect penal assessment even if the occupation was not unauthorised.

The Hon'ble the ADVOCATE-GENERAL:—But also that it has been unauthorisedly occupied.

The Hon'ble V. C. DESIKA CHARIYAR:—The object of the clause was simply to cure an illegal procedure. That is what the High Court decision said. The High Court said that you had no business to act under the Revenue Recovery Act, without any power under the legislature. If that is all that is to be cured, then the adoption of Mr. Sivaswami Aiyar's amendment which says that no proceeding of a Collector prior to this Act shall be deemed to have been illegal by reason only that the provisions of the Revenue Recovery Act were not applicable to the recovery of penal charge ought to be enough. All that need be cured is illegal procedure, and for that purpose Mr. Sivaswami Aiyar's amendment would be quite enough. The learned Advocate-General suggests that the question whether it is authorised or unauthorised occupation would still be open to the Civil Courts to decide. If that is so we may as well adopt the amendment put forward by the Hon'ble Mr. Sivaswami Aiyar.

The Hon'ble Mr. G. STOKES:—When I introduced the Bill, I expressly stated that there were two things which the Bill left open to be decided. One was the liability to assessment. I also pointed out in connection with clause 3 that the other thing was whether the land was unauthorisedly occupied or not. It was to be a question of fact. Those are the two questions of fact which underlie the Bill. As the clause is drafted, it is quite clear that the question whether the land has been unauthorisedly occupied can be tried by a Civil Court and also whether the land is the property of Government. These two are facts which must be tried.

The amendment was put and lost.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—The amendment that I propose, Sir, is that clause 15 of the Bill be omitted as a whole. Before I proceed to give my reasons for the amendment that I beg to move, I think it is necessary that I should draw the attention of the Council to the fact that even in cases wherein penal assessment has been rightly or wrongly levied, before this Bill becomes law, if the occupation in respect of which the assessment has been levied continues after this Bill becomes law, there is no impediment in the Bill to its provisions being applied in such cases. Penalty may be levied under clause 5 and eviction may be effected under clause 6 so that the argument cannot be advanced that there can be no hardship felt by persons who are unauthorisedly in occupation of the land, if the penal assessment that they have already paid is declared to be irrecoverable, because they will not be put to any further difficulty on that ground. Now going to examine the provisions of this clause, I believe it would be granted that unless there are special reasons why the provisions of the Bill should be given retrospective effect, the ordinary rule should be followed that no retrospective effect should be given to any law that is passed. Unless you are satisfied that in this particular case there are weighty reasons as to why the ordinary rule should be departed from, I submit, that it is but just that that rule should be conformed to. I think that the precedent that is appealed to, viz., the one in section 1 (c) of the Madras Partition Deeds Validation Act, is rather against the course indicated in this clause than in favour of it. If you, Sir, will look into the provisions of section 1 clause (c) of the Madras Partition Deeds Validation Act, you will find that all that is sought to be effected therein is that the Act should not affect the legality of any decision arrived at prior to the coming into force of that Act. That was an Act which wanted to cure the defect in certain documents for the purposes of conferring the rights referred to therein; and that Act makes a clear provision that instruments which have been unregistered prior to the date of coming into force of that Act, should not affect the legality of decision passed by Courts which decisions have conferred rights or imposed liabilities, so that, the object that they had in view when section 1 clause (c) of the Madras Partition Deeds Validation Act was passed was that the effect of the Act ought not to be to disturb the then existing rights of parties. Taking that view of the matter, that would be a reason why clause 15 should be omitted rather than that it should

1-20 P.M.

be passed by this Council. But apart from that, taking the case on its own merits I cannot help stating that the Honourable Member in charge of the Bill in discussing the view that has been taken by some members of the Select Committee with reference to this clause, has fallen into a mistake, with respect to the scope and meaning of the decision of the High Court to which we owe this Bill. I submit with deference, that the High Court was perfectly alive to the distinction that there is between cases wherein there is merely an irregular procedure followed and cases wherein rights have been sought to be exercised which have no existence in law. It is a thing that every lawyer will accept that if a person gets what he is entitled to, although the procedure that he might adopt in getting it might be irregular, whatever may be the penalties that such a course on his part will put him to, he cannot be deprived of the right which he has somehow managed to secure. The High Court in that decision have not contravened that principle. On the other hand, what the High Court distinctly decided was that the Government, as the law then stood which they were called upon to administer, had not the right to impose any assessment, not merely to apply the provisions of the Revenue Recovery Act in cases to which the decision relates. They did not at all call in question the prerogative of the Crown to assess lands; on the other hand, they distinctly allow it. But they say that one of the first conditions to be satisfied before the Crown can presume to exercise the prerogative is that the person against whom that prerogative is to be exercised must be the person who must possess some interest in the land in respect of which the prerogative is to be exercised. It is against a trespasser that the Crown cannot exercise its prerogative. It may have other remedies against a trespasser. But if it chooses to impose an assessment, it is not justified in doing it in the exercise of its prerogative. They say in the very decision that the person against whom the Government professes to proceed has no interest in the land; therefore, the prerogative could not be exercised, that there is no assessment that he is bound to pay and that the provisions of the Revenue Recovery Act should not, therefore, be applied. It is not merely a question of the High Court saying that there has been an error of procedure where the right was enjoyed, but they negative the right and consequently the procedure, not that they accept the right but deny that the procedure followed is a correct one. If the Council will agree with me in that interpretation of the High Court decision, it does not require lengthened arguments to convince the Council, that the position taken is perfectly correct. If the Honourable Members will only read the decision they will find that this is the position taken up by every one of the Judges who took part in that decision.

If the Council will agree with me in this view of the High Court decision, then it will be perfectly clear that what the Government now proposes to do is not merely to rectify an error of procedure but to give to the Government a right which admittedly it had not. Then we shall have to consider whether, as a matter of fact, there are any important reasons which can be assigned on behalf of Government as to whether, while it had no right to collect the money, the Government could keep back the money so collected, without making a refund of the same. I submit that I have not seen any reasons given in the various stages of the discussion to which this Bill was subjected which will justify the Government in keeping back the money that it has not been entitled to. I think the latest pronouncement which has considered very fully all the aspects of the case has made it undoubtedly clear that in cases to which this clause is sought to be applied, the Government cannot have the right to get any assessment prior to this Bill coming into force. After all, the question resolves itself into this: Is the Government prepared to pay back the money to which it has been found that it has no right. I see there is no difficulty in answering that question. This is not one of the cases wherein it is necessary that an irregular or wrong act of Government should be validated. As I submitted at the time of the introduction of the Bill, I may venture to submit that the moral effect of such a clause as this must be very depressing. I am content to leave the discussion of the clause even with the observations that I have made. But there are a few other observations which I beg to make for the purposes of showing that the Government will not be in a worse position if this clause be omitted than it will be, if it is retained, for the purpose of showing that there are some advantages in favour of the exclusion of the clause and that there are no advantages likely to be derived from the retention of the clause. I may say that the exclusion of this clause will not take away the operation of the ordinary law of limitation. I may venture to submit with some confidence that

the highest period of limitation that may be applied to cases such as this cannot exceed one year. The decision of the High Court was passed on the 2nd December 1903. The Government, it appears, became aware of it only in April 1904. This Bill will not become law until the middle of April 1905. It is perfectly clear that by the time this Bill becomes law there may not be any cases which will not be barred by the ordinary law of limitation and which may be considered to be unreasonable and to which this clause might have to be applied. I hope that this position will be developed by those who have to support the amendment. There is no reason whatever to collect prohibitory assessment subsequent to the date of High Court decision. Barring such cases, there can be no suit lying with respect to cases wherein assessment has been levied prior to 1904. Under these circumstances the evil that is sought to be obviated cannot be said to exist and the fear that is entertained on account of which this clause has been introduced seems to be altogether unfounded.

Going into the merits of this clause, you will observe that we have prescribed certain rules which have to be followed and contrary to which no penalty can be imposed. But as a matter of fact it is common knowledge that no such rules as these have been adopted in cases in which prohibitory assessment has been already imposed. In this very decision to which we owe this Bill a reference is made to four cents of land having been assessed at Rs. 100. That is a procedure which cannot be justified by any of the provisions of this Bill. I cannot see why when even the principles underlying this Bill have not been followed, and when the assessment has been realised at a time when there was no provision authorizing the imposition and realisation, why in such cases the levy of assessment should be validated. That cannot be considered to be a regular procedure now, and it should have been more irregular then. Why should we permit a thing which could not be supported even as the provisions as now embodied in the Bill? As I submitted, if there were counterbalancing advantages in favour of these cases, there may be something in favour of the clause. Liability to pay further penalty and liability to be evicted are not taken away from this Bill. Therefore, I submit that there is no reason why this clause should be retained in this Bill. I ought to have mentioned it in an earlier stage of my argument and I mention it now that the High Court has not proceeded on the assumption that penal assessment has been introduced for the purpose of procuring surrender and that because penal assessment has been imposed with that object the levy of such assessment is illegal. The position they take up is: before anything can be considered as revenue realisable from the people, the person to be assessed must be interested in the land in respect of which the assessment is sought to be realised, and if he be not so, there is no right for Government to impose the assessment. With these words, I beg to move the amendment that stands in my name.

The Hon'ble M. KRISHNAN NAYAR :—I wish to second the amendment. I wish to state that, as has been pointed out, the ordinary principle of law in legislation is that unless there are very good reasons to the contrary, retrospective effect should not be given to statutes. In this particular case, I have been closely following the arguments which were advanced before the Council on the last occasion by the Honourable Member in charge of the Bill when the Bill was introduced and also the observations that have been made with reference to the Bill, subsequent to the introduction of it, and again on this occasion; and it is with great respect to the Honourable Member in charge of the Bill, that I wish to state that I have not been able to find any reason to convince me, and I think to convince others also, why retrospective effect should be given to this piece of legislation. As I have already stated, the ordinary principle of law in legislation is that retrospective effect should not be given to statutes unless there are very good reasons to the contrary. This principle applies to statutes of a penal nature, and admittedly this Bill, which will shortly become a statute, is one of a penal nature and unless very strong reasons can be shown why retrospective effect should be given to it, I submit retrospective effect should not be given to it. I have already stated that no special reasons have been assigned why, with reference to this penal legislation, retrospective effect should be given.

The Hon'ble Mr. G. STOKES :—It is of course open to the Hon'ble Mr. Govindaraghava Aiyar to construe the judgment of the High Court as he pleases, but all I can say is that I do not, in any way, accept his construction of it and I base my view upon the words of Mr. Justice Bhashyam Aiyangar himself which I quoted yesterday in my remarks. He says "thirdly, that in the case of all lands, whether poramboke or

ayan, any demand which on behalf of the Crown may be made on the occupation thereof with the avowed objects of compelling him to surrender or vacate the land is not the imposition of the land revenue and the machinery provided by Act II of 1864 for the realisation of arrears of revenue cannot be resorted to for enforcing such demand by revenue officers choosing to give it the name of 'assessment' (penal or prohibitory) and crediting it to the head of Land Revenue in the public accounts". That is the position which Mr. Justice Bhashyam Aiyangar takes up. Clearly what he rules is not that the imposition of penal assessment is illegal but that the imposition of assessment "with the avowed object of compelling him to surrender or vacate the land" is illegal. What we are attempting to do in this Bill is to validate what the Hon'ble Mr. Govindaraghava Aiyar himself admitted would be perfectly justifiable, namely, if a man should recover a thing to which he is entitled by a wrong way, such a proceeding is perfectly right. That is exactly what is validated under this Bill. Cases which are not covered by this clause are clear. What the clause does is that it validates the collection of penal assessment where it is made with the avowed object of compelling the man to surrender or vacate the land. It seems to me that the Hon'ble Mr. Govindaraghava Aiyar has not rightly construed the judgment or understood what the position of the judges was. I bow with all respect to the Hon'ble Mr. Govindaraghava Aiyar's legal knowledge. I am not a lawyer, but reading the judgment—I have read it many times—I need hardly say that I cannot make anything out of it except what I said yesterday. Another point he said was as to limitation. I am no lawyer but from the opinions that I could gather I find that it is excessively doubtful as to what the limitation is. The Hon'ble Mr. Govindaraghava Aiyar says that it is one year, while other people say it is three years. It may be a year and I do not know what it exactly is. There is uncertainty and doubt about it. Whether the provisions of the ordinary law of limitation will apply, or whether the provisions of Act II of 1864 will apply, I don't want to discuss. All that I can say is that the limitation question is a matter of doubt, and it is not necessarily one year, as the Hon'ble Mr. Govindaraghava Aiyar has laid down.

The Hon'ble P. S. SIVASWAMI AIYAR :—Mr. President, in discussing this amendment, we have to consider the principles upon which acts of an illegal character may

1-40 P.M.

be validated. Validation is in the air; and it is just as well that we consider if there are any principles upon which official or other acts may be validated. So far as I have examined the measures and acts for validation, they seem to me to suggest certain principles. One is where there is a right as a matter of substantive law, but a wrong procedure has been used in the assertion of that right, the defect may be subsequently cured. Another principle which may be suggested perhaps is where on the faith of some erroneous decision or procedure private rights have come into existence, and it is necessary to validate those rights, such legislation may be had recourse to; or where the object of legislation is to confer some status upon a person, as for instance, in the case of legitimising marriages, which have not conformed to the prescribed formalities and are liable to be regarded as illegal, with the necessary consequence of the issue being regarded as illegitimate. If you wish to legalise the status of the issue, you may validate the marriage by an enactment with retrospective effect. These are the classes of cases in which, so far as I can see, validation has been made. It cannot be said that there is no principle and that there is no limit at all to the power of the legislature to validate acts, and that any act may be validated. That, I think, is not a position which can be tenable at all. Of course, theoretically, the legislature is competent to do anything it likes within the limits assigned to it by constitutional law, but the legislature is moved by other considerations as well, considerations as to what it ought to do and not merely what it can do. So far as the question as to what it ought to do is concerned, it ought to have regard to the principles upon which measures have been validated; it must also have regard to the circumstances under which such an exceptional measure has to be resorted to. It would not do for the legislature to validate all illegal acts, whether official or non-official. The legislature does not exist for legalising everything that is illegal. The general principle of legislation is that you ought to give no retrospective effect to a law, and it is only by way of an exception to the general rule that you validate measures and that you give retrospective effect. These cases ought to rest upon definite principles like

those which I have attempted to state, so far as I have been able to gather them from the measures of validation hitherto passed. The Hon'ble Mr. Stokes referred to the principle of *factum valet* as a well-known principle, as a principle which may be vouched in the present instance. I believe that the Hon'ble Mr. Stokes is not aware that this maxim has recently been condemned by the Privy Council as one which ought not to trouble the minds of Indian courts. Honourable Members will pardon me if I read to them a few lines from the decision of the Privy Council in which they deal with this question of *factum valet*. This is what Lord Hobhouse said in page 423, I.L.R., 20, Madras: "Before leaving this judgment their Lordships ought to state their concurrence with the learned Chief Justice in his remarks on the so-called doctrine of *factum valet*. That unhappily expressed maxim clearly causes trouble in Indian courts. Sir M. Westropp is quite right in pointing out that if the factum, the external act, is void in law, there is no room for the application of the maxim. The truth is that the two halves of the maxim are applied to two different departments of life. Many things which ought not to be done in point of morals or religion are valid in point of law. But it is nonsensical to apply the whole maxim to the same class of actions and to say that what ought not to be done in morals stands good in morals or what ought not to be done in law stands good in law. Sir M. Westropp has, not without cause, reduced the ambiguous maxim to its proper meaning". I submit that, after that condemnation by the highest judicial authority in the land, it is of no use to invoke the application of that maxim for the purpose of this validation. That leads us to the question whether in this case there are any of those grounds to which I have referred and which justify the validation of the assessment which has been levied in the past. That brings us again to the question whether the Government has the right, as a matter of substantive law, to impose penal assessment in cases where the land belongs to the Government itself. It is conceded that where the land belongs to the subject himself the Government has no right to impose penal assessments. The dispute relates only to cases in which the land belongs to Government and has been unauthorisedly occupied. If, as a matter of substantive law, the Government had the right to impose penal assessment whether by the exercise of the prerogative or as a matter of statutory enactment, and if, in the assertion of that right, the Government wrongly applied the provisions of the Revenue Recovery Act, there is not much harm done by validating the collection of money which the Government had made by having recourse to the provisions of the Revenue Recovery Act. I join issue with the Honourable Mover of the Bill with regard to the question that in respect of lands which are the property of Government and which have been unauthorisedly occupied, the Government is entitled to levy penal assessment. In the first place I may clear the ground by stating that the judgment of Sir V. Bhashyam Aiyangar that has been referred to in this case does not warrant the position that the Crown has the prerogative of imposing penal assessment upon lands belonging to itself and which are occupied without its authority. The passage to which reference has been made is on page 398; I have also read that passage. He says "fourthly, that the immemorial and common law prerogative of the Crown in India is only to the Rajabhadgam or King's share in the produce of the land and the land revenue or assessment now levied on land represents the King's share in the produce and the Courts have no jurisdiction to question the rate or share that the executive Government may fix at the periodical revision of assessment, that share of the produce—however high the share or rate may be in relation to the total produce—cannot exceed the produce. An assessment, therefore, which is prohibitive and manifestly in excess of what the land may produce and is professedly out of all proportion to such produce is clearly *ultra vires* of Government and such action of the executive is not exempted from the jurisdiction of the Civil Courts". I have read the whole paragraph and that paragraph states that an assessment which is clearly in excess of the whole produce and which is prohibitive in character cannot be regarded as assessment and it is *ultra vires* of Government. It is a distinct statement of the position that the Government has no right to levy what is called penal assessment. I shall here discuss the question of the prerogative of the Crown to levy assessment. This question has to be considered with reference to two matters, with reference to the nature of the land upon which assessment may be levied and next with reference to the amount of assessment. First of all, with reference to the nature of the land upon which the

assessment may be imposed, I submit that the Government has no right to impose, as a matter of prerogative, any assessment upon land which is not devoted to agricultural purposes or from which no produce is derived. I have been at some pains to read the literature on the subject and I make bold to assert that there is no warrant for the position that the Government has any right to levy assessment on lands not devoted to agricultural purposes or from which produce is not being derived.

The Hon'ble Mr. G. STOKES :—It has always done it.

The PRESIDENT :—The case of *factum valet* again.

The Hon'ble P. S. SIVASWAMI AIYAR :—This is a matter of prerogative which the Government is said to have inherited from the old rulers who preceded the British Government in this country. It is not a matter to be settled upon abstract principles, because the same prerogative would not exist in England. The question has to be determined with reference to the state of affairs in the country prior to the assumption of British rule. What is the law, what is the common law or the prerogative of the old Hindu and Muhammadan kings? Going back to the old Hindu authorities, I do not find it anywhere stated that the king had the right to tax any land from which no produce is derived. The right of the king was spoken of as a right to a share in the produce.

The Hon'ble Mr. G. STOKES :—It has been done in recent years in Canara.

The Hon'ble P. S. SIVASWAMI AIYAR :—That will also be illegal, but for some validation Act. The right of the king is always spoken of as a right to a share in the produce. If the land is not devoted to agricultural purposes, the king could not possibly have any right over it. If some minerals were extracted from the land, it may be that the Government had a right to a share in the minerals. All that the Government is entitled to is to a share of the produce in the land, whether it is grown upon the land or extracted from it. It can only deal with the lands devoted to agricultural purposes or from which any produce is derived. Except in cases of this sort, I find no reference in any of the ancient Hindu law books to the existence of a state of affairs where the Government ever taxed any land which was not devoted to agricultural purposes or from which no produce was derived. If you turn to Muhammadan law books, you will find it laid down that the kiraj or land-tax should not be imposed upon buildings or building-sites. It can only be imposed upon lands devoted to agricultural purposes. It could not be imposed upon lands covered with buildings. This is what Mr. Baillie says in his book on land-tax "kiraj is not due on the rent of houses in kiraji lands. Nothing is due whether he received grain from it or not (by way of house-rent), nor kiraj for a garden attached to a mansion. No kiraj is due from land which cannot be cultivated nor for a forest incapable of tillage, though abounding with trees not bearing fruit." That was the Muhammadan law. That was the state of things under Muhammadan rulers. I have already referred to the state of things under Hindu rulers. The Hon'ble Mr. Stokes referred to the history of taxation in this country and to the rulings of the other High Courts referred to by the Madras High Court in the Full Bench case. I have not been able to find any cases of that sort, cases in which it has been held that the Crown has the right to levy assessment upon all lands whether devoted to agricultural purposes or not; nor have I been able to find anything in the history of taxation to that effect. With regard to the right of the king which is spoken of as a right to a share in the produce, it was observed by the Hon'ble Mr. Stokes on the first occasion when this Bill was introduced that the rajabhadgam is no more the basis of right to assessment than the landholder's right to melvaram was the basis of rent. It is not the question whether the rajabhadgam is the basis of right to assessment. The real question is whether the rajabhadgam or a share of the produce is not an inherent limitation to any assessment, or whether you can impose any assessment, except under the limitation imposed by the doctrine of rajabhadgam. Under the Hindu law, therefore, the right to assessment was recognised only in cases in which there was some produce to be shared and where the king could take a share. We are not concerned with what that share should be and I shall deal with it later on. I referred to the Ain-i-Akbari and I found no traces of Akbar having levied any assessment upon lands not devoted to agricultural purposes.

Then again land revenue is described by English writers themselves as in the nature of a tax on agricultural incomes. That statement is to be found in Baden Powell's book. It is spoken of not as a tax on

2 P.M.

building-sites or on lands not devoted to agricultural purposes, but is spoken of as tax on agricultural incomes. Further support is given to this view by a reference to the discussion whether the land revenue of the country is to be regarded as a rent or a tax. It has been contended most strenuously by many officers of Government that it is in the nature of rent. That, itself, shows that it can be only a right to a share of the produce and that it is not a right to impose assessment upon lands not bearing any produce. The fact that it is contended by people to be rent shows that the view which was taken by the Hindu writers and Muhammadan writers and which was accepted by the ancient kings and old Governments is the correct one—that land revenue is not a right to tax any land at all, but a right only to a share in the produce of the lands; so that the theory of even the officers of the Government with regard to the nature of land revenue lends confirmation to the view that I have ventured to put forward. It may be said that building-sites have sometimes paid rent to Government. In towns, under the Standing Orders of the Board, building-sites have been disposed of for certain rents, *i.e.*, ground-rents. But that is not a fact which in any way militates against my contention. There it is a matter of contract. When the Government disposes of the land belonging to it, it is open to it to bargain any terms it pleases, and if it chooses to let the land to any person or to sell it to a person reserving to itself, the right to collect rent which is changeable or a fixed rent or a rent to be revised by mutual consent at some other time, it is only rent and not revenue; and the fact is clearly indicated by the circumstance that, in the Standing Orders of the Board of Revenue, it is spoken of as ground-rent and never spoken of as revenue. The Standing Orders which deal with the subject of town-sites speak of it only as ground-rent; and in the city of Madras house property is supposed to have belonged to the East India Company and to have been let by them. In Act XII of 1851 and Act VI of 1867, ground-rents are specially referred to. In Act XII of 1851 provision is made for the collection of assessment upon land and also of ground-rent on building-sites. There is a clear distinction made between these two classes. Where the land is not covered with buildings but devoted to agricultural purposes, it is assessment and in the other case it is rent. The fact that a building-site pays rent to the Government is in no way inconsistent with the view that I have been putting forward. It shows that in those cases it is a creature of contract. If you want to impose any revenue at all on building-sites, it can only be done by statutory enactment and not by the common law prerogative, which this Government has inherited from its predecessors. It has been suggested that in the South Canara and Bellary districts a tax has been levied on building-sites. I have not been able to obtain access to any papers connected with those districts; but I believe, if examined, it will be found that they are cases really of rent for building-sites and not of tax on building-sites. Now the case of tax on land must be distinguished from that of tax on building-sites, etc. My contention is that the Government has no right to levy any tax at all upon building-sites as a matter of common law prerogative. If it wants to levy a tax upon the rental of building-sites, that will be a species of income-tax, just as you may levy income-tax upon any other kind of income, income made by merchants or professional men. You may levy a tax upon incomes which may be derived from the ownership of houses and buildings. But it will be a tax on rent.

The PRESIDENT:—I cannot at all understand what the tax on *rent* means.

The Hon'ble P. S. SIVASWAMI AIYAR:—If you impose a tax upon income, which a person derives from a building, it is a species of income-tax, just as you impose income-tax upon persons who derive income from trade.

The PRESIDENT:—We are speaking of charges for occupying a particular piece of land.

The Hon'ble P. S. SIVASWAMI AIYAR:—The distinction that I beg to point out is that it is not a share of the produce but a tax upon income; it cannot be said to be a share but it is only a tax upon income which a person derives from the ownership of a building or a house. That being the state of things under the old Government, I fail

to see any warrant for the claim now made that the Government has a right to levy assessment upon lands not covered with buildings. The Government may do it as a matter of statutory right. If there is a law passed enabling the Government to impose any tax upon building sites or upon any other kind of property, it can do it. All that I am concerned with is to deny the existence of the prerogative of the Crown to levy a tax on land not devoted to agriculture. Simply because the Government puts forward the claim of ownership to land, it has no right to levy assessment upon lands of all descriptions, whatever may be the purpose to which they may be devoted. Another proposition is—

The PRESIDENT:—Are you likely to go on for some time?

The Hon'ble P. S. SIVASWAMI AIYAR:—Yes.

The PRESIDENT:—Relying on the Hon'ble Mr. Krishnan Nayar's statement that one hour and a half would be enough for the discussion to-day, I told His Excellency that it would probably be finished before lunch and that we would not require lunch; but His Excellency has gauged the situation better than I did and he ordered luncheon to be prepared. I trust that after regaling yourselves you will not feel justified in continuing the discussion till to-morrow.

The Council then adjourned at 2-5 P.M. and reassembled at 2-50 P.M.

The Hon'ble P. S. SIVASWAMI AIYAR:—There is another point relied on with regard to the right of Government to levy assessment, namely, that there is no limit to the amount of assessment to be levied. We must be thankful to Government that its practice is much more fair than its theory.

The Hon'ble Mr. G. STOKES:—Is all this relevant?

The PRESIDENT:—It is relevant only in a minor degree and I should be extremely obliged if the Honourable Member in possession of the house would reduce his observations to something more germane to what we have to consider.

The Hon'ble P. S. SIVASWAMI AIYAR:—With regard to the question of amount, that is relevant.

The PRESIDENT:—But I do not think that it should be elaborated to the extent you are elaborating it.

The Hon'ble P. S. SIVASWAMI AIYAR:—It has been claimed that the Government has the right to levy penal assessment. My contention is that though there can be no question as to the amount of assessment which the Government can levy, because there is a provision to that effect in Revenue Recovery Act—though there can be no question as to the amount or rate of assessment, the moment it exceeds the produce itself, it ceases to bear the character of an assessment. As pointed out by Sir V. Bhashyam Aiyangar, in the Full Bench case, if the assessment exceeds a share of the produce or the whole produce, it cannot possibly be regarded as assessment at all. Whatever may be the theory—

The PRESIDENT:—The point is that it is not regarded as assessment. It is intended as a penalty to remove the man out of possession.

The Hon'ble P. S. SIVASWAMI AIYAR:—After that explanation from the President that it is really penalty and not assessment, my argument becomes easier, because while there is a common law prerogative to levy assessment, you have no prerogative to levy a penalty. That can be levied only in accordance with the law, for which you must have the power conferred upon you by an enactment. You have no prerogative right to impose a fine or penalty, which is only called assessment in a loose way, and which does not really partake of the nature of an assessment. If a person is in unlawful possession of land which belongs to Government, there are two courses open to Government. It may elect to treat the occupation as lawful for the time and impose an assessment, but if it does not treat it as lawful, then it may be entitled to damages for use and occupation. Any claim which the Government might have for any damages for use and occupation would not be in the nature of an assessment and cannot possibly be called such and no damages can be imposed at the mere will and pleasure of the Government, but the Government will have the right

to recover them, if it likes, by proceedings in a Civil Court. All claims therefore in regard to unauthorised occupation which the Government does not choose to recognise or elect to treat as lawful, must be treated as being in the nature of damages or fines and, as I submitted, the Government has no prerogative right to impose damages or fines. The fact that the previous Governments might have imposed various kinds of taxes would not, I submit, be a justification for imposing a penal assessment. The previous Governments imposed many taxes, for instance, they taxed the ploughs and the fact that they imposed such taxes would not justify our Government in imposing them without recourse to legislation. It is only land revenue that has been imposed by this Government as a prerogative, but other taxes are not imposed in the exercise of the prerogative of the Crown. Those taxes which do not partake of the nature of the land revenue can only be imposed in the exercise of some power conferred by some statute and cannot be imposed without recourse to the legislature. Then again it has been said by the Honourable Mover that penal assessment has not been imposed upon arable lands at all. I think that the Hon'ble Mr. Stokes said yesterday that penal assessment, as a matter of fact, has never been imposed upon arable land, but I believe that statement is not quite correct, for I find on reference to the Standing Orders of the Board of Revenue, No. 45—

The Hon'ble Mr. G. STOKES:—That refers to registered lands bought in by Government. That is a perfectly special case.

The Hon'ble P. S. SIVASWAMI AIYAR:—I mentioned it as a case of assessed arable land in regard to which penal assessment has been imposed. Again, it has been said that penal assessment has been declared to be legal only where it has been imposed with the view of ejecting a trespasser from the land. So long as the assessment exceeds the produce by several times and so long as it is heavy and partakes of the character of a fine or penalty, it does not matter what the object of the assessment is. If the character of the assessment is such as to be deterrent and prohibitory—and that is the character which is referred to in the Standing Orders of the Board of Revenue dealing with the point—it does not matter what the object is with which assessment is imposed; and the description given in the Full Bench case of prohibitory assessment must not be taken to mean that because it cannot be proved that in a particular case the object of Government was to induce a surrender, therefore penal assessment can be justified, however enormous and however heavy the amount may be. If the assessment is to be Rs. 100 on 4 cents of lands, it necessarily partakes of the character of penalty. It does not matter whether the object with which the assessment is imposed is said to be to compel the surrender of land or not. We must take into consideration the effect of the procedure adopted and the actual motive is quite immaterial.

The Hon'ble Mr. G. STOKES:—I must rise again and ask whether all this is relevant. It is as relevant as that Adam was born. I do not know whether a discussion of the Revenue Settlement of the Presidency is relevant, where the question to be considered is whether penal assessments should be validated or not. It is all one-sided statement that is being made and it will have to be answered by Government; and if the whole of the Revenue system is to be discussed like this, where shall we find ourselves? One may say that everything is relevant, but this disquisition is as relevant to the point as that Adam was born.

The Hon'ble P. S. SIVASWAMI AIYAR:—The question is, as I put it before you in discussing the subject of validation, whether the Government had the power to impose penal assessment. That is the point to be discussed. I submit that my observations are, therefore, germane to the amendment.

The PRESIDENT:—I quite agree that you have a certain right to go on, but it is a question for discretion as to how long this is to be continued. I think you have passed the limit to the fullest extent. I do not see any good in continuing the discussion in the way you are doing it. You can possibly argue in the terms in which you wish to argue for any length of time, but we are sitting here to pass this Bill. You may go on until such time as you like, but you must remember that this Bill must be done with to-night and I will sit here and see it done.

The Hon'ble P. S. SIVASWAMI AIYAR:—We are quite willing. Reference is made—I shall be as brief as possible—to a case in which the crop has been reaped and the land vacated before assessment was imposed. In that case the penal assessment imposed was more in the nature of a fine. Then again it is said that in many cases no objection was raised to ejection from the land, but even in such cases, the assessment will partake of the nature of penal assessment. The fact that the land has been surrendered will not detract from the character of assessment. The character of assessment is its heaviness and, if it is so heavy as to be in the nature of a prohibition, it does not matter whether the surrender has been already made or is going to be made hereafter.

The Hon'ble Mr. G. STOKES:—The question is what is the object with which it was done.

The Hon'ble P. S. SIVASWAMI AIYAR:—I beg to differ from you.

The PRESIDENT:—Will you go on please, Mr. Sivaswami Aiyar.

The Hon'ble P. S. SIVASWAMI AIYAR:—I submit, Sir, that the system of levying penal assessment cannot be justified on the ground that, as a matter of substantive law, the Government had a right to levy penal assessment. That being the case, there is no justification for validating any past levy of penal assessment, more especially when we remember that in many cases the assessment might have been several times heavier than what it is likely to be under the provisions of this Bill.

The Hon'ble Mr. H. BRADLEY:—I should like to make a few remarks in reply to the observations of the Hon'ble Mr. Krishnan Nayar and the Hon'ble Mr. Sivaswami Aiyar. The Hon'ble Mr. Krishnan Nayar was good enough to tell us that this Bill is penal legislation and therefore it required to be treated in a special manner. I would ask him to read the title of the Bill, which is “a Bill to provide measures for checking unauthorised occupation of lands which are the property of Government”. This is preventive legislation and not penal legislation. In the excursions into the different kinds of land tenures through which the Hon'ble Mr. Sivaswami Aiyar has taken us, he refrained from reaching South Canara. I think he was wise in so doing, because in South Canara there is a kind of land tenure called *neltherige* which is a charge made upon land in bazaars and streets of large towns and villages. The meaning of the term *neltherige* is assessment on land. I think we can say that this measure is an exceptional measure and with regard to observations of the gentlemen who have said that it is wrong that the validation clause should come in, I would point out that it is so exceptional that validation clause ought to come in.

In dealing with this clause it appears to me necessary that we should consider in detail the very extraordinary set of circumstances which have led to this legislation. For more than thirty years up to the date of the judgment of the High Court which led to the present Bill, the Government has consistently dealt with encroachments by imposing penal assessment. This course had many times been the subject of consideration before the High Court which had never in any case disapproved of the methods adopted by Government and had thereby placed the seal of its authority upon them. Then came this decision of the High Court under which it is affirmed that the whole procedure which has been adopted since 1869 is wrong. It is impossible for this decision and all the former decisions to be right, and it is immaterial for us to consider which decision is right. But we are in this position either the Government and the public have been misled by the High Court in repeated cases which have come before them or this unfortunate decision is wrong. I use the word *unfortunate* for two reasons. In the first place, I think that the possibility of what has been believed for more than thirty years to be the law and has been repeatedly acted upon being set aside by a judgment of the High Court throws the utmost discredit upon the High Court system. Secondly, I submit that this judgment was unfortunate, because it was absolutely certain from the moment when it was delivered that it would be departed from by the Judges of the High Court themselves. Now it cannot be denied that this judgment is full of *obiter dicta* and it cannot be denied that three Judges of the High Court who were not included in the Bench which delivered this judgment had recently been parties to rulings which completely differed from not a few portions of the judgment of the Bench. I have to refer to two decisions in particular: a decision of a Division Bench (Davies and Benson, JJ.) who held that

the right of Government "to levy assessment is admittedly a right not conferred by legislative enactment, but one exercised from time immemorial by the sovereign power" and further "no limitation is placed on the exercise of that right by any statute or law." Again another Bench consisting of Shephard and Moore, JJ., recognised the right of Government to impose penal assessment in Madras. The former of these judgments was not mentioned in this unfortunate judgment. The latter, "Muthiah Chetty's case," was mentioned casually, and distinguished from the case in point on the ground that the Act under which land revenue is collected in Madras is not the Act under which it is collected in the mufassal. As a matter of fact for the purposes of the case the two Acts are practically identical. With these facts before them the Government determined to legislate, and the question arose whether the ruling of the Full Bench should be followed at once and the practice of imposing penal assessment dropped until the new Act was passed, or whether the practice which had been believed to be in accordance with the law, and which it was intended to make the law, should be continued. The Government decided to continue the previous practice and I submit that it could not consistently and with a due regard to the interests of all parties have done anything else. Everyone had believed this practice to be legal and for 30 years and more had acted upon it. To suddenly withdraw it and renew it after the time necessary for legislation would have been to encourage encroachments which the Government itself would punish as soon as the legislation was complete. I have very little doubt that the effect of this unfortunate judgment in the mufassal would be to encourage encroachments, and if the Government had also encouraged them by doing nothing until this Bill became law, I submit that the Government would have been guilty of great injustice. I further submit that with the certainty that this unfortunate judgment would be differed from, as it was only last Tuesday when the High Court applied Muthiah Chetty's case to the mufassal, it was not improbable that the Government might have to revise its orders even before this Bill became law. Under the circumstances I submit that the action of Government in deciding to continue the existing practice and to legalise it with retrospective effect was consistent, merciful to the ryot and statesmanlike.

The Hon'ble V. C. DESIKA CHARIYAR:—I would just make a very few remarks especially with reference to the remark made by the last Honourable Member. It is a great mistake to suppose that the Division Bench consisting of Mr. Justice Davies and Mr. Justice Benson differed from the Full Bench; and that is the initial mistake that crept into the speeches of the Honourable Members on the other side of the table, as if the High Court said that you cannot levy any assessment at all upon encroached land or that they said that no assessment was valid. If you want to draw a line between the two, I may say that you cannot call it assessment, if you treat a man as a trespasser. Assessment presupposes the relationship between a landlord and a tenant; you must suppose a man to be a tenant, before you can impose assessment upon him. The very phrase *rajabagam* shows that it is only a portion that you are entitled to; but a portion cannot mean the whole, or more than the whole and you cannot levy two hundred times the assessment and call it yet a *bhagam*.

The PRESIDENT:—What is the use of discussing *bhagam*?

The Hon'ble V. C. DESIKA CHARIYAR:—Because it has been mentioned by the Honourable Member in charge of the Bill. If you want to rely upon the Full Bench decision, you can levy assessment up to 15/16th of the produce even. It is open to Government to say that they could assess up to that, but you cannot say you will levy more than the produce. That is all what the decision says.

The Hon'ble Mr. G. S. FORBES:—Does the Chief Justice say so?

The Hon'ble V. C. DESIKA CHARIYAR:—Yes. That is all what the decision says. First of all the means adopted are illegal. You have no right to proceed under the Revenue Recovery Act, and secondly in charging assessment you cannot charge more than the whole produce. That is perfectly right, and that judgment has not been upset. The Government is not in the position of an ordinary private party, who cannot find the means to go to the highest tribunal. I do not say that the High Court is the highest tribunal. In such an important question as this, involving such important issues, why did not the Government take the matter up to the Privy Council. Probably they thought that, by a sort of side wind, they could set aside the

High Court decision. No doubt we have certain powers as Legislators, but I think it is unjust that we should give retrospective effect to such a measure and say that what has been found to be illegal by the High Court we will validate, as from the previous period. In answer to the Hon'ble Mr. Forbes, I may point out that this is what the officiating Chief Justice said—

"It may not perhaps be superfluous to point out that in the actual exercise of the prerogative of the Crown above referred to, the Crown is not supposed to proceed without any regard to definite and well-established principles; for neither in olden times nor now, has the Crown been held entitled to more than a fixed share of the produce—be it the theoretical one-sixth of the Hindu writings or the half-net, again and again proclaimed by the present Government as the share it takes or some other; section 58 of the Revenue Recovery Act having been enacted in order to save the Crown from endless litigation in Courts to which but for such a provision it would be exposed, having regard to the intricate details necessarily incident to a system of assessment, involving in theory at least the ascertainment of the produce of every acre of land in the country and the commutation of the Crown's share thereof with reference to market prices for a definite period such as the usual thirty years for which the settlement money rates are fixed."

Nothing can be clearer than that. It is unfortunate that this decision has been so much misunderstood, though it distinctly says what the Government can do and what it cannot do.

The PRESIDENT:—That is so far as the assessed lands are concerned.

The Hon'ble Mr. G. STOKES:—What about the lands which have no produce.

The Hon'ble V. C. DESIKA CHARIYAR:—You have your remedy for use and occupation, just as other people have. If a man trespasses upon my property I can sue him for occupation. This is a much misunderstood decision and it seems to be used for all sorts of purposes, I am only making it clear in answer to a question put by the Hon'ble Mr. Forbes. The decision of the High Court says that not only the method adopted is illegal, but also the principle adopted for levying assessment, which is not a portion of the produce but two or three hundred times that has been declared to be illegal. As I said at the time of the introduction of the Bill, it is more or less an academical question, and you can well avoid the odium by not introducing this clause. The Honourable Member in charge of the Bill says that the question of limitation is doubtful. It is not at all doubtful; if anything, it is very clear. If it is under the Revenue Recovery Act, it is six months, but if it is under the general Law of Limitation it is one year. Even if you take the longest period, most of these cases would be barred by this time. By having this clause we are laying ourselves open to the charge that we are going against well-established principles and I submit that unless there is a strong necessity for it, we should never take the unprecedented step of making legislation retrospective.

The Hon'ble Mr. G. S. FORBES:—The Honourable Member who just sat down said that it would be unprecedented to give retrospective effect to such a Bill as this, but I think that other Honourable Members who spoke against the Bill did not argue that it would be unprecedented. The Hon'ble Mr. Sivaswami Aiyar's point is that there would be no objection to validating what has been done, if the procedure adopted by Collectors in the collection of this charge was simply an error and if, as a matter of substantive law, the Government had the right to impose the charge. He argued that the Government had no right of assessment in respect of any but agricultural land, and also that the amount of assessment which the Government could impose was limited. I traverse these *dicta* altogether. The Hon'ble Mr. Sivaswami Aiyar took us through the Hindu and the Muhammadan Law to show what

3-20 P.M.

the practice has been and to prove that there were certain limitations imposed upon the prerogative of the Crown with reference to the assessment to be levied. The Hindu and the Muhammadan authorities, which he cited, were referring to the collection of revenue from agricultural land, which in those days was all that ordinarily concerned those Governments to levy assessment upon. There were some *dicta* laid down in the High Court judgment referred to that there were certain rights secured or exercised by those Governments in that respect. In that respect the High Court, I think, wandered away from the point for actual decision. Another *dictum* they laid down was that

of limiting the prerogative of the Crown in respect of the amount of assessment to be levied. With regard to the Honourable Member's assertion that the assessment could be levied only on agricultural lands, all I say is that, as a matter of fact, if the prerogative which the Hindu and Muhammadan rulers exercised, was so restricted that it is not the prerogative which the British Government claims and exercises. The Bombay Revenue Code declares what the prerogative of the Crown is. It distinctly says "all land, whether applied for agricultural or other purposes and wherever situated, is liable to the payment of land revenue to Government". The Land Revenue Acts of the United Provinces and of the Punjab make precisely similar declarations. The law has been laid down to the same effect by the Bombay and by the Allahabad High Courts also. These High Courts made no restriction with reference to the nature of the land on which assessment is to be imposed. As to the amount of assessment to be levied, it was asserted that the prerogative of the Crown was merely to a share of the produce raised on agricultural land and that anything beyond such share was not assessable land revenue. As a matter of administrative policy, no Government in the world would take more than a share in dealing with the people at large. But that is not the question here. Here the land trespassed upon is public land which has been set apart for public purposes, but which has been encroached upon by private persons for their own purposes; and it is not for them to take advantage of their own wrong; it is reasonable that some charge should be made—whether it is called assessment or charge, it does not matter. Action has been taken with reference to these trespassers for a hundred years. Up to the time that the Penal Code came into operation, the man was simply ejected under the Criminal law then administered in our courts which was founded upon the Muhammadan Law. Imprisonment was found to be illegal for such trespasses after the Penal Code was introduced. Apart from that altogether, the Government has been exercising this right of imposing an arbitrary assessment for the last forty or fifty years, and a person who has trespassed has been so charged, not with reference to any share of the produce. No one can be damned if the procedure adopted in the past is now validated. The Hon'ble Mr. Desika Chariyar asked why the Government made no appeal to the Privy Council against this decision of the High Court. The view that the Government took of the decision was simply that the *ratio decidendi* of the High Court judgment was that these charges could not be levied under the procedure of the Act, under which the collection was made, which referred not to penal charges, but only to cases of ordinary occupation of lands subject to payment of land revenue by legal landholders. On that basis, there was room for question whether the Act could be used to levy this charge, and the Government were not prepared on the construction of Act II of 1864 to contest the judgment of the High Court. It was a question as to how it should be levied and not whether it was a proper charge. The High Court said that the Government could not recover the amount under that particular Act. It was a matter of mere procedure, which could be rectified by an amending Act. That was the reason why no appeal was taken. These questions about the rights and the prerogatives of the Crown could not have been raised in the Privy Council since the appeal could only be against the decree and not against the judgment. Even if the Privy Council had upheld the decree of the High Court, legislation would have been had recourse to. It was, therefore, thought that it was far more satisfactory to deal with the matter by legislation at once.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—I beg to say a few words in reply to the observations that have been made by the Honourable Members who spoke against the motion now before the Council and my work has largely been lightened by the observations of those Honourable Members who have spoken in favour of the motion. With reference to the observations made by the Hon'ble Mr. Stokes by way of criticism of what I ventured to put forward as my view of the decision of the High Court, I may say I was perhaps in error in having said that what I said was my construction of the decision, for it appears to me that the fact is that is the decision itself and not one to be inferred from the decision. When I opened my remarks with reference to this motion, I said that all the three Judges agreed in saying that no assessment could be levied against a trespasser and it is that position that was controverted by the Hon'ble Mr. Stokes and some other Honourable Members. I would refer to the observations of the officiating Chief Justice, who was one of the Judges that took part in the decision, and those observations will be found on page 388 of the High Court Reports. He says:—

"Now, it is indisputable that the prerogative or right referred to rests entirely on the assumption that the subject on whom the demand is to be made, is, as between the Crown and himself, a lawful holder of the land, having a substantial and well-marked description of interest in it by virtue of which alone he becomes liable to the tax."

Mr. Justice Boddam says, on page 392, after negating the statutory right on the part of Government to impose any assessment —

"The only other right which the Government have to assess land is the prerogative of the Crown to take their share of the produce of the land occupied under any such right as can give a saleable interest to the occupier in the land and such as will enable him to be registered under Regulation XXVI of 1802."

Sir V. Bhashyam Aiyangar, who is the third Judge that took part in the decision, says on page 396, after referring to the fact that the right of Government to assess land revenue is not one created by statute, but is a prerogative of the Crown and explaining what the prerogative is —

"This necessarily implies and presupposes that the occupant of the land has an interest in the land and is entitled to the occupant's or ryot's share of the produce as distinguished from the King's share."

Sir V. Bhashyam Aiyangar then sums up his arguments and one of his arguments is —

"Secondly, that a person encroaching upon high ways or poramboke land set apart for building purposes can in no sense be regarded as a "landholder" or ryot in respect of the land encroached upon."

The Hon'ble Mr. G. S. FORBES:—That is "landholder" under Act II of 1864.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—There is no definition of "ryot" in that Act. He gives the principle and then sums up his reasons. What I say is not a thing which I have to evolve out of the decision. There is nothing in it in respect of the construction of which there could be any difference of opinion, and there is nothing that could not be plainly seen from the decision itself. It has been said that, whatever might be the Hindu and the Muhammadan Law and whatever might be the character of the land, the Government has the right to assess its revenue. From the point of view that I take of the matter, it is unnecessary to consider whether this proposition contended for by Government is tenable or otherwise. But I should hardly think that a reference to the Bombay Code will settle the matter, since it is not denied that even this Government has power to legislate, if it pleases. The Bombay Government had that power and exercised it. The question is whether independently of that, the power exists. The attention of Honourable Members has been drawn to the fact that the right claimed in behalf of Government to assess anything has been recognised and reference has been made to instances, extending over a series of years, where assessments have been levied. But that cannot go to prove the legality of the assessment hitherto imposed, because the latest decision that we have goes to show that the practice which had been admittedly obtaining for the last thirty years is an illegal one. Reference has been made to certain decisions of the High Court which are said to be inconsistent with the latest pronouncements. Without having those decisions before me, I cannot venture any opinion. One decision referred to by the Hon'ble Mr. Bradley can be distinguished, but I do not know what the other decisions to which he refers are. He was speaking of a case which has been decided very recently. If that is the case in which Mr. Justice Benson is said to have taken part, I heard it from the Government Pleader this morning that the reason why they passed that decision was not that they differed from the Full Bench case, but that they held the payment to be a voluntary payment and no question was necessary to be raised as to whether the Government had the right to collect it. I am not here to contend that where a ryot voluntarily pays whatever assessment is demanded, without exercising any scrutiny, there is any right existing in him for demanding back the money so voluntarily paid. It has been said that there has been the prerogative in favour of the Crown, which has been exercised, and, therefore it is not necessary for us to refer to what has been done during the time of Hindu and Muhammadan rulers. I do not know if a prerogative of the Crown could be created by a practice which had its origin some thirty years ago, when it was found that the practice theretofore adopted was illegal. This practice has

been in existence for the past thirty years and I do not know if in such a case we could even speak of a custom having been validly created. It will require a much longer period during which the practice must have prevailed in order to secure for it a wider recognition, before we can say that a prerogative of the Crown has been created. If, as a matter of fact, there has been a trenching upon the prerogative of the Crown by this decision a trenching that the Government takes the earliest opportunity to obviate the mischief of, where is the necessity for excluding pending suits from the operation of this Bill. The very same principle will apply to these cases also. When a person expects that, in view of the decisions of the High Court, the Government will pay back the money, if demanded, and whether such a person would be in a worse position than another who has resorted to the court, is a matter that has not been explained. No argument has been really advanced to show how the Government will be the sufferers by the adoption of the course indicated.

The amendment was put and lost.

The PRESIDENT :—The amendments which stand in the names of the Hon'ble Mr. Krishnan Nayar, the Hon'ble Mr. Venkata Rao and the Hon'ble Mr. Srinivasa Rao lapse.

The Hon'ble M. KRISHNAN NAYAR :—The object of my next amendment may be briefly explained. It has now been decided by the Council that validation is to take place. The object of the amendment that I am about to move is that, inasmuch validation is to take place, let that validation be restricted to a particular date. My amendment is that after the word "apply" be inserted the words "to any charge which has been imposed or collected under the name of penal or prohibitive assessment or charge after 2nd December 1903". These are cases of penal assessments which have been levied subsequent to the date of the High Court decision. Whatever reason there may be for giving retrospective effect to this Bill with reference to those cases of penal assessments which were actually imposed before the High Court pronounced its decision, those reasons do not exist in cases of penal assessments levied after the date of that decision. All those reasons which induced the Council to vote against the amendment for the omission of the whole clause do not apply to this, seeing that there was no necessity for the imposition of any penal assessment or charge after the High Court have expressly pronounced the practice to be illegal. I hope that this amendment will be carried and those cases of penal assessment may be saved from retrospective effect.

The Hon'ble V. C. DESIKA CHARIYAR :—I beg to second this proposition, as I have given notice of a similar amendment which I withdraw. The reason for the

amendment is shortly this. The time from the date of the High Court decision up to the time when this Bill is passed into Law stands on a different footing than the anterior period. It has been said that out of ignorance of the illegality or otherwise, a certain procedure had been adopted for years, i.e., since 1869, and the assessments have been collected from time to time from several people; and till it was known that it was illegal it is only right that the Government should not be bound to return the amount so collected. Whether that argument is sound or not, it is not necessary for me to consider for this purpose. At any rate, that argument would be in my favour in connection with this amendment, which relates to assessments collected after the High Court decision. There is no reason nor even a semblance of reason why after the highest Court in the land has pronounced a procedure to be illegal, that procedure should be continued till it is validated by a legislative enactment retrospectively. This stands, therefore, on an altogether different footing and I hope that the Government may very well gracefully give in and accept this amendment, out of at least respect to constituted authority, that is the authority of the Full Bench of the High Court.

The Hon'ble Mr. G. STOKES :—I do not know if I should say much in connection with this amendment. I do not see why any distinction should be made between the two periods mentioned. I don't think that the Government can accept the amendment.

The amendment was put and lost.

With the permission of the President the Hon'ble V. C. Desika Chariyar withdrew his next amendment which was similar to the one just lost.

Clause 15, as amended, was allowed to stand part of the Bill.

Clause 16.

The Hon'ble V. C. DESIKA CHARIYAR :—I beg to move that in line 34 between the words "escheat" and "until" be inserted the words "resumption or reversion."

The Hon'ble Mr. G. STOKES :—I have to say that I accept the amendment.

The Hon'ble V. C. DESIKA CHARIYAR :—Thank you very much.

The amendment was put and agreed to.

The Hon'ble M. KRISHNAN NAYAR :—The next amendment that stands in my name need not detain us long. The clause, as it stands, excludes from the operation of this Bill lands claimed by right of escheat until such lands have been reduced into possession by Government. My amendment is that after the word "Government" be inserted the following words "and to lands which have been unauthorisedly occupied for a period of six or more than six years, till the date on which this Act comes into force". The reason why I move this amendment is that the fact that a person has been in possession of a land for six years is a sufficient presumption that he is the owner of the land. We have already seen that the effect of the Revenue authorities taking action under this Bill is to eject a trespasser; and if trespassers claim the land as theirs, they will have to bring suits in the Civil Court as against Government. In such cases, the burden of proof that the land belongs to the Plaintiff trespassers will be on the trespassers themselves. We have already had a long discussion on the question of the burden of proof. What I submit by this amendment is that in any case it is only just and reasonable that, in those cases where trespassers have already been in possession for six or more than six years, the burden of proof should not be cast upon them, but should be cast upon the Government; and until the ownership is proved they should not be disturbed in their possession by any of the proceedings taken under this Bill. I may refer to an analogous case in the Specific Relief Act. Section 9 of that Act says that where a person has been in possession of land for a particular period, namely six months, and if he is disturbed, then, irrespective of the title, if he is able to prove to the Court that he has been in possession for the last six months, he is entitled to succeed as against the defendant. To take an illustration, suppose A, without any title to a plot of land, has been in possession of it for a period of six months and then another person B who may or may not have right to the land comes in—

The Hon'ble Mr. G. STOKES :—That is one trespasser against another trespasser.

The Hon'ble M. KRISHNAN NAYAR :—No, the trespasser remains on the land. To continue the illustration, if another person B who has or has no right to the land comes and turns A out and if A institutes a suit against B, he will succeed, even if he has no title. The mere fact that he has been in possession for a limited period of six months entitles him to succeed, apart from the question of title. Seeing that this is a question of Government land, my amendment says six years instead of six months. If a person has been in possession for six years and even if the Government has a real title, I say by this amendment that the Government should not turn him out, under provisions of this Bill, but that he should be allowed to remain in possession and that the Government should turn him out only in the ordinary course of law. The very fact that a person has been in possession for six years raises a very strong presumption that he has a title to the land.

The Hon'ble L. A. Govindaraghava Aiyar seconded the amendment.

The Hon'ble Mr. G. STOKES :—All I can say is that I am extremely surprised that one lawyer should propose and another lawyer second this amendment, which seems something extraordinary. If you look at the amendment, you will see that the effect of it is to create against the Crown right by adverse possession for more than six years—even six years' possession would, according to the amendment, create against the Crown a right by adverse possession. I always thought that the Crown was entitled to more consideration than an ordinary person. In the case of an ordinary person, the period of limitation is twelve years, but in the case of Crown it is sixty years. This amendment seems to take away my breath altogether. I may say at once that Government cannot accept this amendment.

The Hon'ble V. C. DESIKA CHARIYAR :—I may mention for the satisfaction of the Hon'ble Mr. Stokes at least to bring his breath back, that it is not meant that the man who squats should get indefeasible title and that all that is meant is that the Government should not apply the summary remedy provided in this Bill and take away the land from him. Six years' possession would not give him title, just as it would not give him title against any private individual. It would be a large order to say that because a man is able to squat upon a land for six years, it should give him title absolutely. All that is stated by the amendment is we must draw the line somewhere in respect of possession that if a man has been allowed to remain in possession for six years, you can only turn him out, in the ordinary course of law, by filing a suit in the regular courts but not under the summary provisions of this Bill.

The Hon'ble M. KRISHNAN NAYAR :—I am afraid that I was not very clear in what I said, and that must be the reason why the Honourable Member in charge of the Bill says that he is surprised that I moved this proposition and that I was seconded by another lawyer. As pointed out by the Hon'ble Mr. Desika Chariyar, I do not mean to suggest that if a person has been in occupation for more than six years, by adverse possession, the right of Government for ownership would be lost and that it would

4 P.M.

become vested in the trespasser. Far from it. As the Honourable Mover of the Bill has himself stated, a trespasser can acquire title as against a private individual only by twelve years' possession, and as against Government the possession must be for sixty years. What I say is that a man who has been in possession for more than six years must not be summarily turned out under the provisions of this Bill, but that the Government must bring a suit against him and turn him out. That is the only object of my amendment. I am sure that if I had clearly expressed what I had to say, the Honourable Member would not have expressed his surprise.

The amendment was put and lost.

Clause 16 as amended was allowed to stand part of the Bill.

The Hon'ble K. VENKATA RAO :—My next amendment is :

At the end, add the following clause :—

"17. The penalty levied under section 5 of this Act shall be paid over to the Provincial, Municipal, or Local Fund account according to the nature of the land regarding which the said penalty has been levied."

The Hon'ble Mr. G. S. FORBES :—It has just struck me that this amendment may be *ultra vires* of this Council. Section 43 of the Indian Councils Act declares "that it shall not be lawful for the Governor in Council, except with the sanction of the Governor-General in Council, to make regulations or take into consideration any law or regulation for any of the purposes hereinafter mentioned, that is to say, (1) affecting the public debt of India or the customs duties, or any other tax or duty now in force and imposed by the authority of the Government of India for the general purposes of such Government, etc." I don't think we can legislate, without the sanction of the Government of India, on matters which involve the apportionment of the public revenues.

The Hon'ble the ADVOCATE-GENERAL :—I think it is a matter about which we must get the sanction of the Government of India.

The PRESIDENT :—I don't think that it affects the public debt of India. It is competent for this Council to declare that the money shall be spent in a particular way.

The Hon'ble K. VENKATA RAO :—I am not very particular about pressing this proposition. But I don't think that it comes under section 43 of the Councils Act.

The PRESIDENT :—It is easily disposed of, if you will say what you want to say.

The Hon'ble K. VENKATA RAO :—What I suggest is that if the land belongs to the Municipality, penalty levied on that land under this Bill should go to the Municipality concerned. For use and occupation of land, a Municipal Council levies some tax, rent or revenue from the person who has occupied the land without permission. If the land belongs to District Boards or Local Boards, the money collected under this Bill should be handed over to those bodies. My suggestion is merely to hand over these collections so as to enhance the limited funds of these local bodies, provided the lands from which the penal assessment has been collected belong to these bodies.

The Hon'ble V. C. DESIKA CHARIYAR :—I beg to second it. There is nothing illegal or strange in the suggestion made. Every day we see that in the Municipal prosecutions the fine is handed over to the Municipality.

The Hon'ble Mr. G. S. FORBES :—That is done by executive authority.

The Hon'ble V. C. DESIKA CHARIYAR :—If it can be done by executive authority, I don't see why we should not do it.

The Hon'ble K. VENKATA RAO :—Then I would remark that my suggestion may be given effect to by an executive order.

The Hon'ble Mr. G. STOKES :—I have only got to say that, with regard to this penalty, no Municipal or Local bodies has any claim whatever to the money collected under any circumstances. This money is imperial money and must be so. That is the fundamental objection to the amendment. But there is another very important objection to this clause, namely, that it is impossible to understand what it does mean. It does not say what the mover wants to say and what it does say I am not prepared to say, but it certainly does not say what he wants to say. As it stands, it is perfectly impossible that this amendment can be accepted.

The Hon'ble K. VENKATA RAO :—To make my meaning clear I may state that the penalties levied may be credited to the Municipal funds or Local funds or Provincial funds according to the nature of the lands cultivated. If it is Municipal land, it will have to go to the Municipality or if it is Local fund or District Board property or Union property, the penalty must go to their funds. If it is otherwise, it must go to Provincial or Imperial funds.

The Hon'ble Mr. G. STOKES :—If you get the Government of India to consent to it, it will be very good.

The amendment was put and lost.

Title of the Bill.

With the permission of His Excellency the President, the Hon'ble L. A. Govindaraghava Aiyar withdrew the following amendment of which he had given notice :—

For lands which are the property of Government *substitute* unassigned assessed waste lands and lands set apart for communal purposes.

With the permission of the President, the Hon'ble M. Krishnan Nayar withdrew the following amendment of which he had given notice :—

Between the words property *and* of *add* or under the control.

The title of the Bill was put and agreed to.

Preamble.

With the permission of the President, the Hon'ble L. A. Govindaraghava Aiyar withdrew the following amendment of which he had given notice :—

For lands which are the property of Government *in lines 2 and 3 substitute* unassigned assessed waste lands set apart for communal purposes.

With the permission of the President, the Hon'ble M. Krishnan Nayar withdrew the following amendment of which he had given notice :—

In line 3, between the words property *and* of *add* or under the control.

The preamble was put and agreed to.

The Hon'ble Mr. G. STOKES :—The Bill having been considered clause by clause, it now becomes my duty to move that the Bill be passed into law at once. I do not mean to take up the time of the Council with any remarks, but I think I am bound to say that I consider the Bill to be a good one and that it will effect the purpose for which it is intended without causing harm to the people. It will cause a considerable amount of extra work to the Revenue officers. That is undoubted, but for that there are compensations. The main points of contention were clauses 2, 5, 6 and 15 and they are all settled and I am glad of that. I won't say any more, except to commend the Bill to the Council.

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

The Hon'ble M. KRISHNAN NAYAR:—As the Honourable Member in charge of the Bill stated, there is no necessity for detaining the Council with any lengthy remarks. We have been at it for two full days and for an important fraction of a third day and most of us are becoming tired. Now, Sir, I rise only to explain the vote that I am going to give in connection with this Bill. I do not want that in such a Bill as this, which the Government regards as important and which is, as a matter of fact, important—I should give a silent vote. To my mind, the Bill, as it stands, with the various amendments which have been accepted is better than the Bill which was originally drafted; and speaking for myself personally, I think it is very much better than the Bill, as it emerged out of the hands of the Select Committee. So far, I think it is a matter for congratulation. I also think that there are in this Bill some provisions which are really very useful, both to the Government and to the public represented by Government. It is certainly desirable that in respect of those lands which clearly and admittedly belong to Government, the Government must possess rights which are not possessed by private individuals to turn out trespassers. Such a provision as that is desirable and necessary. There are many other useful provisions in this Bill, but, Sir, I take it that my friends will agree with me, when I say that the most important part of the Bill is contained in clause 2. Even the other provisions relating to imprisonment and validation to which there have been reasonable objections are not half so important as the provision contained in clause 2. The object of that provision is to declare that certain lands and that certain kinds of water which do not come under a certain specified category are the property of Government. There was, I think, absolutely no reason whatever for a declaration like this, seeing that the effect of this declaration will be very important and far reaching. In view of the retention of the clause, I feel constrained to vote against the motion now placed before us. I may say at once that, if I vote against the motion, it is not because I do not think that there are not important and useful provisions in this Bill, but, as I said before, it is by reason of the declaration contained in clause 2, though I admit that there are in the Bill useful provisions which will be of great benefit to the public and the Government. If the declaration contained in this clause had been restricted as suggested by me to the purposes of this Bill, I would gladly give a different vote.

The PRESIDENT:—I thought that clause 2 was specially worded to meet your objections.

The Hon'ble M. KRISHNAN NAYAR:—With reference to that, I am very thankful to the Government and the Honourable Member for having exempted janmam lands in Malabar and also similar lands in South Canara. But the vote that I am going to give is not on behalf of Malabar and South Canara only. If I represented only those two districts, I would have voted only for this Bill. But so far as this Bill is concerned, unfortunately I represent other districts also. I would have been very glad, in fact, if I could give two different votes—one for those two districts and the other for the other districts; but inasmuch as I have not got two votes but only one, I must vote against the Bill. I must thank you personally for having reminded me of Malabar and South Canara; otherwise, I would have sat down without expressing my gratitude to you for what you have done with regard to Malabar and South Canara.

The Hon'ble V. C. DESIKA CHARIYAR:—I cannot help expressing my gratitude to the attitude of the Honourable Member in charge of the Bill. He seems to be quite conscious that this declaration in clause 2 is very necessary. The only explanation given by the Honourable Member—nobody else has attempted to give any justification—and the only reason given for it is: does it not contain the truth? Is there anything wrong in it? If it is a positive definition, I can understand it, but it is a negative definition, and all that it says is that except certain properties all the rest are Government property. It is to that sort of definition of enumeration by implication—to make all property the property of Government which does not fall under certain category—we take exception. If, on the other hand, as in the Bombay Code and in the other Codes, a positive definition had been attempted by Government and if it had defined what are Government property—this or that class of property—we should have nothing to say against that definition. Then again a charge is made

against members who sit on this side of the table that they never helped Government in framing a more satisfactory definition. From the very beginning, on the very day this Bill was introduced, we honestly attempted to do what we could to make the definition least harmful. We mentioned that such and such a class of property should be excluded. The Honourable Member no doubt adopted some of our suggestions and to that extent we feel thankful. When a measure is introduced and when a clause is inserted not for the purposes of this Bill but for some other purposes, though it contains much of truth one is not prepared to accept it as a part of the measure for which he considers it quite unnecessary. It is that which makes us all unable to vote for the Bill—at any rate speaking for myself, I feel constrained to say that I am unable to vote in favour of the Bill. In connection with this Bill, I would only point out that the objectionable features of it are to be found not only in clause 2 but in clauses 5 and 6 taken together and clause 15, as it is now amended and passed. To these we do take exception. The object of the Bill might well have been attained without any of these provisions being introduced or without introducing all of them together, as some of them may be necessary. I am no sympathiser with any trespasser. I go further than that and say to the Honourable Member: you may punish him in whatever way you like. But you should not go and cut off his head.

The PRESIDENT:—I don't find any such provision in the Bill.

The Hon'ble V. C. DESIKA CHARIYAR:—Short of that you have everything—I am happy to congratulate the Council that it does not find a place. All that I say is that the punishment inflicted should be in some proportion to the offence committed. Why should there be cumulative punishment of 20, 50 or 100 times the assessment, and of sending the man to the jail and of making him forfeit his crops and buildings on the land? I fail to see why there should be these three punishments together. Speaking for myself, I should not have talked at all about clause 2. The President was kind enough to tell us at the end of the debate that it is there by direction. I wish I had known that at the initial stage and I should not have wasted my own time and the time of the Council. If I had been told that it was there by direction—I take it it must be by direction of the Government of India or Secretary of State and whoever it may be that gave the direction I should loyally have bowed to the direction—I should not have wasted my time or the time of the Council. We thought that we could persuade the Honourable Member by showing him what we considered to be objectionable, and it was only at the fag end of the discussion that we were told this. Therefore I won't address one word against that clause, which, by direction, stands there. One other argument which was addressed on the other side is as to the provisions not being *ultra vires*, because the Viceroy's Council had sanctioned the introduction of the Bill.

The Hon'ble Mr. G. S. FORBES:—Do you refer to my objection?

The Hon'ble V. C. DESIKA CHARIYAR:—No. I refer to the Hon'ble Mr. Castle-stuart Stuart's argument. Then at the very outset you should not have sat here. If the Viceroy allows the introduction of the Bill, he simply takes the policy of the Bill into consideration and says that the Bill may be discussed in the local Council. The mere permission given for the introduction of the Bill does not imply that the Viceroy or his Council approves of everything contained in the Bill. When I remember how even the very moderate amendments about the period of limitation being made to count from the date of communication were voted upon and negatived by the official majority, I feel constrained to say that I cannot give my vote in favour of this Bill. It is very easy to say that a private man ought to know when an order is passed. We have in evidence that the Madras Government was unaware of the decision passed by the Madras High Court in December 1903 till some time in April 1904. If, with all the machinery at the disposal of the Government and with the standing Government Pleader who appeared in the case, it took four months in the Presidency town of Madras for the decision of the High Court to reach the ears of the Government, especially when the Government was itself a party to the litigation, how do you expect that ordinary people in the mufassal should come to know the decision on the date it is pronounced or immediately after. Is it at all reasonable that a small amendment that we proposed should be negatived?

4-20 P.M.

The Hon'ble K. VENKATA RAO :—So far as the Ceded Districts go, I regret to say that the provisions of clauses 4, 5 and 6 are likely to work injuriously and may do a good deal of mischief, unless some benevolent regulations are introduced under sub-clause (b) of clause 8. So far as these rules are concerned, they are completely left to the executive authority of the local Government and I hope that so far as the dry districts go, the regulations will be so framed as not to cause any sort of hardship to the poor ryots of the Ceded Districts which have been constantly subjected to droughts and famines. Even in the best years they do not derive any bumper crops from their lands. What I am afraid of is that the ten times and twenty times the assessment to be levied as penal charge may prevent most of the ryots from taking up land, even if it be at the discretion of the Collector to impose penal assessment. The existence of this provision will act as deterrent on the occupation of lands by ryots who have been occupying it for thirty and forty years. I appeal to the Government to see that these rules are so framed as not to cause hardship to the ryots of the Ceded Districts.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—I propose to vote against this Bill and it is due to me and to the Council, especially when I have been on the Select Committee too, to explain the reasons for the course I propose to adopt. The chief reason that I have for voting against this Bill is the retention of clause 2. I have given my most anxious consideration to the arguments that have been advanced in favour of the retention of the clause and I must confess that I have not been convinced by the arguments urged for its retention. One Honourable Member, in his observations with reference to this clause, called in question the facilities that "distinguished lawyers resident in Madras" have for understanding the views and sentiments of the public in this connection, and he also called into question their competency to represent them. I cannot help stating that these observations have been singularly inappropriate and, if you will allow me to say so, have been entirely uncalled for. But I am thankful to say that, in the present case, no experience is required for the purpose of understanding whether the retention of this clause is necessary. It merely requires a reading of history, the history of this country, the understanding of the existing state of the law and the full recognition of the scope of this clause. With these decisions which are as much available to one uninitiated in the mysteries of the Revenue Department, as they may be to those who are officers of wide experience, it appears to me that no justification has been made out as to why this clause should be retained in this Bill. No doubt the Honourable Member has asked whether any instances could be pointed out which are not covered by this clause. In respect of that, it may be stated that these are cases wherein the property vests not in Government but in others. We have tried in our various speeches to say what those instances are. We are thankful that some of our instances had been recognised and provided for, but others were not. When there is a sweeping declaration to be made like the one contained in clause 2, the point of view from which the matter should be looked at is not the one adopted by the Honourable Member but rather the other as to whether any hardship has been caused to Government or any difficulty has been experienced by them in carrying on the administration of the country, due to the absence of such a provision. The very decision, to which this Bill owes its inception did not proceed on the theory that the Government had not the right but the subject in the case to which it referred. What was said was that the provisions of the law that had been called into requisition were not applicable and the prerogative of the Crown could not be exercised. It appears to me that some necessity should be shown to exist for the provision before such a clause as this could be introduced into this Bill. That is my chief reason for voting against the Bill. No doubt, I object still to the retention of clause 15. It appears to me that although the principle which it embodies is mischievous and dangerous, there can be any great practical hardship in the working of it. So that if clause 2 had been deleted and even if clause 15 had been retained, I would have been willing to vote for the Bill. But unfortunately the Government had made up its mind to have clause 2 and I regret I am not able to vote for the Bill. But I wish the Government and other members of Council will appreciate the position that we take up. We perfectly agree that some steps should be taken to check unauthorised occupation of land, without previous permission, as such occupation is

undesirable in public interests. We said so when the Bill was introduced and we still adhere to the same view. What we particularly object to is that advantage should have been taken of such an occasion as this, for the purpose of introducing this clause, the exact significance of which it is not possible for us to realise or foresee. It has not had that amount of consideration at the hands of the Council or of the Select Committee which it must have had, before one could confidently say that it reserves to Government only those rights which are understood to belong to them and does not purport to refer to anything more than what the Government may be undoubtedly entitled to.

The Hon'ble P. S. SIVASWAMI AIYAR :—I regret I am unable to give my vote for the Bill for the same reasons as have been urged by the Hon'ble Mr. Govindaraghava Aiyar. It is so very difficult to frame a satisfactory definition of what is Government property, that the more I think of clause 2, more difficulties suggest themselves to me. One difficulty is whether the case of trees standing on poramboke lands would be saved. The Hon'ble Mr. Forbes says they would be saved. It seems to me also that they would be saved. But the saving proviso in clause 2 speaks only of the lands which are in the possession of individuals and not the trees. If the words used were immovable property and not lands, trees would be clearly saved.

The Hon'ble Mr. G. STOKES :—That is English law. But that is another question.

The Hon'ble P. S. SIVASWAMI AIYAR :—I merely refer to it as an illustration of the difficulty in framing a satisfactory definition.

The Hon'ble Mr. G. STOKES :—You know that in Indian Legislation the word land has not got that meaning.

The Hon'ble P. S. SIVASWAMI AIYAR :—It seems to me difficult to frame a satisfactory definition. I need not repeat the other arguments which have been urged by the Hon'ble Mr. Govindaraghava Aiyar.

The Hon'ble G. SRINIVASA RAO :—We have considered the Bill for fully three days and it has not been in vain that we have been sitting for such a length of time. We have done our best to take away the harmful nature of the clauses to which we object. But still the clauses are there. We do not for one moment say that the Members of Government do not take interest in the public. They represent the public as well as we do. When it is their interest to pass a law for the good of the public, it is our duty, as Members of the Legislative Council, to see whether any of the provisions will work harmfully. We have done our best to improve the clauses. Wherever the Members of the Government have yielded to us, we are thankful for what they have done. But the harmful provisions to which we object are still there. Though we approve of the principle of the Bill, yet for reasons which I have already given and which it is not necessary for me to repeat, I feel constrained not to vote in favour of the Bill, but against it.

The Hon'ble Mr. A. E. CASTLESTUART STUART :—As a member of the Select Committee, I think I may, on behalf of the Honourable Members of the Committee sitting on this side of the table, say that I consider the Bill as now amended, better in some respects than what it was when it was originally framed. I am not prepared to say that the Honourable Members on the opposite side have done very much to strengthen the hands of the Government but, as I said yesterday, the Government are interested in protecting village communities and the ryots of the country from invasion of their rights. From the remarks that fell from some Honourable Members, they appear to feel annoyed at what I ventured to say yesterday afternoon, when I resented their apparent assumption that they alone represented the interests of the public at large. I deny entirely that such is a correct statement of fact. On the contrary, I maintain that the officers of Government in its various departments, whether Europeans or not, are persons who are interested and take the keenest possible interest in the ryots of this country. Speaking for myself, I have devoted more than 25 years of my life—devoted the best energies that I possess—solely to the interests

of the public and I repudiate as absolutely untrue the assumption on the part of the Honourable Non-Official Members on the opposite side that they are the only or the best representatives of the people.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—I never said that.

The Hon'ble V. C. DESIKA CHARIYAR :—I respectfully repudiate having said that.

The Hon'ble M. KRISHNAN NAYAR :—I never said that.

The PRESIDENT :—You had better confine yourself to the Bill before us.

The Hon'ble Mr. A. E. CASTLESUART STUART :—This Bill has not been brought forward solely for the benefit of the village community but for the benefit of the public at large. Every further amendment brought forward would have tended, had it been passed, to more or less emasculate the Bill and would have rendered it less efficient than it now is with the amendments rejected. I think, therefore, we are entitled to congratulate ourselves that the Bill has come out of such scathing criticism in the form in which it now stands. I don't say it is perfect, but I have no doubt that it will make for the good of the country and will protect the rights of the public, which was the sole object with which the Bill was introduced.

The Hon'ble Mr. G. STOKES :—As a Member in charge of the Bill I desire to acknowledge the great help which both the Hon'ble Mr. Govindaraghava Aiyar and

4-40 P.M.

the Hon'ble Mr. Sivaswami Aiyar have given to this Bill. I feel bound to do so more especially because they have not seen eye to eye with Government in this matter. I desire to acknowledge their singlemindedness and straightforwardness in dealing with this Bill and putting forward their opinions. I only say that it is a matter of extreme regret that we could not go further to meet their wishes. We have derived a great deal of advantage from the suggestions made in regard to clause 2, and I hope it will be found that it does not confiscate any rights. I hope the Hon'ble Mr. Sivaswami Aiyar, as he considers it still more, will come round to that opinion, at any rate in the practical working of it. I beg to tender to these gentlemen my best thanks for the help which they have given me in connection with this Bill both in the Select Committee and in the Council. The Hon'ble Mr. Venkata Rao hoped that executive orders would be issued in connection with this Bill. It follows, as a matter of course, that they will be issued, and I have no doubt that orders will be framed so as to prevent any possible hardship under the Bill.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—Will you allow me to say one word? I am very thankful to the Hon'ble Mr. Stokes—speaking for myself and the Hon'ble Mr. Sivaswami Aiyar—for the very kind observations that he has made respecting us: and if I can venture to give expression to our own personal feelings in the matter, I beg to submit that we have met with nothing but kindness and consideration from him personally and we must say that we found it a great pleasure to work with him in the Select Committee, and though we have not been able to convince him of the propriety of our views, our regret that we have not been able to agree with him cannot be less than the regret that he feels that he is not able to agree with us. We feel thankful to the Honourable Member in charge of the Bill for his kind expressions and we wish that we deserved the whole of what he said. I am glad that he has recognised that, in making such opposition as we did to some of the provisions in this Bill, we did so only with the singlemindedness of purpose that ought to characterise the conduct of any person who takes part in these debates and not with any desire to pose as the sole representatives of the people.

The Hon'ble P. S. SIVASWAMI AIYAR :—I beg to endorse every word of what Hon'ble Mr. Govindaraghava Aiyar has said.

The PRESIDENT :—I have a few words to say. I much regret that Honourable Members on the other side of the table are unable to follow the Government in this matter. Government undertook this legislation on the head of a declaration by the High Court that Act II of 1864 could not be used to collect prohibitory assessment imposed for the occupation of land which should not be occupied. I am far from agreeing with all the opinions of the High Court that appear in the particular judgment, but I was quite satisfied that the Act does not in its terms contemplate the levy of such a charge.

When Government came to the drafting of a Bill some difficulty was encountered over the consideration of the property that was to be brought within the purview of the Act. That question was solved for us, and out of this has grown most of the trouble that the Bill has occasioned. On that point I spoke yesterday and need say no more. Government has no occasion to raise revenue out of occupation of the sort and would be glad to be without it and without the necessity and the labour of collecting it. I would, however, point out that the levy of from two to three lakhs of rupees per annum, if it shows nothing else, does give some index of the total amount of improper occupation that takes place, and, still more, of the extent of improper occupation that would probably take place if Government or its officers were to sit still and allow this acquisition to go on unchecked.

I pass from that to the consideration of the many objections that have been raised to the penalties of sorts that the Bill provides. Endeavours all along the line have been made to minimise those as set out in the draft Bill. I cannot help thinking and expressing the opinion that a deal of wrong sympathy with wrong-doing has thereby been exhibited. It cannot be maintained that no cases of mistake or of wilful injustice occur, but out of a very long actual experience I have no hesitation in stating that the proportion of such cases is infinitesimal; in fact I can recall no case at all though I recently read of one discovered by the High Court. The unauthorised occupation is, so far as I know, only too obvious and flagrant. Let any one walk through the streets of Chidambaram or Conjeevaram, and, if he keep his eyes open, he cannot entertain a very high opinion of the descendants or representatives of those by whom or for whom the fine streets of those towns were originally designed. With all the repression that past procedure permitted to be applied, it is but too obvious that this method of stealing—or acquiring, if a less offensive term is held proper—does not show any sign of abatement. When, therefore, a remedy has to be applied it should be of such a character as will secure the end in view in the very worst cases. I have seen some exceedingly bad cases. For minor ones the good sense of those entrusted with authority must be assumed to be capable of apportioning the penalty to the particular act.

The last matter of importance is the validation of the past executive action of Government. Some of us are inclined to think that a sort of mania is abroad at present as to the value of and respect to be paid to judgments of a Court. One generally understands that a Court is appointed by a Government or Sovereign to find and to expound and apply the law, but it is evidently being forgotten now and then that Government exists to—with other things—supply the Court with directions for its guidance or with material for it to exercise its judicial acumen upon. No one will, I hope, deny the right of Government to amend its mind on any particular matter affecting the community, and to embody its mind in statute law if it finds justification and has the constitutional power requisite. What is argued now is that when a law is found not to be of the particular use to which it has been put, it is morally wrong to make or convert the law so as to be of the sort found to be necessary, and also to make it hark back and cover up the so-called illegality which is found to have occurred. Now I agree to the immorality alleged, always if, and provided that, the improper application of the law has induced any one to materially alter his position so that the new law or the new application of it puts him in a worse position than he occupied theretofore. I express the matter as a layman; it seems easy of comprehension. Now, I simply ask, has any one of those, upon whom in the past prohibitory assessment has been imposed, been in any way damnified otherwise than by his own act or the results of his own act of improper occupation? He has suffered I grant; and I am ready to maintain that, taking the ordinary case of encroachment, and the remedy which was ordinarily applied or applicable—and these ordinary cases are all that we can regard at the present moment—he deserved to suffer, and his position was certainly not altered by himself for the worse. Much has been made of the Government's alleged illegal action in exacting for occupation more than the total assessment that might be imposed on the land. I consider, and it must be accepted, that any Government, that is a Government, has the right to impose what charge it pleases on any land that belongs to it, if it has not already limited its own power to do so. It would be difficult to show that a Government in or out of India should be in any

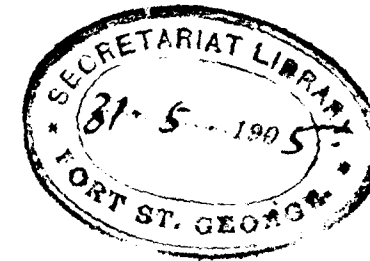
worse position than a private owner, but that is exactly the position that those who are anxious to curb the power of Government are solicitous to establish. Government property may be difficult of definition, but there should be no difficulty in accepting a statement that what is no one's property is to be looked after by the Government. And I may venture to say that this common property will not be worse looked after in the future than it has been in the past.

The motion that the Bill be passed into law at once was put and agreed to.

4-50 P.M.

The PRESIDENT:—There is no further business before the meeting and I declare it dissolved.

H. D. TAYLOR,
Ag. Secretary to Government, Legislative Dept.



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 Vic., cap. 67, and 55 and 56 Vic., cap. 14.

The Council met at the Council Chamber, Fort St. George, at noon on Tuesday the 4th day of April 1905.

PRESENT:

His Excellency Baron AMPTHILL, G.C.S.I., G.C.I.E., Governor of Madras—
Presiding.
The Hon'ble Sir JAMES THOMSON, K.C.S.I.
The Hon'ble Mr. G. STOKES, C.S.I.
The Hon'ble Diwan Bahadur R. V. SRINIVASA AIYAR Avargal.
The Hon'ble Mr. A. G. BOURNE, D.Sc., F.R.S.
The Hon'ble G. SRINIVASA RAO Avargal.
The Hon'ble M. KRISHNAN NAYAR Avargal.
The Hon'ble GHULAM MUHAMMAD ALI SAHIB BAHADUR, Khan Bahadur, Prince of Arcot.
The Hon'ble Mr. H. P. HODGSON.
The Hon'ble Mr. H. BRADLEY.
The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR Avargal, Zamindar of Chunampet.
The Hon'ble Mr. A. E. CASTLESTUART STUART.
The Hon'ble P. S. SIVASWAMI AIYAR Avargal.
The Hon'ble V. C. DESIKA CHARIYAR Avargal.
The Hon'ble Mr. J. E. P. WALLIS (Advocate-General).
The Hon'ble Mr. J. TWIGG.
The Hon'ble Mr. G. S. FORBES, C.S.I.
The Hon'ble L. A. GOVINDARAGHAVA AIYAR Avargal.
The Hon'ble Mr. A. J. YORKE.
The Hon'ble Mr. M. HAMMICK, C.I.E.
The Hon'ble K. VASUDEVA AIYANGAR Avargal.
The Hon'ble Mr. W. B. DEWINTON, C.I.E.
The Hon'ble Mr. C. J. WEIR.

QUESTIONS AND ANSWERS.

His Excellency the PRESIDENT:—Honourable Members will now put the questions standing in their names.

The Hon'ble K. VASUDEVA AIYANGAR:—

I. (a) In view of the fact that the water-supply in the Cauvery has become uncertain and fitful of late, will the Government be pleased to state if the storage scheme to improve the water-supply of the delta will be taken up for execution soon?
(b) Will the Government be pleased to place on the table the details of the scheme?

iv-1

The Hon'ble Mr. de Winton :—

I. (a) There is no reason to believe that the character of the water-supply in the Cauvery has altered of late years, but with a view to improve and extend the irrigation of the delta an estimate for the construction of the Cauvery reservoir was submitted to the Government of India in September last with the request that the sanction of the Secretary of State might be obtained thereto. That Government have now called for certain information which is being collected, and pending the sanction of the Secretary of State, it cannot be stated when the project will be carried out.

(b) Government are not at liberty to place on the table the details of the scheme.

The Hon'ble K. Vasudeva Aiyangar :—

II. (a) In what districts have the provisions of section 9 of the Village Courts Act, 1888, been brought into operation?

(b) Will the Government be pleased to state if the report called for in G.O., No. 1552, dated 14th October 1904, towards the improvement of the Village Bench Courts has been received from several Collectors and whether the Government contemplate the extension of the provisions of the above section to other districts?

The Hon'ble Mr. Forbes :—

II. (a) A list of the districts to which the system of trial by Bench Courts under section 9 of the Village Courts Act has been introduced will be found in statement B-1 in Appendix II of the report on the Administration of Civil Justice for 1903. The districts are North Arcot, South Arcot, Bellary, Anantapur, Chingleput, Coimbatore, the Nilgiris, Cuddapah, Ganjam, Kistna, Kurnool, Madras, Malabar, Nellore, Tinnevely and Vizagapatam.

(b) Replies have been received from nine Collectors to G.O., No. 1552, Judicial, dated 14th October 1904. The further extension of the system of trial by Bench Courts will be considered when the replies from other districts have been received.

The Hon'ble K. Vasudeva Aiyangar :—

III. (a) Are the Government aware of the existence of great difficulties in the diverting of water into the high level channels of the Trichinopoly district from the Cauvery for irrigation purposes even when there is sufficient supply of water in the river?

(b) Is it a fact that owing to this difficulty water-supply fails in one place or other every year subjecting the ryots to great loss?

(c) Will the Government be pleased to depute a special officer to investigate this matter and elaborate a scheme so that this evil is set at rest once for all?

The Hon'ble Mr. de Winton :—

III. (a) & (b) Government are aware of the difficulties to which the Honourable Member refers, but they have been removed to a considerable extent by the recent improvements to the Upper Anicut, which is now capable of holding up water a foot higher than formerly.

(c) The supply to the channels will be still further improved if the Cauvery reservoir is made, and in these circumstances no further investigation is required at present.

The Hon'ble K. Vasudeva Aiyangar :—

IV. In what districts are the resettlement operations going on at present? Will the Government be pleased to state whether these will be conducted solely with reference to the fluctuations in the prices of food-grains or otherwise?

The Hon'ble Mr. Hammick :—

IV. Resettlement operations are now going on in Salem, Tinnevely, Kurnool, Guntur and Nellore.

The principles on which the revision of the assessment is made must depend on the circumstances of the previous settlement in each district. Fluctuations in the prices of food-grains will naturally be the main factor for consideration as a rule, but not necessarily the only one.

The Hon'ble K. Vasudeva Aiyangar :—

V. (a) With reference to the grant of 20 lakhs of rupees for the improvement of drainage of the river-irrigated portions of the Tanjore district, will the Government be pleased to place on the table the details of the whole scheme?

(b) Does the scheme include the drainage of the Trichinopoly delta also?

(c) If not, will the Government be pleased to order the investigation and improvement of the drainage of that district where the difficulties are considerably augmented by the submersion of cultivated lands by floods of the jungle streams from the adjacent uplands?

The Hon'ble Mr. de Winton :—

V. (a) The scheme as sanctioned aims at improving the principal drainage streams such as the Palavar, Adappar, Nandalar, etc., and provides for draining the country in normal years, and in years of excessive rainfall it would allow of water to drain away at a fair rate so that damage to standing crops may be reduced to a minimum. In submitting the scheme to the Government of India, it was stated that its execution was proposed to be spread over 10 or 12 years, each portion of it being taken up in the order of urgency. Accordingly the estimates for improving the two first-named drainage streams, the Palavar and the Adappar, are now under execution. But in the course of progress of these works, investigations made have shown that the scheme requires revision which is now receiving attention. The Government are therefore unable at present to furnish the detailed information for which the Honourable Member has asked.

(b) There is no delta proper in Trichinopoly; the scheme does not embrace that district.

(c) The Government have received a detailed report from the Superintending Engineer on the causes and effects of defective drainage in the Trichinopoly district. Measures are being taken to remedy these defects and if the Honourable Member desires to have detailed information as to what has been done, it will be supplied to him.

The Hon'ble K. Vasudeva Aiyangar :—

VI. (a) Is it a fact that when the Bill to amend Madras Act VII of 1865 was passed into law, the Hon'ble Mr. Winterbotham said from his place in the Legislative Council that "not one inch of ryotwari land throughout the Tanjore delta would be affected by the aforesaid law"?

(b) Is it a fact that Government have now issued instructions to charge water rates under Madras Act No. V of 1900 for crops which are not irrigated with water from the rivers of the Tanjore district but are supposed to be benefited by percolation? If so, will the Government be pleased to order the instructions to be placed on the table?

The Hon'ble Mr. Hammick:—

VI. (a) The Honourable Member has quoted only a portion of a sentence from the remarks of the Hon'ble Mr. (now Sir) Henry Winterbotham, who when presenting the report of the Select Committee on the Bill to amend Madras Act VII of 1865 made the following observations:

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.

The Honourable Member will thus see that the meaning and effect of Sir Henry Winterbotham's remarks are very different from what he supposes.

(b) Government have ruled that the question whether there has been irrigation by percolation is one of fact to be determined in each case and have directed that in Tanjore where a plantain crop is raised on dry lands surrounded by Government channels and irrigation by percolation is found as a fact water-rate should be charged.

A copy of the instructions issued will now be placed on the table.

The Hon'ble K. VASUDEVA AIYANGAR:—

VII. (a) Is it a fact that there are narrow strips of land reserved for forest purposes on the right bank of the Cauvery in the Trichinopoly district very close to the cultivated lands of the villages causing great hardships to the ryots?

(b) If so, will the Government be pleased to order the disafforestation of these bits and allot them for the grazing of the agricultural cattle of the adjoining villages?

The Hon'ble Mr. Hammick:—

VII. The Honourable Member presumably refers to the padugai lands on the banks of the Cauvery which were reserved originally in 1871. Under the instructions issued in 1897 and 1901 District officers are empowered to allow villagers to exercise ordinary village privileges within a reasonable margin inside reserves if the boundaries of the latter adjoin village-sites or irrigated land. The Government are not aware that the padugai reserves are causing hardship and are not prepared to disafforest them.

The Hon'ble M. KRISHNAN NAYAR:—

VIII. (a) Has the attention of Government been called to an article under the heading of "The Tramway in Chintadripet" published in the *Madras Mail* of 11th March 1905?

(b) Is it a fact that as stated in that article two children died by reason of tram-car accidents in Aiya Mudali Street in Chintadripet?

(c) Is it a fact that as found in a judgment of the Black Town Presidency Magistrate published in the *Madras Times* of 25th January 1905, there is at present

no contrivance in the mechanism of the tram-car to stop it suddenly for averting accidents?

(d) Will Government be pleased to direct the immediate introduction of contrivances in tram-cars for stopping them whenever required?

(e) Is there any sanctioned speed, and if so what is it, at which tram-cars are directed to run?

(f) What is the actual speed at which tram-cars now run?

(g) Has the attention of Government been called to a paragraph under the heading of "A fatal tramway accident" published in the *Madras Mail* of 20th March 1905 in which a woman of fifty-five years of age is alleged to have died by reason of injuries which were the result of a tram-car accident in the Wall Tax Road, and to the rider which the jury who assisted at the inquest held in connection with the death added to their verdict?

The Hon'ble Mr. de Winton:—

VIII. The attention of Government has been drawn to the article under the heading of "The Tramway in Chintadripet" published in the *Madras Mail* of 11th March 1905; and it is a regrettable fact that two children did, as stated in that article, die by reason of the tram-car accidents in Aiya Mudali Street in Chintadripet.

With regard to the enquiry as to appliances fitted to the Madras Tramway Company cars for the purpose of stopping them suddenly in case of emergency, each car is fitted with, in addition to the ordinary hand brake, a lever which reverses the motor, the effect of which is to bring a car running at 8 miles an hour to stand in a distance of from 16 to 20 feet. The sanctioned maximum speed at which cars may be run is 8 miles an hour, and the actual speed is considerably below this, especially in streets where traffic is congested. The attention of Government has been drawn to the accident referred to in the last paragraph of the question.

The Hon'ble M. KRISHNAN NAYAR:—

IX. (a) With reference to the answer to Question IV (b) which was asked at the meeting of this Council on the 27th January 1905, will Government be pleased to state what consideration the matter has received from Government?

(b) With a view to prevent accidents like those referred to in Question VIII above till the matter of diversion alluded to in Question IV (b) asked at the meeting of this Council on the 27th January 1905 is finally disposed of by Government, will Government be pleased to direct the Tramway Company to reduce their speed and do such other acts as Government think fit?

The Hon'ble Mr. de Winton:—

IX. The question of diverting the tram line from narrow to broader streets is still under the consideration of Government, but as the interests involved are important and the question is complicated no decision can be announced at present. Allowing for the efficient means of control provided in each car the sanctioned speed of 8 miles an hour does not appear to the Government to be excessive.

The Hon'ble G. SRINIVASA RAO:—

X. Is it a fact that the Hon'ble Mr. H. M. Winterbotham gave an assurance that not even an inch of ryotwari land throughout the Tanjore delta would be affected by Madras Act V of 1900?

The Hon'ble G. SRINIVASA RAO :—

XI. (a) Is it a fact that Government have issued instructions to charge water-rates under Madras Act V of 1900 for crops which are not irrigated with the water from the rivers of the Tanjore district, but which are supposed to be benefited by percolation?

(b) If so, will the Government be pleased to order the instructions to be placed on the table?

The Hon'ble Mr. Hammick :—

X & XI. The Honourable Member's questions have been answered already in the reply given to the Hon'ble K. Vasudeva Aiyangar on the same subject (No. VI).

The Hon'ble G. SRINIVASA RAO :—

XII. (a) Is it a fact that the Superintendent of Police applied to the District Magistrate of Coimbatore to revise the proceedings of the Second-class Magistrate in one of two register cases discharged by him and to order the committal of the accused therein to the Sessions?

(b) Is it also a fact that, by some mistake, the records of the wrong case were sent for, and the accused therein being ordered to be committed, the Sub-Magistrate committed them to the Sessions?

(c) Is it true that, when the mistake was found out, the Public Prosecutor was asked to withdraw the case, not upon the ground that there was a mistake but for the reason that the District Magistrate thought there was not sufficient evidence in the case to warrant a conviction?

(d) Will the Government be pleased to state if the accused in the wrong case were on bail or in jail as under-trial prisoners, pending their committal to the Sessions?

The Hon'ble Mr. Forbes :—

XII. (a), (b) & (c) The answers are in the affirmative. The reason which the Public Prosecutor was instructed to offer for the withdrawal of the case was a proper reason.

(d) The accused were under remand in connection with another case.

The Hon'ble P. S. SIVASWAMI AYYAR :—

XIII. (a) Is it a fact that Government have issued instructions to charge water-rates under Madras Act V of 1900 for crops which are not irrigated with water from the rivers of the Tanjore district, but are supposed to be benefited by percolation?

(b) If so, will the Government order the instructions to be placed on the table?

The Hon'ble Mr. Hammick :—

XIII. The Honourable Member's question has already been answered in the reply given to the Hon'ble K. Vasudeva Aiyangar on the same subject (No. VI).

ACT ASSENTED TO BY HIS EXCELLENCY THE GOVERNOR.

The Secretary reported that the Bill to amend the Madras Abkari Act, 1836, which had been passed into law at the meeting of the Council held on the 21st March 1905, received the assent of His Excellency the Governor on the 31st idem.

COMMUNICATIONS FOR THE COUNCIL.

The Secretary laid on the table G.O., No. 31, Revenue, dated 9th January 1904, containing the instructions on the subject of charging water-rate for irrigation by percolation referred to in the answer to question No. VI.

FINANCIAL STATEMENT.

The Hon'ble Sir JAMES THOMSON, in explaining the annual Financial Statement of the Government of Madras for the year 1905-1906, said :—The Financial Statement has now been in the hands of Honourable Members and before the public for a week or more and, from the fact that no Honourable Member has found it necessary to address a single enquiry or comment thereon to me, I might infer either that the business of to-day was not of absorbing interest or that, at the present stage, it required no further elucidation at my hands. This Government does not impose or remit taxation save with the consent or by the orders of the authorities to whom it is subordinate; its power of making more money than is allotted to it by the Supreme Government under the current arrangements depends on its management of detail within circumscribed limits involving judicious spending as well as judicious saving. The weather is the power we worship and dread. The fiscal question, the military question, commercial reform and many others are not for this Council to discuss, save in that dilettante way that means and incurs no responsibility. According to our rules, if strictly applied, I explain the statement I have already laid before you: you are at liberty to criticise that statement, but no criticism of Imperial finance is open either to you or to me.

Fortunately for us all—official and non-official—little criticism of Imperial finance, except of that pleasant character to which no objection can be taken, has been open to any one now for some years past, although it is not very many years ago since the finances of India were or seemed to be on the high road to ruin. The men and the measures that turned the tide may be open to praise or blame but not in this place. They will certainly not be blamed by me since as the result we have now a fair provincial settlement with in addition a large sum in hand to make a fair start upon, while odd sums have been now and again placed at our disposal out of the continuing Imperial surpluses for special uses. These for the year now opened are 30 lakhs—10 for police reforms, 6 for primary education and 14 to aid the work of District Boards. For the liberal recognition of the needs of those local bodies we cannot be sufficiently thankful, but I do not conceal from you the fact that the sumtotal is in proportion to the amount which is yielded by our own local taxation and the magnitude of that compared with that of the other provinces is represented by the magnitude of the grant.

If, therefore, in the past our interest and concern in the financial statement of the Government of India was to see how much further we were to escape denudation—a process conducted by us mostly in the way the Irishman manipulated his blanket—or to what further lenten or prison fare the body politic was to be accustomed till it seemed as if before long only a skeleton would have to be provided for, to-day we have waxed so fat that room has been found for jest in the bare statements of fact that have been laid before you, and the detailed explanations which it has been my duty and a pleasure to submit to you are characterised as dry bones. The fault may be mine, though I protest I do not know how otherwise to handle them, but it is a living fact enough that though we are far from enjoying the best of times at this present in Madras, we are able to regard the present and the future without dismay; and that things are so is due, as His Excellency the Viceroy has said, to the prudence and foresight of the statesmen who tackled and settled the currency problem and also to the wave of material prosperity with which in recent years the country has been favoured.

Revised Estimate for 1904-1905.

My present duty, however, is to explain the statement, though I trust that, for the most part, it explains itself. I think I shall easiest do so by asking your attention to

pages 22 * and 23 † and first to the columns headed Budget Estimate and Revised Estimate of 1904-1905.

The first and most serious item is our income from *Land Revenue* which you will note is less by 13.67 than we anticipated. This is the direct result of the unfortunate season we are now passing through. We anticipate a total falling off to the extent of about 55, three-fourths of which, of course, imperial revenue will have to sustain. The total disastrous effects of the season will not be known till the jamabandi is concluded and the accounts made up thereon.

The next item of *Adjustments* is swelled from 59.66 to 66.76 mainly by a sum which only passes through the accounts being India's contribution to the *Madras Harbour Scheme* and by the grant recently announced of .70 for University and collegiate uses which is intended in part to pay the travelling expenses of members of the Senate to attend meetings and for inspection of colleges, and the rest is for purposes which the University has further to consider. *Salt* is no longer a Provincial head, the income from and expenditure upon it being entirely Imperial. *Stamps, Income-tax, Forest and Registration* are each expected to afford a slight increase of income. As regards *Excise*, while it was only natural that the prosperous times of the past should induce contractors and lessees to offer high rents, it has been a matter of considerable astonishment to find how in spite of the hard last few months some of the items that pay a tax on consumption continue to be in such large demand that on the whole we have had to estimate an excess of 2.75 (Provincial Share) over that originally anticipated. It means a total of 13 lakhs on our estimate. The decrease under tree tax will not be nearly so much as was anticipated.

Under *Receipts by Civil Departments* there is hardly any change worthy your attention. The receipts from *Jails* have somewhat fallen off. The explanation for

Police is the punitive force employed in Tinnevely and Madura has been largely disbanded because the country has assumed a more settled condition.

Miscellaneous, Irrigation, Buildings and Roads also offer no room for remark. The items that affect the total increase of .88 under *Contribution* are set forth in detail on page 20 ‡.

Passing now to expenditure on page 23 †, the decrease under *Land Revenue*, amounting on the whole to 4.49, is mostly referable to *Survey and Settlement*, and, as you will find on page 4 § is accounted for by various causes which are mainly the reflection of the facts that the department is shorthanded and has been doing a deal of private work. The like reason of want of hands has told also in *Land Records and Agriculture*. Under *Stamps* there has been increased revenue and that means increased expenditure. Under *Registration* the officers of the department have been doing more touring and more work in the office and that also means more expenditure. The items of saving under *Excise* are trivial but are set out on page 6 || and as regards *Forests* they are due to non-execution of works which were proposed.

General Administration has cost more than anticipated by the use of officers for special duties and the Board of Revenue has been less of a stationary body than it used to be. Under *Jails*, those of Bellary, Vizagapatam and Cannanore have not as yet been raised to a higher class as was intended. *Education* has had much attention from Government and from the head of the department; but as I explained last year the obtaining of sanction to schemes which themselves take much time and thought to settle involves delay, and the obtaining of officers for vacant posts cannot be done in a day or even in a year sometimes. But the great bar in our way to the spread of elementary education for which the Government of India is so liberally making provision is the difficulty in finding teachers who are fit to teach, and the necessity of training would-be teachers by sufficient and suitable training schools is recognised and provision is being made accordingly. Till a new race of teachers is turned out by such schools we must be content to make the best use possible of current material.

Various reasons combine to form the increase of 1.58 in the charges under *Medical*. I have noted occasion taken to deride the provision of .47 for the enhancement of the salaries of officers of the Indian Medical Service and will say simply that I consider money spent to procure and retain a good medical service is money well bestowed, and that I do not consider the Indian Medical Service is extravagantly—I might almost say adequately—paid even now.

* 296 infra.

† 297 infra.

‡ 294 infra.

§ 278 infra.

|| 280 infra.

Superannuation charges, you will note, are continuously increasing and they are increasing somewhat rapidly. This we foresaw in transacting the provincial settlement, but the increase was treated by the Government of India as only that due to ordinary development. The increase under *Stationery and Printing* is due largely to the misguided strike of the workmen at the Government Press which ended with 1904. That under *Miscellaneous* is explained at length on page 15*. Plague has spelt ruin to several municipal bodies and Government has no option but to come to their support.

For *Minor Works and Navigation* we have spent 6.33 over the estimate all for good and necessary work. The figures here and under *Civil Works* are obscured by the mode of booking the special grants of the Government of India. A sum of 6.26 under *Civil Works* has been simply made over to the Harbour Trust. You will note on page 18† the several useful projects for which the benefactions of 3 and 6 lakhs granted by India have been bestowed and will observe that the expenditure of the year by Public Works officers is considerably in excess of any of the three previous years. The figure 32.41 of the revised estimate for 1904-1905 against 45. CIVIL WORKS—PUBLIC WORKS OFFICERS is 2.77 below the anticipated expenditure of the year owing to the manner in which the refund of coast lights expenditure has been adjusted as explained at the top of page 19 ‡. On page 19 § are shown the various municipal works which have been subsidised in the year, six municipalities having received 2.29 among them.

The net result of the year's operations is a total expenditure of 381.06 against an income of 362.22, an excess of 18.84, reducing our opening balance for 1905-1906 to 76.28.

Budget Estimates for 1905-1906.

The estimates for this year need not detain us inordinately. The principle in budgeting is that certain or fairly certain facts or circumstances affecting the figures dealt with shall be taken account of, and when there is nothing to the contrary the current figure should be repeated.

The main assumption made under *Land Revenue collections* is that the present unhappy time will pass away and normal prosperity return. To that consideration we add the results of the introduction of resettlement rates in various districts and other items. If we continue to be unfortunate, we have to accept the fact. Adjustments total 37.09 in addition to the fixed assignment of 59.66, the sum of 7 not being for our use but for the Harbour Trust. As a first instalment for Police reorganization necessities 10 is granted; 6 for primary education and 14 in aid of District Boards are intended by the Government of India to be recurring grants. *Excise and Registration* are likely to reflect the current season and are somewhat reduced; *Stamps* are stationary; *Forest* gives reasons for increased income by larger working; and *Income-tax* has not pleased everybody by assuming an increase of .20. The other and minor items are more or less what they are in the revised estimate, making up a total of 407.62.

By way of expenditure, the assignment under each head corresponding to the main items of income is increased save under *Stamps*. An amount over 3 is provided in *Land Revenue* for extended work of various sorts and for more officers to do it. *Excise* is modest and wants a small sum to clothe the establishment. *Forest* means to be more active and to increase an establishment which is at present deficient in numbers and overworked in consequence. Under *Salaries and Expenses of Civil Departments—Courts of Law*, it will be noted that about half a lakh goes mainly for courts, and under *Jails* another half lakh or more for raising the class of the Bellary Jail and in anticipation of a larger or more costly jail population. The 10 granted by India for the Police is entered in full. In respect of *Education*, the 29.78 embraces all the projects elaborated hitherto and the 6 just granted by India, the use of which must immediately be considered. I have explained at length on page 12§ the purposes for which the addition of .91 is required under *Medical*, being principally increases in the staff and payments for various purposes intended to promote the art of healing and the prevention of disease. The provision of an additional 1.50 under *Scientific and other Minor departments* is largely for experiments in agriculture, for the promotion of veterinary knowledge and the continuance of the work of the Registrar of Co-operative Credit Societies. *Superannuation charges*, as I have already said, go on increasing with an increasing Government staff and the passage of the years.

* 289 infra.

† 292 infra.

‡ 293 infra.

§ 286 infra.

In case famine relief becomes a necessity we have entered 15 in that regard. We may not be so alarmed as some are or would seem to be, because one crop season has failed over a large tract of country, but we are not blind to the grave issues which a continuance of failure of the rains will raise. If more than 15 becomes a necessity, it will be found.

Under *Minor Works and Navigation* provision has been made not to the extent that the department is capable of disposing of money, but for the outturn of a fair quantity of work and with due regard to the sum we can legitimately afford under the head. A similar remark applies to *Buildings and Roads*, and you will note that Government mean to spend nearly 6 on water-supply and drainage works in Municipalities besides making a free grant of 3 to the Corporation of Madras.

The 14 granted to District Boards swells *Contributions* from 7.26 to 20.04. The distribution of this large sum will have speedy and earnest attention. India desires that roads and bridges shall have first consideration; the precise distribution is left to Government.

The total expenditure is accordingly 437.89 or 30.27 in excess of the year's income, and reduces the balance at our disposal to 46.01.

Provincial Loans and Advances.

Owing to the fact that the orders of the Government of India on the estimates of Provincial Loans and Advances had not been received when the memorandum to accompany the financial statement was circulated, Appendix C, which is usually issued with the memorandum, had to be omitted. This appendix has now been laid upon the table. It will be seen that provision has been made in 1905-1906 for advances to cultivators 3.60, for loans to mufassal Municipalities 7.93, and for loans to District Boards 10.30. Of the last-mentioned sum 10 is intended for the assistance of the railway schemes which local bodies have under contemplation.

I regret to have detained you so long and perhaps somewhat unnecessarily, but explanation once begun has a faculty of expanding itself and I have endeavoured to be brief.

His Excellency the PRESIDENT:—I propose once more to undertake my self-imposed duty of telling you something about the administration of the past year, and I think that I can do so without repeating the explanations which I have made on former occasions. My absence of eight months has made me realize even more than I did before how little the general public can know of what the Government are doing, intending to do, or hoping to do, for during the past three months I have found it an arduous task to pick up the threads of the administration and to acquaint myself fully with all that was done while I was away. I have had to wade through huge piles of papers to find out what progress has been made in one matter or another, and I am confirmed in my impression that a concise statement concerning the business of the administration must be useful and welcome to those who are at all interested in the progress of the country. The information furnished to the Press, which we try to deal out in as liberal a manner as possible, treats of particular subjects at particular stages and is nowhere condensed into a general review of the year's work. The Honourable Non-official Members in the questions which they ask in this Council seek to elicit information on still more particular subjects, and I trust that they have recognized the consistent desire on the part of Government to give them full and frank explanations whenever it is possible to do so. But these questions, by their very nature, do not afford any opportunity of giving the general information which we should like the public to have. They are more frequently concerned with the grievances of individuals or with matters in which they think that the Government has been at fault, and although we are glad to show that the grievances are being dealt with in what we hope is a just and impartial manner, and that we have not made the mistakes imputed to us, we should be better pleased to explain what we are doing in the way of constructive reform. We should, however, often be obliged to confess that progress is vexatiously slow in spite of our most strenuous endeavours, and I for one, under the shadow of approaching retirement, am beginning to realize how much remains unfinished and how much will have to be left to my successor and the successors of my Honourable Colleagues. Honourable Non-official Members who belong to the legal profession

and are accustomed to the slow process of the law must be able to appreciate the analogous causes which retard the action of Government administration, but the general public, who do not know of the cautious stages which are essential to the conduct of public affairs in every country and under any constitution, are apt to regard Government as inert and apathetic and to think that little more than a stroke of the pen is required to carry out any measure.

As I was absent for two-thirds of the year, I am somewhat diffident about reviewing the administration, but there was no change of policy during my absence, nor was there any break in the continuity of the affairs for which I am again responsible. My first impulse would be to speak of the weather and the crops, the subject which is of most vital importance in a country where agriculture supports 26½ millions or 69 per cent. of the population, but the unfavourable character of the present season has obliged us to make several official statements on this subject, and we have quite recently issued a very full and detailed report so that I should merely be wasting your time by repeating the information. The bare facts of the case are that up to the 1st April 1904 we enjoyed a continuance of the exceptionally favourable conditions of the preceding three years. But since the 1st of April 1904 the rainfall has been below the average in all the districts except Ganjam, Vizagapatam, Malabar and the

12-40 P.M.

Nilgiris. The consequence is that the area cultivated from the 1st April 1904 to the 31st January 1905 was less in extent than the average of the preceding five years. That average is 27,815,479 acres and the area cultivated in the recent period amounted to 25,972,691 acres, a decrease of 1,842,788 acres. The outturn of the crops has ranged from poor to fair and the prices of the staple food-grains are generally above "normal" rates which, in many cases, have not prevailed for years, but they have nowhere touched or even approached "scarcity" rates, except in the case of cumbu in South Arcot, where groundnut cultivation has largely displaced cumbu. There is nothing in this situation to cause serious alarm though we cannot be free from disquietude, until the south-west monsoon has declared itself. I have received communications from people who ought to know better asking me to take note that an "unprecedented calamity had befallen the Presidency" and using similar expressions which were so exaggerated that I have been at a loss to understand how such ideas can have originated. The present distress, thank Heaven, is not such as can correctly be described as famine. If the south-west monsoon were to fail us, it would be a different matter and we should have cause for serious apprehension, but at present we have no reason to anticipate such a real calamity. Of course there are numbers of poor people whose means of subsistence is miserable and precarious in the extreme, but such people unhappily always exist and the increase in their numbers due to hard times does not constitute famine. I do not hesitate to say that, in England, where the population is about the same as that of the Madras Presidency, there are at the present moment, and, indeed at all times, more people on the verge of starvation and sunk in the utmost depths of misery than there are in the Madras Presidency at the present moment. Probably in London alone there are more people than we have here who are subsisting on scraps and who never light a fire to cook a regular meal, but people in England do not cry "famine" on that account or clamour to the Government for exceptional measures. There, as here, private charity deals to a large extent with these sad cases of distress, but while in England the problem of dealing with the unemployed in hard times is one of immense difficulty, here in Madras we have in our Famine Code an elaborate system which is capable of immediate application as soon as the resources of the district officers become insufficient to deal with the earlier stages of scarcity of labour. It is too often forgotten in India that Government have no money except that which is contributed by the tax-payers and that while it would no doubt be pleasant for Government to be generous at the public expense, they have at the same time to guard against that demoralization both of employers and employed which is only too apt to be engendered by the idea that State relief is available at the first pinch.

A curious notion which I am quite unable to understand or account for is prevalent to the effect that Government are unwilling or afraid ever to admit that there is famine. I can assure Honourable Members that no more erroneous opinion has ever existed, at any rate, so far as the present Government is concerned. There are

no conceivable reasons why we should wish to deny or conceal the existence of famine. On the contrary, if there were famine, there would be every reason why we should declare it at once in order to explain the extraordinary use we should have to make of the public revenues.

Another very curious notion which is very widespread is that the district officers deliberately mislead the Government as to the condition of the people and the country, because they are supposed to dread being blamed if they report unfavourable conditions. This again is an idea which is quite incomprehensible to me, and what I should like to point out in connection with it is that those who give it currency do a very serious injury to their own countrymen, that is to say, to that highly educated and admirable class of men who constitute the Provincial Civil Service and the subordinate establishments of the district administration. To assert that Deputy Collectors, Tahsildars, Revenue Inspectors, Forest officials and Police officers deliberately give false information for fear of official disapproval is to impute a dishonesty and moral cowardice to those admirable classes of men with which I for one should be the last to charge them. It is strange that such accusations should come from their own countrymen, for we the Government place very great trust and confidence in them and consider that, with the exceptions which are inevitable to every rule, they are as efficient and dutiful a class of Government officials as can be found in most countries. I am glad to have the opportunity of saying this for I do not often get the chance of saying how highly I appreciate the work of the native officials in this country.

Well, gentlemen, the report which we issued a fortnight ago on the general condition and prospects of the season gave full information as to the measures of relief which have already been taken. That information is public property, and everybody who is interested knows that the Collectors have estimated the amount of remissions which will be required at nearly 41 lakhs of rupees, and that the collection of kists has been postponed to an extent of nearly thirteen lakhs of rupees. The Collectors of certain districts have been authorised to permit the cultivation of tank-beds in cases where the concession seemed to be desirable, additional allotments amounting to seventy thousand rupees have been sanctioned under the Loans Act for the sinking of wells and the purchase of fodder and stock, and special temporary establishments have been sanctioned for loans work. Additional allotments amounting to nearly fifty thousand rupees have also been sanctioned for minor irrigation works in the districts most affected in order to provide additional employment for the labouring classes, and in some districts the ryots have been granted special privileges in the way of free grazing for cattle and cutting and removing grass from the forests. Meanwhile we may draw some satisfaction from the fact that the public health has been unusually good during the past year. There has been very little cholera, and the plague—I am thankful to say—is showing a most satisfactory and marked decline. I earnestly hope that there will be no occasion for larger measures of relief, but I can assure Honourable Members that if the necessity should unhappily arise, there will be no hesitation on the part of Government about doing everything that is called for and desirable, and Honourable Members will have noticed that in the budget estimates which we submitted to the Government of India long ago we made provision for exceptional measures.

Now let me say a few words on the economic condition of the country apart from the present unfavourable agricultural conditions. The consumption of liquor is at any rate one of the means and one of the most reliable means of gauging the real condition of the labouring classes, and any distress or diminution of material prosperity is immediately reflected in the monthly statistics of the consumption of country spirits. You will have seen from the recently published report that the consumption of spirits has again increased in the past year, and I hope that some Honourable Non-official Members, who are sufficiently interested in the question, read the Abkari Administration Report which was published at the end of last year. That report subjected the Madras Abkari system to a searching review, and the conclusion arrived at was that the policy adopted in 1884 had been fully justified. While on the one hand facilities for obtaining liquor have been reduced, the prices to be paid for it have on the other hand been increased. The consumption of country spirits per head of the population in the tracts under the excise system showed a decrease of 18.7 per cent. in 1902-1903 while the population increased by 17.4 per cent. during the period. In 1903-1904 there was a large increase in consumption, and again in the past year

there has been a further increase, and since this was certainly not owing to any undue encouragement by Government to the consumption of intoxicants, it must be taken as a sign of increasing prosperity among the agricultural classes.

I think that I can fairly say that we have been making some progress in the reform of the agricultural department, of course not so much as we intend to do and hope to do, but we have, at any rate, made a fair start and are beginning to see the way ahead much more clearly. There are at present four experimental farms, two general agricultural stations at Bellary and Koilpatti and two farms at Samalkot and Hindupur devoted, respectively, to sugarcane and agave cultivation. In the first two farms experiments in "deeper tillage", in the application of cattle manure and in the improvement of cotton are carried on. The farm at Samalkot has been of much practical use to the ryots, and steps are being taken to extend it and make it a permanent institution; cane seed from the farm was distributed to the ryots of the neighbourhood. The Government have directed that the cultivation of agave shall be thoroughly investigated at Hindupur, and have also sanctioned the opening of three more farms—one in South Arcot for conducting experiments in the cultivation of groundnut and sugarcane, a second in Malabar for the study of the pepper vine and the exact nature of the diseases which affect it, and a third on the Hagari for carrying on experiments in irrigated cultivation. Four experimental pumping stations have been started at Kadiampatti, Cuddalore, Manamadurai and Saidapet, and we are thinking of establishing yet another on the Hagari. The results of the pumping experiments at Melrosapuram have been very interesting, and the management of the experiments there and at Coimbatore, Atur and Villupuram have been transferred from the Public Works to the Agricultural Department. All these stations will be under the charge of Mr. Chatterton, who has been specially deputed for the superintendence of experiments in irrigation by pumping and for the exploitation and development of technical trades and industries. In order to improve and extend cotton cultivation, arrangements are being made for the collection, storage and distribution of cotton seed. Experiments in tobacco cultivation and curing are being carried on around Dindigul, and we have directed that experimental cultivation by the ryots themselves should be encouraged by the free distribution of seed, and that the Agricultural Department should for the present confine its attention to experiments in curing crop bought from the ryots. Experiments in the reclamation of saline soils are being continued. Special efforts have been made to place the results of the researches of the department within easy reach of the ryot, and Government have directed that free use should be made of the village sheets of the District Gazettes to convey advice and information on all matters that are likely to be of interest to the ryots. An agricultural show was held at Conjeevaram last May to awaken interest and discussion in agricultural matters, and in order to encourage the breeding of cattle Government allotted a sum of one thousand rupees for the award of prizes at the highly successful cattle shows which were held at Vizianagram, Ongole and Madurai. The Madras Veterinary College, which was inaugurated at Vepery in October 1903, has been working successfully, and it will ere long be in a position to supply the qualified veterinarians for want of whom it has hitherto been necessary to delay the establishment of veterinary dispensaries. We have, however, quite recently sanctioned the opening of a dispensary at Rajahmundry, where it was specially needed. The Veterinary Department are making every effort to meet the demands of the ryots in the important matter of inoculation against cattle disease which is rapidly growing in popularity. You will have seen that the Government of India have set apart the sum of twenty lakhs per annum, which will be distributed among the Local Governments for the purpose of agricultural development, and the portion of this sum, which we may hope to receive, will enable us to carry out many objects which we have at heart but which we have hitherto been unable to afford. Our Agricultural Department is at present greatly cramped in every branch of work—experiment, research, demonstration and instruction—by want of staff. The existing expert staff consists of a Deputy Director of Agriculture, a Botanist and a Superintendent of the Veterinary Department, which is wholly inadequate for the needs of this large agricultural country and ridiculously small as compared to what is considered necessary in other countries. The very least that we require and hope to obtain is an Assistant to the Deputy Director of Agriculture, an Agricultural Chemist, an Entomologist and a Cryptogamist. Each of these experts is wanted both for field, laboratory and

instructional purposes. I am afraid that we must confess that our scheme of agricultural education has hitherto been a failure and we must certainly try some new method, but whatever method we ultimately adopt it is certain that we must have men capable of teaching each of the four subjects of agriculture, chemistry, entomology and cryptogamy. At present we have none such and without laboratory work both field work and instruction must necessarily fail to attain the highest standard of efficiency and will rapidly become out of date. But more important than instruction at present is demonstration and experiment, and here too our operations for want of staff fail to cover more than a small portion of the field. We require a farm for each large tract in which conditions are fairly homogeneous, and we ought to conduct experiments in regard to each crop of economic importance. At present we are dealing with sugarcane, groundnut, pepper, tobacco, cotton and, to a limited extent, with indigo, but we have not been able to do anything in regard to the immensely important crops of cumbu and ragi and hardly anything in regard to the no less important crops of paddy and cholam. We should like to collect and distribute selected seeds of all the staple crops, but at present, for want of staff, we are only able to deal with cotton, and although every man in the Agricultural Department has been put on to the job, we cannot even include the whole of the cotton-growing country within the scope of our operations. When we get our share of the funds which the Government of India have set apart for agricultural development, we hope to be able to make immediate improvement in all these matters and also to start four more farms partly for experiments in improvement of type and partly for the selection and distribution of seed. We also look forward to extending the operations of the veterinary branch, now that we have got a college which will provide us with the requisite staff, and there are many minor agricultural undertakings, such as the purchase of good bulls for stock breeding, on which we shall be able to spend money usefully. These are our schemes, and I hope that I shall at any rate be able to preside over the inception of some of them.

There has been considerable activity in the matter of forest administration during the past year, and we have adopted schemes for developing new timber markets and for supplying cheap firewood by departmental agency to towns and villages. On the report submitted by Mr. Sim we have passed orders to mitigate, as far as possible, evils complained of by the ryots, and in several districts manure leaves have been supplied to cultivators and special arrangements have been made to encourage the growth of such leaves. A very important measure has been the opening of a training school for Deputy Rangers and Foresters, to which private candidates can be admitted, and concerning which full information has been published.

Closely allied with the question of forests is that of fisheries, and we are asking the Government of India to sanction an investigation into the immensely important and interesting question of the conservation and development of the inland and marine fisheries of this Presidency. There are perhaps few people who realise what an immense potential source of wealth is left practically untouched in India in our seas

and rivers, but we are fortunate in having in our midst one whose expert knowledge of this important question is of a very rare order. I refer to Sir Frederick Nicholson, who is willing without fee or reward, and I hope will be allowed, to resume his valuable services to this Presidency by undertaking the investigation which we have in mind. The leading facts are the following:—Although 75 per cent. of the people in this Presidency would eat fish if they could get it and although such food is most wholesome and nutrient, the internal fish supply of the country is most insufficient and unsatisfactory in character. Again, while many fields in the country are in great need of manure, the sea fisheries, one of the most valuable sources of manure, are practically left untouched. Further, each successive famine or period of scarcity points to the necessity for additional supplies of food otherwise than from the uncertain fields, and while the growing population is each year pressing more hardly upon the soil, the need for more manure is sufficiently obvious. I attach the very greatest importance to this proposed investigation of which, unfortunately, I cannot hope to see more than the mere inception.

Before I leave the subject of agriculture, I should like to mention that the Co-operative Credit Societies Act has begun working and that there seems to be a general desire for the establishment of these societies. Under the advice and at the

suggestion of Mr. P. Rajagopalachariyar who has been appointed Registrar of Co-operative Credit Societies, eight rural and two urban societies have been registered up to date in the districts of Chingleput, North Arcot, Tinnevely, Tanjore and Cuddapah. No rules have yet been published under the Act, but the by-laws of three of these societies, which have already commenced operations, have been approved by Government. It is as yet too early to give any detailed information, but I think that, on the whole, a promising beginning has been made. The Famine Code has been revised with reference to the recommendations of the Famine Commission of 1901, and we may shortly expect the orders of the Government of India, while an important piece of work which was done during the past year was the preparation of a new Manual of Famine Administration in accordance with this revision which will be published at an early date. As regards settlement, it is expected that the operations in Malabar will be finished by June next and those in South Canara by August. The resettlement of Guntur has been completed and proposals for the resettlement of Kurnool are now under the consideration of Government. Schemes for the resettlement of Nellore and Tinnevely are being prepared by the Special Settlement-officers.

I cannot complete my reference to the material condition of the Presidency and those matters which affect it without some allusion to the activities of the Public Works Department. In the Irrigation Branch of that department which, of course, affects agriculture more than anything else, there has been an altogether unprecedented activity, for the total amount of estimates prepared during the year largely exceeded the capital cost up to date of all the irrigation works in the Presidency. The two most important of these schemes are of course the Tungabhadra and Kistna reservoir projects, the plans and estimates of which, I am glad to say, have just been completed. The estimate for the former amounts to 11.66 crores and that for the latter to 11.05 crores, and we hope during the next few months to submit them for the sanction of the Government of India; it is of course impossible to say at present whether these costly undertakings are likely to be sanctioned and, if so, how far they will take priority over the other great irrigation schemes for which the Government of India have to provide funds. The Mopad project, in the Nellore district, which is to cost 12.10 lakhs, has been sanctioned by the Government of India for execution as a protective work, and the establishment for carrying it out is already being appointed. It is a scheme of very great importance as it is designed for irrigating dry crops—a method of irrigation which was strongly recommended by the Irrigation Commission, but which in this Presidency is still in the experimental stage. The feasibility of the Tungabhadra project depends to a great extent on the success of this experiment concerning which the attitude of the ryots is still very doubtful. When we remember, however, the difficulties of persuading the ryots to take the water provided by the great Godavari and Kistna anicut systems when they were first established and the eagerness with which they now welcome every extension of the channels in those fertile tracts, we may hope that the advantages of this new system of irrigating dry crops will be demonstrated with similar success. During the past year an estimate, amounting to 2.78 crores, for constructing a reservoir on the Cauvery, was submitted to the Government of India, and, if this estimate is sanctioned, as we hope it will be, it will be necessary to reconsider the measures already adopted for improving the drainage of the Tanjore delta. Honourable Members will remember that the defective drainage in the Tanjore delta is a matter on which they have made constant representations and that, in pursuance of the promises of Government, works which were to cost twenty lakhs were commenced last year; but meanwhile considerable improvements have been effected at the Upper and Lower anicuts, and it is quite likely that these alone will render a great proportion of the proposed expenditure unnecessary. But the work of the department was not merely confined to the preparation of estimates and a great deal was done in the way of drainage and river conservancy on the Kistna and the Coleroon besides the execution of numerous smaller works. I must confess with regret that the scheme for the improvement of the conservancy establishments in the Kistna and Godavari deltas—a matter in which Honourable Members have shown great interest for some years past—has not yet been finally approved. There has been further difficulty and discussion, and my hope of announcing the introduction of the scheme on this occasion has been defeated. I trust, however, that there will not be much further delay.

The work of the General Branch of the Public Works Department does not lend itself to any condensed review, but I may say that, owing to increased funds, there was greater activity in the department than there had been for some years past, and that good progress was made with a large number of roads and buildings.

As regards Railways, I may state that 222 miles of railway are under construction, and of these 121 are approaching completion. During the past year the new railway from Shencottah to Quilon was opened, and the communication thus established with the West Coast of the Travancore State will no doubt lead to very important developments. Good progress is being made with the extension of the Madras Railway from Azhikkal to Mangalore, but owing to the difficult nature of the work it will be some two years before the line is opened for traffic. The small famine protective lines from Tiruppattūr, Morappūr, Bellary and Hospet are all nearing completion, and work is in progress on the extension of the Nilgiri Railway to Ootacamund, where the available water power is being investigated with a view to ascertaining the possibility of using electricity as the motive power. The construction and the extension of the Pámban branch of the South Indian Railway to the island of Rámésvaram has also been commenced. I wish that I could report similar good progress in regard to District Board Railways, but there has been vexatious delay owing to the inability of the London financiers to raise a company. The Government of India have agreed to assist the Kistna Board with a loan for the construction of the Bezwada-Masulipatam Railway, and it is anticipated that satisfactory arrangements will soon be made for constructing the line, but I am sorry to say that the question of the Dhone-Kurnool Railway has again been hung up owing to the necessity of considering proposals for railway extension affecting the tract in question which have been made by the Government of Hyderabad.

The past year marks an epoch in the management of the Madras Harbour, for not only have the improvement works been commenced, but the Board of Trustees have been invested by the new Act with the powers which they so long craved for, namely, those of collecting and administering the funds of the port of Madras. A long-standing grievance has thus been removed, and the vigorous manner in which Mr. Spring, the newly-appointed full-time Chairman, has taken up his duties justifies the expectations which we formed of this measure. Meanwhile the improvement scheme, which is estimated to cost 46 lakhs, is being actively commenced. The Government of India accorded us very handsome treatment in respect of the financial arrangements as they gave us a free grant of 20 lakhs and undertook to lend the balance up to a maximum of 40 lakhs. But we have not neglected the minor ports of the Presidency, for important dredging operations have been going on at Pámban and Tuticorin. For the work at the latter port we imported the powerful dredger "Manar" from England, which will be invaluable to the ports of the Presidency and which will probably be sent to Mangalore when her present work is done. The trade of the port of Cuddalore has been increasing and as the merchants were alarmed at the silting of the backwater and were willing to pay fees for a dredger under the Act, we have undertaken to provide one and meanwhile have appointed a Port Officer to Cuddalore. The Coast Lights Act IX of 1904 has relieved Port and Provincial Funds of the cost and construction of the Light Houses which were completed the year before last and the cost of the lights now falls on those who benefit by them. A further consequence has been the reduction of port dues on vessels and a saving to shipping of half a lakh of rupees. I think that what I have said will show you that during the past year a good deal was done to develop the internal and external means of communication of the Presidency.

I pass from a recital of matters relating to the material condition of the Presidency which has, I fear, been somewhat dry and tedious to those affairs which affect the moral condition of the people. The most important of these is, of course, education, and here I despair of condensing an account of the past year's work into any form which will not try the patience of Honourable Members. There was very considerable activity in the Educational Department during the past year, and this was mainly due to the consideration of the Government of India Resolution on the subject of Education. This resolution contained only a declaration of policy, but it necessitated a careful examination of the principles and methods followed in this Presidency in order to see what action was required in order to bring them into complete accord with those laid down by the Government of India. The Indian Universities Act of 1904 was brought into force during the year, and I am glad to think that the reduction of the Senate and the

constitution of the provisional Syndicate were received with less adverse criticism in this Presidency than they were elsewhere. It is in the work of the new Senate which has just commenced that the Act may be expected to bear fruit and we may anticipate that during the coming year important reforms will be proposed. The Madras Educational Rules have been revised so as to make them clearer and more comprehensive, but they have not yet been formally issued. The reorganization of the Provincial Educational Service has been carried out, and that of the staff of Sub-Assistant Inspectors of Schools has also made progress. The latter scheme is of very great importance as the number of Sub-Assistant Inspectors was formerly altogether inadequate. The business of these officers is to examine primary schools and there used to be only just enough of them to visit each school once a year and examine it for a grant. The number of Sub-Assistants has now been nearly doubled, for 54 of the 62 new Sub-Assistants have been appointed and their pay and prospects have been considerably improved. The reorganization of the Government Girls' Schools was continued and in regard to the other Government schools reforms which are expected to have very far-reaching results have been under consideration. Hitherto primary school teachers have been trained in the art of teaching, but nothing has been done to improve their general knowledge. It is now proposed to make them undergo a regular course of instruction in general subjects and to extend the period of their training to two years. Further, the practising schools attached to training institutions, which have been hitherto more or less neglected, are to be converted into model schools and placed under a separate staff of teachers, but these proposals still require the sanction of the Government of India. I may note in passing that the system of paying grants-in-aid in full which was introduced two years ago was continued during the past year. You have seen that the Government of India have given us an allotment of six lakhs for the purpose of primary education, and I should like to say a few words on this subject. It is, of course, our object to extend primary education, but first of all we wish to improve that education as far as possible so that full value may be obtained for the money spent. The difficulty, however, is that we have got nothing like the number of qualified teachers required to teach the children attending the existing and recognised schools. We are generally ahead of other provinces in the matter of education, for we teach 198 boys out of every thousand of school-going age as against an average of 174 per thousand for the rest of India, and we head the list of literate boys for all India, but we wish to maintain our lead in spite of any advance which may be made elsewhere. During the past three years distinct improvement has been made in the matter of primary education in this Presidency, and our present object is to consolidate the work already achieved by improving the organization of existing primary schools and the quality of the instruction given in them so that we shall be able at once to apply these improvements to any new schools which we may bring into existence. For this purpose we need more and better teachers and an improved inspecting agency and it is to these objects that we shall first apply the funds that have been allotted to us. We have made a beginning, but the question is one of exceeding difficulty, and I cannot discuss it any further without making a digression which would hardly be justifiable on the present occasion.

Before I leave the subject of education I should like to tell you that no suitable candidate has yet come forward to take up the technical scholarship instituted by the Government of India to enable natives of India to pursue a course of study in Great Britain or other western countries. You will, I am sure, agree with me that this is deplorable and reveals a want of enterprise which bodes ill for the development of industries in this Presidency. It is a matter in which personal influence could do a great deal, and I hope that those who guide the rising generation will turn their attention to the subject.

While education is the principal agency for developing the moral condition of the people, the Police are indispensable for keeping watch and ward over it. You are, no doubt, glad to see that we are at last in a position to commence the reorganization of the Police which has been so long discussed and that the Government of India have placed ten lakhs at our disposal for this purpose, but I need not say more on this subject as all the available information has recently been published. A satisfactory event of the past year was the disbandment of the Punitive Police Force which was

quartered in Tinnevely in 1899 owing to the disturbed state of the district, and in the Madura district also the pacification of disorder made it possible to disband the small Punitive Force stationed at Elayangudi.

In the Local and Municipal Department the most important work of the past year has been the consideration of the long deferred scheme for reforming the vaccination establishment which will, I hope, very shortly be finally approved and put into operation. The requisite staff will be trained at the King Institute of Preventive Medicine which has recently been formally opened and which is now supplying lymph for vaccination to all districts in the Presidency except Tanjore and which is also training candidates for the post of Sanitary Inspector under local bodies. In fact, the opening of the King Institute marks the commencement of an era of sanitary reform in the Presidency which will, I hope, be of far-reaching importance. I am glad to say that we were able to make grants to the Municipal Councils of Vellore, Guntur, Coonoor, Dindigul, and Negapatam on account of water-supply schemes and a grant to the Municipal Council of Ootacamund for sanitary improvements, while water works are under execution at the present time at Guntur, Coonoor, Dindigul, and Tuticorin. We were also able to make grants to the Municipal Councils of Coimbatore, Bellary, Nandyal, Nellore, and Dindigul for the construction and repair of hospitals, and grants amounting to nearly three lakhs of rupees to a number of District Boards and Municipalities whose finances has been crippled on account of large expenditure on plague measures. On the whole, therefore, it was our good fortune to be able to do more for local bodies than we had been in a position to do for some years past and the grant of fourteen lakhs which we have now received from the Government of India for the purpose of aiding District Boards will, I trust, go far to increase the activity of those bodies and to encourage them in useful enterprise.

In respect of general administration there are a few matters among a great number which should be specially mentioned. The most important event of the past year was the creation of the new district of Guntur which was effected on the 1st of October. The redistribution of the Gódvári, Kistna and Nellore districts, however, did not affect the existing judicial arrangements, and the District and Sessions Judges of those districts continue to exercise jurisdiction in the same areas as before. The question of establishing a separate District and Sessions Court at Guntur is now under consideration. During the year a small tract of 550 square miles lying on the Gódvári was transferred from the Central Provinces to this Presidency for convenience of administration and will form part of the Gódvári district as soon as the legal arrangements which require the sanction of the Secretary of State are completed. Meanwhile the larger scheme for the redistribution of district and divisional charges in the Presidency which was prepared by Mr. Meyer, at present Financial Secretary to the Government of India, is under the consideration of the Government of India. The views of the High Court on the judicial aspect of the proposals were called for and a Special Officer, Mr. Cardew, has been deputed to enquire and report on the subject under the orders of the High Court. A necessary consequence of these enquiries is that the scheme for the grading of District Judges to which I referred last year and that for giving better training to junior Civilians in judicial duties have been suspended, for the former cannot be taken in hand until the strength of the judicial service is finally settled, and the latter is a connected scheme.

During the course of my recent tour I said all that I am at liberty to say on the subject of the proposed transfer of the district of Ganjam and the Agency tracts of Ganjam and Vizagapatam to the Bengal Presidency. Briefly the position is that we are awaiting the orders of the Government of India, which we have every reason to hope will be in accordance with the views we have strongly expressed against the proposed transfer.

We had, for some time past, been considering the possibility of establishing a Pasteur Institute for Southern India when the Viceroy enabled us to prepare a scheme at once by giving us the sum of a lakh of rupees out of a generous donation which has been placed at his personal disposal by Mr. Henry Phipps, an American citizen. The institute will be situated at Coonoor and building operations will shortly be commenced so that in a year's time we shall have relief close at hand for the

numerous persons who are annually bitten by rabid animals and to whom the long journey to Kasauli is impossible.

I do not think that I need detain Honourable Members by referring to the legislative work that has already taken place during the past year, and I must reserve what I have to say in regard to the highly important measure which we have to discuss at the present meeting. I am afraid, however, that we have not yet attained finality in our legislative programme and the next Bill which we shall have to introduce will be an Irrigation Bill. It is for the purpose of collecting information for the drafting of this Bill that the officer referred to on page 9* of the Financial Memorandum has been placed on special duty. Our experience in the Peranai Dam case and other law suits has made it evident that we cannot risk the public revenues on the vast irrigation schemes which have been projected unless and until the rights of Government in the matter of controlling the sources and distribution of irrigation water have been clearly defined so as to avoid the chances of costly and obstructive litigation. The Government of India have, in fact, made it a condition of the financial assistance which they will be prepared to give to our irrigation schemes that the existing uncertainty of the law should be cleared up, and we intend to devote ourselves at once to the consideration of this knotty problem.

I have now done, but I cannot pretend that my account of the past year's work and of that which is still on hand is by any means exhaustive. To have made it so would have been to inflict a severe trial of patience on Honourable Members which I was anxious to avoid. I do not wish to point any moral and, at the risk of being thought tedious, I have carefully avoided adorning my tale, for my only object has been to give information which is of public importance and interest. I think that Honourable Members will see that the Government have not lagged behind the opportunities afforded by increased financial resources and the prevalence until quite lately of prosperous conditions, and that in every department the consideration of reform and progress has corresponded to the facilities afforded. Our constant anxiety is, of course, that which depends on the condition of the weather and the crops, and we can only hope that in the next few months the possibility of more adverse circumstances than those at present existing will be averted by seasonable rainfall. If Providence favours us in this matter, there will be nothing that can humanly be foreseen to retard the normal development of the country and the moral progress of the people.

The Hon'ble Mr. A. J. YORKE:—Your Excellency, we have to thank you for the very interesting *resumé* with which you have just favoured us and to congratulate the Government and you, Sir, on the record of work which you have given us and on the far-reaching schemes in various directions to which you have referred. I refer especially to irrigation and to fisheries in which I quite agree with what your Excellency has said, that an opportunity of great utility to the country lies latent in it. As to the Madras Harbour, I have already recorded my thanks and the thanks of the mercantile community at the last meeting when the Bill was passed. I have really nothing to add to what Sir James Thomson then said that it is likely to be a very useful Bill and we have every hope in it. I would also refer to the assistance to be given to some of the smaller ports and there again I think great utility will result from these proposals. Turning to the budget I think, Sir, that it is a very satisfactory one, owing, of course, to the large assignments given us by the Government of India. They enable us to provide a sum of 15 lakhs for possible famine-relief measures, which, we may still hope, will not be required and permit of large allotments to District Boards which will enable them to give much needed attention to their roads. I need scarcely say that the great difficulty in that connection is to ensure that the money really reaches the roads as intended and I would suggest that some steps be taken, if possible, to greatly improve the system of check now in vogue in connection with Local Fund roads. I am specially glad to see that the budget provides for the extension in various ways of experimental farming. In view of the now declared intentions of the Government of India, to pursue a policy of agricultural development henceforward, there is no occasion for me to do more than record keen appreciation of that policy and express the hope that this Government will secure a full share for the Madras Presidency of whatever scheme may be ultimately adopted as the outcome

of Mr. Sly's proposals. I would add that the steps so far taken in this Presidency in connection with the farms in South Arcot and Gódvári in particular are thought of very highly in those localities and I am in a position to say that Government may fully count on the continuance of all available assistance from private firms and individuals in connection with these farms, which, to a certain small extent, has already been given. In this matter merchants are altogether with Government fully realising what it would mean to all concerned if India's yield of cane and cotton alone could be improved to equal what is already obtained by scientific methods in, say, Java and Egypt, not to mention America. I would now refer briefly to tea. Here we have to invoke the assistance of Government for a branch of agriculture in which Indian methods are a model rather than a warning to other countries. Notwithstanding that, the condition of the industry is a very pitiable one, as I have no doubt that the Honourable Member for the planting interests will fully explain, and I would only, in anticipation of what he may say, urge Government to give special consideration to planters in the shape particularly of better communications and reduced assessments. I would urge that any such exceptional treatment to planters cannot be deemed unfair to the rest of the community if it be remembered that tea alone of India's important exports is heavily taxed at home and in that way bears an exceptional share of the cost of the Empire in the benefits of which all participate. I would invoke the aid of Government further in connection with tea in a way in which Madras revenues can be made to benefit and therefore my request, I think, will not be out of place at this debate. However I should mention that my real object is to put pressure on Ceylon to admit South Indian teas into that island free of duty. It is a matter in which we have been pressing Ceylon for many years; and hitherto, although the opinion in that island is divided, our request has been refused, but I think that if this Government could see its way to indicate that it purposes to improve its own revenue by taxing emigration to Ceylon, all difficulties would soon be got over. An alternative might be to put emigration to Ceylon on the same regulated footing as, for instance, to Mauritius. I see no reason why one of these Crown colonies should be better treated than the other in the matter of labour. I am aware that in Ceylon Indian tea can now be imported and sold *in Bond*, but the restrictions involved in that operation nullify any benefit from concession. Before sitting down I would like to express the gratification of the Indian mercantile community of Madras no less than elsewhere at the recent institution of the department of commerce and industry. I think, Sir, that all who have considered the point must be in accord with the opinion of His Excellency the Viceroy that at present in India no tax is imposed that can fairly be called burdensome to any class or crippling to any industry; but I think that I ought to say that non-officials, rightly or wrongly, think that in connection with certain taxes, which are not in themselves objected to, the methods of Government in this Presidency, for which alone I can speak, sometimes hamper legitimate industry and even work unfairly against certain classes. Probably all that is wanted to put matters on a satisfactory footing is a better understanding on the one side of the necessities of the Government and on the other side of the wants of business; and we anticipate that this new department should help to give us that better understanding. We, therefore, greet with gratitude the appointment of Mr. Hewett as also the declaration of His Excellency the Viceroy that the Government can no longer dissociate itself from the encouragement of commercial enterprise, but desires to foster the development of this great country, by Natives and Europeans alike.

The Hon'ble Mr. H. P. Hoverson :—My Lord, the occasion of the discussion on the budget is the opportunity given to us the non-official members of this Council to address Government on matters of interest and importance to the constituents we represent. As your Excellency is aware the planting industry in this Presidency is a large one covering the cultivation of several important products such as coffee, tea, cinchona and other products. A very large capital is invested in the industry and it gives employment at good and permanent wages to many thousands of coolies and hundreds of Eurasians and Natives, as writers and overseers, and this means the circulation of many lakhs of rupees in the country. I claim therefore that the planting industry is of considerable importance to the welfare of this country. I regret to say that this industry is now passing through a period of depression and anxiety in every branch owing to the unprecedented low prices of all its chief products. East India coffee which used to

take a first place in the markets of the world has been for some seasons falling away in price and has this year fallen still lower.

1-40 P.M.

Over production in Brazil is in a great measure responsible for this, but the London buyers say that it is also due to a falling off in quality and this we know is caused by adverse seasons. The tea planter is in a still worse condition, his product in many instances having fallen in price below the cost of production, due mainly to the heavy duty in England which has been raised during the last four years by 100 per cent. Of this I shall have more to say presently. Cardamoms, pepper, cinchona have also fallen heavily in price, so that planters are working against severe odds in their struggle for existence. At such times we look with confidence to the Government to help us to tide over the time of trouble. Something can be done by improving communications and thus decreasing the cost of transport of produce and of food stuffs, and I trust that this matter will be kept always in view by the Government. I would like to say that planters recognise with gratitude what has been done for them under the present régime in the direction of improving existing, and opening new communications. The last few years have seen the completion of the new ghát roads to the Shevaroy and Anamalai Hills, and feeder roads are being constructed, so we feel that Government has given the very important subject of improving communications much sympathetic consideration, and I trust this policy will be continued. I would here venture to mention a specific case in which I think Government aid may fairly be asked for. I refer to the Vellera Mulla District road, which was made entirely by planters in the early seventies, and has since been kept up by them. The estates that subscribed to the upkeep of the road in 1902 had an acreage of 2,441 acres in cultivation, and it was estimated that in 1904-1905, 450,000 lb. of tea and 70 tons of coffee would be dependent on this road for an outlet. Food supplies for at least 3,000 coolies have to go in by the road to the estates, so that it is one of some importance. In fact it is a district road. The road is in urgent need of metalling, but the cost of this work is beyond the means of the planters, and I think they might fairly expect it to be paid for by Government. The papers in this case have been before Government who through the Collector of Malabar intimated in September last that they were unable to give any contribution towards this road. I would ask for a reconsideration of this order and that a special grant may be made this year from Provincial funds for the metalling of the road. If it cannot all be done, at least the worst portions might be taken in hand this year. The Hon'ble Mr. deWinton has inspected the road and can speak to its importance and to its condition. I would venture to suggest that aid might also be given to the planters by the remission for a time of assessments. This matter has been laid before Government already by the United Planters Association of Southern India but I regret to say that it has not been favourably considered. As the remission of assessment to ryots in time of trouble is an admitted policy of the country, there seems to me nothing unreasonable in our asking for it now. It is to be presumed that the Rs. 2 per acre assessment rate was fixed at a time when the industry was more prosperous and the planters cannot like the ryot allow a field to be uncultivated for a season and thus gain remission. I can assure your Excellency that it would be of great and practical assistance to many a struggling planter, who finds it difficult with the present low price of his produce to provide for the upkeep of his estate, to receive a temporary remission of assessment. I would point out that through the exchange policy of the Indian Government the producer is already paying a tax of 20 per cent. on the convertible gold value of his produce. No doubt this policy was necessary for the working of the general finances of the country, but I think it should be remembered that the producer contributes an undue portion of the advantage gained by Government in fixing the rupee value above its silver value. Your Excellency is of course aware of the agitation that is taking place in India and Ceylon against the burdensome tea duty, an agitation which has nothing of sentiment in it, but is dictated by a despairing struggle for existence by an industry which is being taxed to death. I do not think it needs many words from me to impress upon the Government of India and Madras that this industry is one of large importance not only to English-born subjects of the Crown who have invested over 25 millions sterling in it, but also to a vast number of the natives who are employed in it. I am within the mark when I say that it gives employment to over a million coolies,

who are so well paid that in this Presidency at least I can say, they are able to save one-third of their wages which they take away to their homes, and which helps towards the payment of Government taxes and the support of their families. Indian tea has already, as I have stated, a disadvantage in cost of production owing to the exchange of about 20 per cent. as compared with China, its chief competitor, but in spite of this disadvantage the English market has been practically won. In 1875 84 per cent. of the tea consumed in the United Kingdom came from China and 16 per cent. was British grown, in 1896 China only supplied 11 per cent. and in 1902 the total value of the tea imported into the United Kingdom was £8,787,000, of which only £457,000 came from China. This wonderful result was however only obtained at a great sacrifice in price. In 1833 the average price of tea in England was three shillings and six pence per pound, at the present time it is 6½ pence! The planter was able to do this chiefly by the introduction of high class and expensive machinery and by careful attention to every detail of cost, but the limit has been reached and any appreciable further reduction in cost is impossible. Since the imposition of the last extra two pence per pound of duty there has been a fall in price of another one penny per pound at least, or half the duty; presumably the consumer in England is paying the other half at present, and thus a tax which ought to be paid by the British tax-payer falls really to the extent of fully 50 per cent. on India. The average of many estate sales lately has in consequence fallen to but little over five pence per pound, in some cases even less. This is under the cost of production and can only have one end, the abandonment of large areas where only the lower class teas can be grown and re-entry of the cheap China teas. I know it is contended by the Chancellor of the Exchequer that the enhanced duty would not affect consumption, but what are the facts? In 1885 with the duty at four pence there was an increase in consumption of 4.25 per cent., in 1886 the duty was raised to six pence followed by a decrease to 1.92 per cent. and the average increase for the three years following was one per cent. In the ten succeeding years 1890 to 1899, with a four pence duty, the increase was two and a half per cent. In 1900 with the war tax (which by the way we cheerfully paid) the duty was again raised to six pence, and the increase in consumption at once fell to .74 per cent. Is it not more than probable that with the duty at eight pence there will be a still further fall in consumption, in spite of the Chancellor of the Exchequer's optimistic prophecy to the contrary? Thus through the imposition of the tax the planter has already lost one penny per pound in the value of his produce, and a further loss in consumption, which must be followed again by still lower prices. We have been told by Mr. Brodrick that our salvation lies in seeking new markets. Surely such a suggestion in itself shows but little knowledge of the working of our great industry, and of the energy and push of the Indian and Ceylon tea growers. Is it not realized that they have taxed themselves and otherwise subscribed largely with this very object, and that they have pushed the sale of their product in America, Australia, Russia, and the Continent, everywhere in fact throughout the world where tea is drunk, to an extent perhaps unknown and with results unequalled in any other industry? But the United Kingdom must be, and should be, the principal market for the tea produced by British capital and British subjects and it is deeply felt by those interested in its production that from the United Kingdom should come the blow that is sounding its ruin. This, your Excellency, is no exaggeration of terms, for a persistence in the present policy can only lead to the eventual abandonment of large areas which cannot produce the article with this heavy impost. The planter has done and is doing far more for India's good than is perhaps generally acknowledged, by the opening up of jungle tracts which would otherwise remain unproductive and unprofitable to the country. One such tract has been opening up even during your Excellency's term of office. I allude to the Anamalais. There, only a few years ago, was a trackless forest, bringing in a few rupees annually in the form of minor forest produce, collected by the jungle tribes, where now there are over 4,000 acres of tea, coffee, cinchona, etc., giving employment to many. The same has been done over larger areas in the wilds of Assam, Travancore, the Wynad, etc. I have gone into the question of the tea-tax at some length and I can only ask that its vital importance may be held to justify my having taken up so much time. I feel sure that we have your Excellency's sympathy as we know we have that of Lord Curzon, to whom our acknowledgments are due for the telegram, I understand, he sent

last month to the Secretary of State for India pointing out the serious burden the present rate of duty imposes on the industry. My object to-day is to impress upon your Excellency the fact that it is more than a serious burden. The expression implies something that may be borne, with difficulty perhaps, but I can assure you that in a large number of cases the burden is one that cannot be borne, it is too great; and I solicit continued efforts on the part of those in power in this country in impressing this fact upon the Home Government, with a view to obtaining relief before it is too late.

I should also like to say a few words in support of the Hon'ble Mr. Yorke's suggestion that the Government might do something to obtain for our tea a free entry into Ceylon. That is a matter which has been before Government on more occasions than one and it is one of very great importance. I think that in all fairness to the Indian tea producers, Indian tea should at least enter Ceylon on the same conditions as Ceylon tea comes to us.

With regard to the remission on the salt tax, this is no doubt a very generally popular remission. It was designed, as His Excellency the Viceroy stated in his sympathetic remarks on this subject at the budget meeting, to give relief to "the people of the country," and he asked "what is the tax that touches all classes down to the very humblest?" It is the salt tax." Now I think, your Excellency, that it is incumbent on Government to watch carefully the effect of this remission, to see if it really reaches the classes it is designed to relieve—that is to say whether the retail bazaar price of very small quantities of salt is reduced in some proportion to the amount of the remitted tax. If it is not, then it is clear that the object of the remission has miscarried and that the whole of the benefit has really gone into the hands of the merchant and the middleman, and it follows that a large amount of revenue has been lost to the country, which under such circumstances might have been better employed for the good of the people. I trust this will not be the result, but it is a very possible one, and I think that in any case it is a question that is worthy of attention.

With these remarks I would again ask for your Excellency's sympathetic and special attention to the present condition and wants of the planting industry of Southern India.

2 P.M.

His Excellency the PRESIDENT:—I think it will be convenient to adjourn now for three quarters of an hour.

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

The Hon'ble M. KRISHNAN NAYAR:—May it please your Excellency, I wish to associate myself with everything which the Hon'ble Mr. Yorke has said as to the lucid way in which your Excellency was pleased to place last year's administration before this Council and also with reference to what we call the prosperity of the year which has already come to a close.

In connection with the various points dealt with in the Budget, I wish to draw your Excellency's attention and the attention of your Excellency's Government to some of the points mentioned therein. One point that I wish to refer to is one of considerable importance, and that is with reference to a class of hardworked and very often much abused public officers, namely, the village officers. At present the village officers' pay is, as all of us know, very small and very often they are required to attend Taluk offices and also the offices of the Divisional officers and Collectors; and when they attend these offices, they are often required to stay there for a number of days, during which time they are not paid any batta. That, I submit, is a very great hardship. The expenses which these officers have to undergo when they are travelling and also when they are attending the Taluk and other offices already referred to, are very much more than what they get in the shape of pay. Having regard to the importance of the work which these officers do and the smallness of their pay, I submit that it is only just and reasonable that some allowance, however small it may be, must be given to them, whenever they are required to leave their head-quarters and to be in attendance on Tahsildars and Divisional officers.

Another point that I wish to touch upon is the subject of irrigation, especially in respect of its minor aspects. In the last two years the Government has been paying particular attention to the subject of agriculture. In the speech, to which all of us have been listening with great interest, of your Excellency this morning, your Excellency has given a large place to the subject of agriculture. Naturally the people of this Presidency are thankful to the Government for the care which the Government is bestowing upon this subject. The suggestion that I place before Government is that some attempt may be made to introduce some sort of Government irrigation in Malabar. My Lord, at present there is no Government work of irrigation of any kind in Malabar. I am aware, My Lord, that there is an opinion that in the district of Malabar there is no necessity for irrigation works, as the district enjoys plenty of rainfall. No doubt the district is particularly favoured by nature in respect of rainfall. With reference to the first crop—I refer to paddy crop—we have always the necessary quantity of water for reaping that harvest. But that is not so with reference to the second crop. In years of scanty rainfall brought in by the north-east monsoon, and even in years of normal rainfall, in several parts of Malabar the second crop suffers from want of rain. In October and November there is plenty of water in the rivers, which runs to waste; and if irrigation works are introduced, it will be possible to utilise this water which at present runs to waste, for the purpose of second-crop cultivation in the months of December and January. The Government is not likely to suffer too from a pecuniary point of view, while the people will greatly benefit by the adoption of the suggestion I make. In the neighbouring State of Cochin which borders on the district of Malabar, this experiment has been tried for many years and has been found to work very well. There is no reason why the same experiment introduced into Malabar should not prove a similar success.

Another subject to which I wish to draw your Excellency's attention and the attention of Government is this: as in the case of village officers, so in the case of Deputy Tahsildars throughout the Presidency, it is necessary that some allowance should be given to them, when they are travelling outside their head-quarters. According to the rule in existence, the Deputy Tahsildars have to be touring in the West Coast districts for ten days in the month and in other districts for 15 days; and under the present rules, they are not entitled to draw any allowance, when they are so touring. The answer of the Government with reference to the suggestion that I make is that at the time that their pay was fixed, this circumstance that they have to be touring for a particular number of days in a month was taken into consideration; and it was with reference to this, that their present pay was fixed. If that is the case, My Lord, all that I submit is that their present pay is quite inadequate. The pay of the Deputy Tahsildars is only Rs. 100, and from this amount they must find the expenses which are necessary.

The Hon'ble Sir JAMES THOMSON:—Are there no Deputy Tahsildars on the West Coast receiving a pay of Rs. 120?

The Hon'ble M. KRISHNAN NAYAR:—Some, I think, receive Rs. 120, while others receive Rs. 100. In any case, whether the pay is Rs. 100 or 120, the remarks that I have ventured to place before your Excellency are applicable in all cases.

Then another point that I wish to draw your Excellency's attention and the attention of Government to is with reference to the recent reduction in the salt duty. The Hon'ble Mr. Hodgson has already referred to this subject. By the recent reduction of annas eight in the salt duty, really the Government of India has conferred a very great boon upon the people of this country. But, My Lord, unless your Excellency's Government pays particular attention to this matter, there is every probability of this benefit, which is intended for the poorer classes of people, not really going to them. Even with reference to the reduction which took place about two years ago, I find, in the administration report of the Board of Revenue, in connection with salt revenue, that the benefit which was intended has not really reached the lower classes as yet. I refer to the administration report of 1903-1904. I find from that report that in the case of those poor persons who purchase salt by barter and otherwise purchase salt in small quantities, the benefit has not really reached them. What really took place when there was a reduction of duty two years ago was this: the benefit intended for the poorer classes did not reach them, but the middlemen and

merchants, who were in possession of the salt, were benefited. In order that this may not happen with reference to the recent reduction, I would request the Government to give as wide and early a notice of this reduction as possible by means of orders by District officers announcing the recent reduction of salt duty, such orders being proclaimed in market places and other places where people are likely to congregate. By beat of tom-tom and other ways it should be made widely known that this reduction has taken place; otherwise there is the danger of the benefit which is intended for the poorer classes not reaching them.

Another point that I wish to refer to in connection with this budget, My Lord, is this. One legitimate inference may be drawn from the greatly increasing amount of taxes that is derived from the administration of the Abkari department. With reference to the figures given at page 5* of the memorandum placed in the hands of the Honourable Members, what we find is that in 1901-1902 the revenue was 35 lakhs and odd, but in the next year it rose to 39 lakhs and odd, and in the next year it rose to 44 lakhs and odd. Passing over the budget estimate for 1904-1905 and coming to the revised estimate of the same year, we find that the amount reached 47 lakhs and odd. I submit that one legitimate inference that may be drawn from this increase in the amount of abkari revenue is that drunkenness among the people is increasing. I am aware your Lordship has referred to another inference in this morning's speech and that is the increasing quantity of liquor that is consumed by the people shows the prosperity of the people. Even supposing that the increased prosperity of the people is denoted by increase in abkari revenue, I submit that is not the whole explanation. One other explanation and, according to my view, the legitimate explanation is really that drunkenness among the people is increasing. I also note that another explanation is given in the administration report to which your Excellency has referred this morning and that is, a large quantity of illicit liquor which has been hitherto manufactured and sold has ceased to exist, so that the increase that we see in the consumption of liquor and the consequent increase in the amount of taxes is only an increase in the registration of statistics, and it does not really show an increase in the real consumption, because consumption of illicit liquor has been replaced by consumption of licit, the facilities for the manufacture of illicit liquor not being available to the same extent as they were before. That explanation may go to some extent to account for this large increase in drunkenness, but that again is not the whole explanation. I submit, My Lord, the real explanation is that liquor shops are located in thoroughfares and public streets and people who will not otherwise drink are tempted to enter these liquor shops. That is one reason why we see a large increase in the consumption of liquor. With reference to this subject, My Lord, I would refer to the opinion expressed by an eminent Civilian of the Bombay Presidency, where he says that the locating of shops in public streets and thoroughfare is a veritable trap for those who feel thirsty and are unwary. Therefore, something must be done, by taking the necessary steps in Abkari administration to check this growing drunkenness among people.

Another point that I wish to refer to is with reference to the collection of income-tax. This, My Lord, is a real hardship which is now suffered by the people. What really was intended by Government as a real blessing to the people, has proved not a blessing but just the reverse. The object of the Government of India in increasing the taxable minimum with reference to income-tax from Rs. 500 to Rs. 1,000 a year, was to exempt those people whose income was comparatively low, from payment of the tax. The result in many cases has been that those persons who have been formerly paying a tax on Rs. 500 have not only not been exempted from the payment of the tax, but have been obliged to pay tax on an income of Rs. 1,000. That is actually what it has come to. With reference to this, I wish to rely upon certain figures supplied by your Excellency's Government. It was stated some two months ago in this Council in answer to certain questions put, that the number of persons who were assessed on incomes above Rs. 1,000 and below Rs. 1,250 in the year 1902-1903, was 10,196, but in the next year, that is 1903-1904, the first year after the raising of the taxable minimum, the figure 10,196 of the previous year went up to 18,973, that is, an increase of 8,777 persons. I submit, My Lord, that there is no satisfactory explanation, excepting the one that I venture to place before your Excellency, for this abnormal increase in the number of persons taxed, namely, that

the same persons who were formerly taxed for the lower amount are now taxed for the higher amount. Then again, My Lord, I asked the Government whether they would be pleased to call for statistics showing the number of persons who were being formerly taxed on Rs. 500 and who are now being taxed on the higher amount. The answer of the Government was that it was not thought necessary to take statistics on that point. The Government further said that they had no information as to the number of persons who, having been assessed in 1902-1903, in the class from Rs. 500 to Rs. 1,000 were in 1903-1904 transferred from that class to class Rs. 1,000 to Rs. 1,250. If statistics on that point had been collected, they would have gone directly to show that the majority of persons who had been taxed on Rs. 500 have now been put in the higher class. In addition to that, there is an order passed by the Government of India, an order which is associated with your Excellency's name, as it was an order passed at the time that your Excellency was in Simla. That Government order concludes thus:—

"This question has been alluded to in several of the Provincial reports, and the Government of India are satisfied that it

3 P.M.

"will continue to receive the close attention of Local Governments. It is possible that a part of the abnormal increase may be due to the fact that the assessing officers have now to deal with a far smaller number of assessee than formerly, and have, therefore, more time in which to enquire into their circumstances; but the Governor-General in Council can feel no confidence that this explanation covers more than a portion of the increase, and he is impelled to the conclusion that persons formerly taxed in the two lowest classes have, in some cases at least, been raised to a higher class, without adequate investigation and for no other reason than that they would otherwise escape altogether. Any such tendency would defeat the object with which the minimum income liable to the tax was raised, and could not fail to bring discredit on the good faith of Government in granting the remission."

I submit, My Lord, that no condemnation can be in stronger terms, and this Government order goes very considerably to show that the observations that I have been placing before your Excellency are correct. With reference to this also, the same explanation based upon the prosperity of the people has been offered, but I submit, My Lord, that there is no reason why all of a sudden a large abnormal increase in prosperity should be visible. Another reason given by Government for this increase is that the assessing officers are able to give more attention to their duties than before. There is no reason why the Government officers who had been before engaged in the collection of income-tax should at once grow more diligent in their duties than before. With reference to this question, I would request your Excellency's Government to pay particular attention to see that the benefits which were really intended for the poorer people are really enjoyed by them.

The next subject that I wish to draw your Excellency's attention to is, under the head of Law and Justice, the system under which Sub-Magistrates are appointed. Last year I had occasion to allude to that subject and I wish to refer to it again. According to the system that now obtains, they are recruited from clerks employed in Divisional offices and in the Collectors' Cutcheries. By the time these clerks come to be appointed Sub-Magistrates, the little law they learnt for their examination will have been forgotten. The result is that the appointments are not satisfactory from the point of view of ability which ought to be possessed by these Magistrates, and also in other ways. We find that among a class of similar officers, I mean among the class of Munsifs, the officers now employed are a class of men, possessing a high degree of efficiency and honesty. There is no reason whatever why the same results should not be brought about in the class of Sub-Magistrates also, as those that have been brought about among the Munsifs. Munsifs are appointed from the members of the Bar and from the establishments of District Courts and the High Court. If a similar system be followed in the appointment of Sub-Magistrates, similar results will follow. That is especially necessary with reference to the intended change in the Police Department. Hereafter under the new arrangement, the Police officers are expected to be learned and the Sub-Magistrates should be able to grasp all the points placed before them by the pleaders and the members of the Police force. I, therefore, submit that a change may be introduced in the system of appointing the Sub-Magistrates.

Another subject in connection with the question of law and justice is the practice under which extension is granted to officers who have passed 55 years of age. I know, My Lord, that there are cases in which officers deserve this extension. In some cases, by granting extension to officers who have passed 55 years of age, the State secures the services of persons who have grown grey in the service and who have much experience and ability. Certainly the State and the people are not losers by extension granted to such men. But in many cases the contrary is the result. By the time that a man attains his fifty-fifth year, very often his physical and mental capacity deteriorate, with the result that the State does not get the equivalent of the pay that is given to him and the people also do not enjoy the benefit of his extension. Very often the quality of work suffers. Naturally these men who are hard worked officers begin to lose the faculty of grasping all the details placed before them and people suffer. I know there is an order of the Government of India in connection with this subject that, wherever possible, the services of persons who have gained experience and who have passed 55 years of age must not be lost to the State. In the actual working of this order, difficulties are experienced and taking all circumstances into consideration, it is better in the interests of the State that a strict adherence to the age limit should be observed, though, by such strict adherence, there may be individual cases of hardship.

There is one other point to which I wish to draw your Excellency's attention. Your Excellency referred this morning to the state of the weather and to the condition of the poorer classes in many districts that are affected by want of rain. Your Excellency has told the Council this morning—and that is also seen from the memorandum on the Financial statement that is placed in the hands of the Honourable Members—that a grant of 15 lakhs has already been set apart to be utilised as a Famine fund. There is no necessity for dismay—dismay is the word used by your Excellency—and if there should be any necessity for it, the Government is prepared to spend a much larger sum. We are thankful to your Excellency's Government for its ever watchful care of the people. It seems to me that from the various representations that we see in the respectable newspapers in the Metropolis, there is even now a great deal of distress in the Presidency—whether it is called scarcity, distress or famine it does not matter. I am sure that your Excellency's Government will take the necessary steps to alleviate the sufferings of the people.

The Hon'ble K. VASUDEVA AIYANGAR:—May it please your Excellency, in the first place I beg to tender our heartfelt thanks to your Excellency for the very able and interesting speech that has just now been vouchsafed to us and which breathes at every step of vast sympathies towards the millions of people under your charge. The review has been brilliantly made and I congratulate the Government on being able to effect improvements in every branch of administration during the last year and on the liberal provisions made for the administration of finances in the current year, the progress of which in all branches of administration I am sure is steady and beneficial to the public. Being myself an agriculturist I crave your Excellency's permission to say a few words on agriculture. The year that has just closed has not been very favourable to the agriculturist as the three years that preceded it. There were no early showers and consequently cultivation had to be begun at a comparatively late period. Some showers here and there kept up the crops, but later on owing to the complete withholding of rains they had to wither. The effects would have been more disastrous had it not been for the advent of some showers in December and January. The dry portions and the tank-fed lands seem to have suffered considerably. Even in the protected parts owing to the failure of water-supply in the latter portion of the season, some of the parts have failed and in others the yield is below the normal. In this connexion it is refreshing to note that the Government have been watching with great anxiety the state of the season and are taking all possible steps to alleviate the distress caused by the failure of rains. As your Excellency has observed an amount of 41 lakhs will be remitted and 13 will not be collected for the present. Sufficient sums of money seem to have been placed at the disposal of the Collectors to be spent on minor irrigation and Local Fund works and I am glad to see that these officers are exerting their best to utilise this money and provide work for the labourers. Your Excellency's Government have placed the agriculturists under a deep sense of obligation for these and other concessions mentioned by your Excellency. A provision of 15 lakhs has been made in the current year's budget for adopting relief measures, if

unfortunately the situation becomes worse. But the danger signals are not yet visible and I may say that on the other hand signs of the return of a good year are not wanting. So we will hope that after all the country will be favoured with copious downpour of rain and that the serious calamity will be averted.

I said last year that the new Provincial Settlement should not be considered as a very advantageous one and the terms might be more liberal especially in view of the constant vicissitudes of the season to which this country is subject. The opening balance which stood at 95.12 which we had to trade upon, in the beginning of the last year, became 76.28 during the current year and would dwindle into 46.01 during the next year. That is we would be obliged to spend a large portion of the 50 lakhs we were granted last year for starting the new arrangement and difficulties would arise if some unforeseen contingencies arise and put strain on our resources. But there is consolation that at such times we can confidently rely upon the generous support of the Government of India who have already begun to show signs of coming to our rescue. This is evident from the liberal grants made for improving the Police, giving impetus to the spread of primary education, grants-in-aid to the District Boards and for improving the Harbour works.

Broadly speaking the budget should be considered as satisfactory in that the estimated Provincial Revenue of the current year is expected to show an improvement of 45.40 over the revised figure and the estimated expenditure oversteps the revised figure by excess charges to the extent of 56.83 lakhs and many improvements are proposed to be effected in various departments.

I find under "Land Revenue" that the budget estimates of the last year were not realised on account of the failure of the north-east monsoon, but hopes are entertained for the realisation of the suspended collections during the current year. Perhaps the forecast may prove a little too sanguine considering the still gloomy outlook in the prospect of the coming season. Even if there should be a change for the better it is likely that the ryots may not have quite recovered from the oppressive effects of the past season to enable them to pay up the suspended outstandings in addition to the current kists. These suspensions, I beg to submit, have always a demoralising effect on the cultivating classes and do not encourage them to put their hand to the plough—I mean in the literal sense—with vigour and enthusiasm as soon as there is rain. The ryots are acknowledged to be poor and when there is no guarantee for him that he will be enabled to utilise some profit from his fields for the benefit of himself and his family especially after the dire effects of scarcity he cannot be expected to attend to the cultivation properly. In the opinion of the Famine Commissioners the first thing that the Government should do in times of scarcity and distress is to put heart into the people. With this view they urge the desirability of dealing with such cases with more than ordinary liberality. In this connexion the thanks of the agriculturists are due to the Government of India for the orders recently issued laying down principles that should guide the officers in granting suspensions and remissions. That the postponed collections should not be collected at the next favourable season, that it should only be collected in instalments are far-reaching provisions and are sure to confer benefits upon the persons for whom they are intended. I hope the subordinate officers in whose hands lies the power of carrying out the instructions of the Government will rise to the occasion and interpret the rules in the same liberal spirit.

Under the same head I find that an additional revenue of about 65 lakhs is expected by the introduction of settlement rates in portions of Salem, Nellore, Kurnool, Tinnevely and Guntur districts also by the realisation of postponed kists and by the increases under water-rates. The last two items would come to about 13 lakhs and the balance, i.e., 52 is proposed to be raised under the first item—introduction of new settlement rates. Examining the actuals further I find that the enhanced rates proposed for Salem would bring in a revenue of Rupees one lakh and forty thousand

3-20 P.M.

and the rest—a little more than 50 lakhs of rupees—is to come out from the other four districts where the lands, except in a few protected parts, are generally poor. When the Hon'ble Sir James Thomson said last year that the Revenue under this head ought to grow by revenue settlements in reply to my passing remark that there was no likelihood of an abnormal increase of revenue in this item, I had

not the least idea that so much enhancements would be the result of settlement operations. Your Excellency graciously gave us last year the details of the preliminaries that were adopted in ascertaining the views of the ryots of the Salem district before the new rates were sanctioned and I trust that the same care and attention have been bestowed in resettling these districts as well and the policy pursued in Salem has been adopted here also. I have also to submit that, even if the increases are resolved upon, it may not be expedient to bring them into force this year unless the agricultural prospects improve. His Excellency the Viceroy at the last budget discussion said that his heart always went to give relief to the cultivators of the soil—the patient dumb millions toiling at the work and at the plough, knowing little of budget but very painfully aware of the narrow margin between suffering and indigence. I need hardly submit to your Excellency whose solicitude in the welfare of these is so well known, that it is just and proper that they are allowed to enjoy the small profits left to them in cultivating their lands. In this connection I beg your Lordship's permission to acknowledge the bounty of the Government with thanks in having further reduced the duty on salt this year. In doing so, I beg to submit that it has been a puzzle to me why this beneficent action does not filter down to the ryots proportionately and why the price of salt has not materially been affected throughout the length and breadth of the country. The Hon'ble Mr. Krishnan Nayar referred to this and so has the Hon'ble Mr. Hodgson. It was said last year that the price could not be reduced owing to the rise in the price of the commodity in Bombay which obliged us to send large quantity to places where Bombay salt was being used. This answer does not clear the doubt. Nor does a reference to the Administration report make the point clear. The revenue which was more than two crores in 1902-1903 fell only by 7½ lakhs during the year when the reduction was made while there ought to have been a fall of 40 lakhs. That the revenue rose by greater consumption was also refuted by the Hon'ble Mr. Bradley. The question may be taken into the serious consideration of the Government and steps taken to bring the benefit home to the labouring classes in out-of-the-way places.

Turning to agriculture I find that the improvement of the Agricultural College is yet in the deliberative stage. The provision to appoint an Agricultural Chemist has again lapsed and it is without a Vice-Principal and other experts. Speaking of this institution I have heard it said that it is not worth being maintained at so much cost and might be even ended as it is not productive of much good to the public. But, when I had the privilege of visiting it last year, I could not share that opinion having been favourably impressed with the work going on in that place, though it might not be proportionate to the enormous sums of money that are being spent on it. I believe that, if it is to be maintained at a higher state of efficiency and made more attractive by providing some posts in the public service to the holders of diplomas, it would become more popular. It also struck me that more facilities might be created in favour of the ryots and their sons to get practical knowledge in the institution and that a separate course of instruction might be given to these for short periods in field work and on improved methods of cultivation. I am glad to see that it is the intention of the Government to improve its scope of usefulness.

In the current year's budget provision has been made for the opening of more experimental farms, for the extension of pumping experiments, for enlarging the Samalkot farm and for storage and distribution of cotton seed. The work done at the Government experimental farms started already does not seem to have produced any tangible results nor are the results from pumping experiments known. The importance of making known to the public such results in vernacular leaflets and bulletins cannot be overstated and I am glad your Excellency's Government have recently issued instructions for disseminating knowledge among the masses on the above lines and for deputing qualified subordinates to explain to the ryots improved methods and their results. The most noteworthy feature of the last year is the unusual activity displayed by the people in various parts of the country for the improvement of agriculture with the result that associations have been started in several places and have been doing good work. In this connection, the grateful thanks of the public are due to your Excellency's Government for rendering great assistance to these indigenous efforts. Another feature is that agricultural shows, which were discontinued for the last so many years, have been revived. The cattle owners have

another reason to feel complacent in that a Veterinary College has been opened recently which would supply qualified veterinarians to go about the country and give relief to the suffering dumb creatures. For the College buildings I see a sum of Rs. 90,000 is provided in the revised estimate.

Irrigation is another matter closely connected with the welfare of the agriculturists. It is satisfactory that a sum of 48 lakhs has been spent on minor irrigation works last year. This appears to be the greatest figure obtained during the last many years. But the allotments made for the repair of the Cauvery channels do not seem to satisfy the purpose. For the last three years I find that provision has been made for the repair of these in the Trichinopoly district, but the channels have not visibly improved. I notice the same complaint from Tanjore. Channels are silted up and the banks and sluices fall into disorder with the result that water does not flow easily to the lands under the channel irrigation. May I respectfully plead for the allotment of larger funds for improving the facilities of irrigation in these parts? The Irrigation Commission specially recommends this in the case of the Cauvery channels with a view "to prevent them from running dry when water is mostly needed and to protect the cultivation on them from excessive floods in other seasons."

In this connection I have to bring to the notice of your Excellency's Government the neglected state of the minor distributary channels. The villagers themselves used to carry out the repairs of these channels which were kept in an efficient order by the joint exertions of the ryots, which was known as 'kudimaramat.' Now that it has fallen into disuse owing to various causes, such as the disruption of the village communities, division of the village lands into small patches owned in many instances by absentee landlords and the growing competition for labour which has almost disabled the landlords from exercising any control over the labourers, the best thing is for the Government to intervene and maintain these works by the collection of a small cess, say, at three pias in the rupee. The Irrigation Commissioners suggest that a panchayat of villagers may be formed to manage this fund and, I think, this will be very wholesome. There is much confusion about the regulation of water-supply and matters would certainly improve if it is left to the village committees, and in the case of a number of villages under one big channel bigger committees may be formed. The Hon'ble Colonel R. H. Sankey when introducing a Bill on a cognate subject in 1883 in this Council said that "under proper restrictions the management of the funds granted by Government for ordinary and special repairs of minor irrigation works might be made over for expenditure to these bodies." He goes on to say that "the forms of local self-government as applied to our irrigation works have existed and had a vigorous life over a large portion of the Southern Presidency. A study of the record of evidence before the Public Works Commission would go to dispel any misgivings which may exist on this point." After these words from such an authority I have simply to commend the proposal to the favourable consideration of your Excellency's Government.

There is one item in the budget which cannot fail to produce some concern to the agriculturists. Under head 26 the Revenue from fees for emigration to British colonies is expected to increase this year. The cultivation has already suffered much by the desertion of these labouring classes and further depletion would only tend to launch the mirasidars into greater difficulties.

I have submitted last year that interest on loans advanced to the ryots may be reduced as we are having surpluses under this head.

Your Excellency has referred to the starting of Co-operative Credit Societies in some solvent localities of the country for the improvement of the credit of the agriculturists. The Registrar than whom a better officer cannot be selected for the post, will, I am sure, be able to dot the country with a network of such societies in the near future.

While thanking your Excellency for the concessions granted as regards forest grievances, I would submit that the question of making reductions in grazing fees in favour of agriculturists may be again considered favourably.

Under Education I should congratulate the Hon'ble Dr. Bourne on his getting a further grant of six lakhs for primary education. But, this is too insufficient for the purpose. Even with the present allotment, the whole figure would not exceed even

half of the amount required by the Honourable Member. Though there has been a slight improvement in the spread of primary education during the last year, still, some 80 per cent. of the male population of school-age are still left without any education at all. I hope, however, that, with this additional amount, the system of rural schools will be introduced on the lines indicated in the famous resolution of the Government of India. The system that is reported to be prevailing in the Central Provinces seems to be doing excellent work and to impart practical education mostly required for a young cultivator in the village. If he is made to study his text-books containing chapters on sanitation, agriculture and the rights of the tenants, becomes conversant with the village accounts and maps and if he is made to contract habits of industry, thrift and business even in early life, the position of the agriculturists would indeed become much improved. But the usefulness and importance of a good school depend upon the qualifications of the teacher. The sort of men that are allowed to impart instruction in village schools and their absolute incapacity to deal with the training of young minds both morally and intellectually do not encourage me to hope for any good result accruing from such education. I am glad that in the budget, provision has been made to remedy this evil by the reorganization of Government Training schools. The recent additions to the staff of Sub-Assistant Inspectors would also improve the position of these primary schools. In urging the spread of primary education, the importance of helping secondary education should not be lost sight of. It is not known why the total expenditure from public funds under this item should have fallen during the year 1903-1904, though the number of institutions and their strength arose. I cannot leave this subject without saying one word about the improvement of Sanskrit literature—a subject on which I have been dwelling these two years. I may again submit that it may not be just to leave this to indigenous agency alone and the small annual outlay of 20 or 30 thousand for this purpose would certainly not launch us in a deficit. The preservation of ancient monuments has been accepted as one of the principles of the Government and if the definition includes all that are of historical or archaeological interest, then the preservation of the ancient literature of the country would become one of the obligations of the State.

The grant of 2.29 lakhs made to the Municipalities of Guntur, Dindigul, Vellore, Coonoor and Ootacamund in the last year for water-supply and drainage is praiseworthy and it is very gratifying to note that an enhanced provision of 5.73 lakhs has been made in the budget of the current year towards similar grants. I hope Srirangam Municipality will be fortunate enough to partake of a decent share of the grant to meet urgent sanitary and other improvements, especially as it exhibits the anomaly of a very important town with a great shrine but a municipality of slender means incommensurate with highly costing sanitary measures. The Government, I beg to submit with great pleasure, have further generously extended their help to these bodies by contributing 3.85 lakhs in favour of Municipalities whose balances have been depleted by expenditure on plague preventive measures, by granting 3 lakhs to the Madras Corporation for drainage works, and 10,000 rupees to the same body for the improvement of the People's Park and by granting 1.57 lakhs to five mufassal Municipalities for the construction and repairs of hospitals.

The last important item that naturally attracts one's attention is the very liberal contribution of 14 provided to be made to the Local Boards. I find that this is to be spent mostly on civil works where an amount of 66.16 is proposed to be spent, while the revised estimates of the last year show only 53.13. Heavy plague expenditure has been putting a great strain on all the District Boards alike whether affected by the epidemic or not. They have been absolutely unable to move on and the first important item for which the land-cess is collected, i.e., communications, is obliged to suffer. In Tanjore many important roads are left in a wretchedly bad condition and in Trichinopoly many jungle streams have yet to be bridged. The construction of an important bridge in the latter place for which provision was made for two successive years had to be postponed for want of funds. Nothing would therefore be more welcome to the ryots than the news that better facilities of communication will be created and they would be enabled to carry their grains to the markets and to the Railway stations more easily. While on this part of the year's programme I wish to submit a request that in connection with the Local Fund Railways of the Trichinopoly district the

Government will be pleased to arrange for the construction of the two bridges of the Cauvery and the Coleroon strong enough for the mixed-gauge in view of the contemplated broad-gauge line. The railway-cess is being collected in the district for the last three years and as matters stand at present there is no chance of the Board's undertaking any line until the above difficulty is solved—the cost of undertaking that work being prohibitory and beyond the scope of the finances of the District Board. The proportionate income and the expenditure may be apportioned according to the sources of the Capital account. It will then be easy for the Board to carry out its scheme of the feeder railways as the tracts that are to be tapped by the railway lie on the northern side of these two rivers.

I am sorry I have detained your Excellency too long and my apology is that this is the only occasion in which the members are privileged to have their say on subjects concerning the welfare of the people; and if I have tried your patience and that of the Council I beg that this infliction of mine, though quite unintentional, will be overlooked.

The Hon'ble G. SRINIVASA RAO:—My Lord, I have very great pleasure in congratulating the Honourable the Senior Member on the eminently satisfactory budget which he has been enabled to lay before this Council by the heavy surplus, he might indeed say the embarrassingly heavy surplus, coming on, too, on the top of a series of successive surpluses, which the new Finance Minister found staring him in the face and demanding disposal. The choice of subjects for the exercise of the Government of India's bounty has been extremely judicious and thoroughly unexceptionable. In addition to the permanent lightening of the burdens of the toiling masses, the Government of India has been bountiful in the distribution of doles in which Madras has had its share, though in respect of one or two items, we may be pelted to exercise the indefeasible right, which we enjoy under the British Government, of grumbling that our Presidency has not obtained its full share. For instance out of the five lakhs of Rupees which the Government of India had for distribution among the five Universities of India, Madras has come in for a disproportionately small sum of Rs. 70,000, though its University is one of the oldest and caters to a much larger population than any other University, save that of Calcutta.

My Lord, I feel it my duty also to express my personal thankfulness to your Lordship's Government for having carried out more than one suggestion which I ventured to place before it in my budget utterances last year. I may instance the provision that has been made in the current year's budget for the temporary employment of a Deputy Collector in the Madura district for income-tax work. Speaking on the subject of primary education last year, I remarked that "no improvement worth the name can be effected in primary education without an almost complete overhauling of the training schools that are scattered up and down the Presidency." I am accordingly glad to note that a complete scheme of reorganization of the Training schools has been engaging the attention of the Government and that the expenditure sanctioned under the head of Education includes a provision to meet the cost of the reorganization. But the improvement of the Training schools is not by itself sufficient to make primary education more efficient than it is to-day. The betterment of the pay and position of the primary schoolmaster, who in many instances, it would hardly be believed, is paid the paltry pittance of Rs. 4 and Rs. 5 a month, is a most crying need, without which primary education cannot be expected to make any progress in quality. No less important is the provincialisation of the staff of supervisors of primary schools and recruitment of them from a better and more highly educated class.

The District and Local Boards in the past were hampered considerably by want of funds to carry out the works for which they were made responsible. These local authorities have till now occupied a position somewhat analogous to that of the Israelites of old who grumbled that they were required to make bricks without straw.

3-40 P.M. The liberal grant-in-aid amounting to 25 per cent. of their income, which the plethoric state of the public purse has enabled the Government of India to sanction to these bodies, ought to have a perceptible effect in improving their financial position and I fancy, My Lord, that in their improved circumstances, it would not be too much to insist upon their laying out a fixed proportion of their revenues on education.

Last year, I ventured to express the hope that the claims of qualified and experienced teachers in the well-established and successful private schools would not be lost sight of in filling up vacancies in the Government Educational department. I am thankful that in making the recent appointments to the Sub-Assistant Inspectorate, my suggestion was acted upon. I am, however, of opinion that the Provincial Educational service is quite as much in need of strengthening by the infusion of new blood as the subordinate service. For the reasons which I set forth at some length in my last year's speech, I would suggest for the consideration of the Government that at least one-half of the vacancies in the Provincial service should be made available to competent men in extra departmental institutions. I am aware that the age difficulty may be looked upon as a bar to such recruitment, but I think it cannot be an insuperable one. As in the case of District Munsifs recruited from the bar, the higher age limit of 35 may well be prescribed and occasional departures even from this rule may, with great advantage, be permitted.

The subject of technical education is apparently a ticklish one, especially, when it is regarded in the light of the confession made by the Honourable the Senior Member from his place here a twelve month ago, "that in spite of the work and report of a committee on this subject, we are little further forward. It is useless to talk of establishing technical schools till you know what they are wanted for and how they can best supply what is wanted." I shall, however, only remark that it is hard to be asked to rest content with this plea of *non possumus*.

Last year, My Lord, I was taken to task for certain remarks which I made on the Abkari administration. I do not want to take up the time of this Council with any elaborate justification of my position, nor with controverting at any length the Honourable Official Members who found fault with me. While I am not unwilling to endorse the boast of the Hon'ble Mr. Sim in the Supreme Council, "that Madras has been the pioneer in excise reform, based on this cardinal principle of obtaining a maximum of revenue from a minimum of consumption and I am glad to believe that, of late years, its pre-eminence in this direction has been recognised in other parts of India, and that Madras is now the Mecca of Temperance, to which official pilgrims from less-favoured provinces periodically wend their way," I am at the same time free to confess that I continue to be unconvinced and unconverted.

I cannot bring myself to believe that the Madras system, however excellent in itself as compared with the systems in vogue in other parts of India, has been brought to such a degree of perfection as to be no longer susceptible of any improvement, as its official exponents seem desirous of claiming for it.

I have been, My Lord, making the Registration department, so to say, my own in the annual budget debates in this Council. I do not want to weary your ears with a repetition of the remarks which I have made in the past years, but shall content myself with placing before the responsible officers concerned certain matters to which I desire to invite their special attention.

My Lord, I find that in spite of the increase of revenue in 1904-1905 and the expected increase of revenue in 1905-1906 owing to the unfavourable character of the season, no provision has been made in the budget for giving relief to the public by way of reduction of fees or for improving the pay and prospects of the Registration officers. In spite of the repeated declarations of the Government of India that Registration receipts were never intended as a source of revenue, surpluses are allowed to accumulate every year and merge in the Provincial Revenue, without the people being in any way benefited. Repeated requests have been made by Funds and Nidhis for the reduction of search fees for encumbrance certificates without any avail. The vexed question of how seasons affect registrations is still unsolved and no systematic statistics have been collected from the Registration department regarding the economic condition of the people. I am glad to learn that an attempt is being made to revive the collection of statistics in some form. But so long as the Registration officers are allowed to degenerate into a set of despondent and discontented officers, no hearty co-operation can be secured. Beyond providing a small amount for opening a few new offices and making a small addition to the clerical establishment, no improvement worth the name has been provided for in the budget. This department is verily the Cinderella of all the Government departments. A glance over the budget

shows that the Revenue, the Police, the Survey, the Forest, the Educational, the Medical, and the Judicial departments have all received additional grants for improving the pay and prospects of their officers while this may be said to have been left in the lurch.

In the Registration department alone graduates with 25 years' service have not been able to rise above Rs. 125 while their compeers in other departments have had the chance of becoming Deputy Collectors or Sub-Judges drawing salaries thrice if not four times as much. Look at the vast expansion these departments have assumed within the last decade, whereas the Registration department is stagnant. In September 1882, the number of Registration officers was 180; it is now over 400 and yet the superior officers have been given no relief. The late lamented Srinivasa Raghavaiyengar submitted a scheme in 1896 for the reorganization of the department. This scheme which in itself did not go fully towards ameliorating the condition of the officers underwent so much pruning that the scheme turned out to be worse than the one it superseded.

I doubt the utility of opening new offices in out-of-the-way villages convenient neither to the officers nor to the parties, who would prefer to travel a few miles more to Deputy Tahsildar's, Tahsildar's and District Munsif's head-quarters where they may attend to other business as well, when going to the Registration offices. Further the money-lenders with whom the people have transactions live mostly in the more important places. I am in doubt whether the amount which is now spent in opening new offices in petty villages may not be better utilized towards improving the pay and prospects of the officers in existence. I am informed that about half the number of District Registrars who have completed their 55 years or are about to complete the same during the course of the year have been granted extensions of service. This will positively block the way of the juniors and add to their great discomfort.

My Lord, I venture to suggest that in view to remove the spirit of despondency that is growing among the officers of the Registration department, early steps may be taken to improve their status and pay and that in creating new offices, if they are to be created at all, the appointments may be made in the first two grades, as the numerical strength of those grades is immensely low when compared with that of the lower grades.

It is gratifying to note that one of the most efficient and trusted officers of Government has been deputed to carry out the provisions of the Co-operative Credit Societies Act and that a few societies have already been brought into existence. When the way is seen to taking up the existing nidhis, with changes in their rules in keeping with the provisions of the Act, co-operative credit will be greatly assured and moneys by way of loans at cheap interest, with facilities of returning them in small dribblets over a conveniently long period, but without the heavy initial cost of obtaining them in the open money market as it is at present, I say, moneys on these advantageous terms will be made available in large quantities to the benefit of the industrial and the agricultural classes whose betterment is the aim of Government.

The Pamban Railway extension is a piece of work for which the public cannot but be sufficiently indebted to your Lordship's Government. I have no doubt that the extension will be completed in the very near future and the blessings of the countless millions who now go to Ramesvaram on pilgrimages not in any particular part of the year as they used to do until now but who flock from all corners of the continent of India at all seasons regardless of the heat or the cold thereof, will be upon the heads of Government.

I am glad to find that the bulk of the punitive police in the districts of Madura and Tinnevely has been disbanded and I ardently wish that the remnant of the special police left in the districts will be found fit to be removed in the year for which the budget is framed.

In the Periyár-affected area in the district of Madura, the want of roads and cross-roads has been long felt and our endeavours to get a portion, if not the whole, of the sale-proceeds of lands sold under the project, diverted for the construction of the much-needed communications were in vain. Although some roads have since been made, still I hope that with the help that the District and Local Boards will now get, all the necessary roads will be caused to be made without the matter being put off

any longer. I speak from personal experience in this matter. I own lands in the Periyár-affected area. I bought them nearly seven years ago. For want of roads, I am unable to carry manure to my lands with ease nor am I able to take home the little paddy or straw I get from them without a degree of trouble, cost and inconvenience which is quite out of proportion with the advantages of owning the lands. The site for a cross-road has been marked out probably when the lands were sold in auction, but the road is not made for want of funds.

There is one other matter with reference to the Periyár-affected lands, which I beg to place before the Council. In the distribution of water, there is always very great difficulty. I may mention what took place in my case. At one time, not being able to control the water, the Government allowed it to run to waste. Now not only have they been able to control the water in the Periyár lake, but even on the plains, they are able to control it satisfactorily. The result now is that it is controlled at times when it need not be controlled. When I wanted water about a month ago, I went to make my representation to the authority concerned—the maistry or the watchman. I was told by the maistry that in a week he would get water and that the first man to be supplied with water would be myself. A week after, I went there. Water was passing, but it was not to my land. It was going $1\frac{1}{2}$ miles further away from my land. When I questioned the watchman he said that that was his orders from the maistry. I told him that, in his presence, the maistry had given him orders to give me water, when it was available. However, he would not let it and I told him that I would not block the water in the direction in which it was going but, as there was a passage to my field, I would open it, so that water might run into my field also. That was an instance in which when I was entitled to water, it was not only not given to me, but taken away to lands far away. I mention this for the purpose of showing that in such cases, there is the difficulty of finding out where the water available did actually go or was really supplied. This is an instance showing that what exactly takes place is not and cannot easily be known to the authorities. When I went there, as a matter of fact, there was water available. If the District Engineer was told that the water was sent to my land, he had no occasion to know that it was not so done. In such cases, I think, that if the signature of the owner of the land to which water is taken—is taken in the daily report that is made to the higher authorities, it will be easy to find out afterwards where the water was really so taken or not.

The Hon'ble Sir JAMES THOMSON:—You mean each particular owner.

The Hon'ble G. SRINIVASA RAO:—No. The water goes through channels to a number of lands. Suppose the maistry says he sent it to A & B while, as a matter of fact, A & B did not get it, to show that he did send it to A & B, he should send a daily report to the superior officers, saying that the water was let to them and if the report should contain the signature of A and B in token of their having received it, it will be of immense benefit.

In conclusion, let me touch upon the general failure of the north-east monsoon throughout the Presidency which has been a source of great anxiety alike to the people and the Government. The steps that have been taken by the Government in the matter, the investigations that have been caused by the Government to be made and the instructions which have been conceived in a generous spirit and conveyed to the District officers with a view to afford relief to the unfortunate ryots and the remissions and suspensions of land revenue that have been already announced in places which have been hit hard have been in a great measure reassuring to the people. The provision of a sum of 15 lakhs of rupees in the current year's budget for relief measures, which would become necessary, should the next south-west monsoon turn out to be unpropitious, will be particularly welcomed as indicative of the anxiety of Government to save the afflicted peasantry from the dire consequences of the drought. I should not omit to express my thankfulness on behalf of the people to the Government of India for its sympathetic resolution regarding the methods by which the ryots should be dealt with in seasons of scarcity such as the present.

The Hon'ble P. S. SIVASWAMI Aiyar:—May it please your Excellency, I beg to express my sense of gratefulness to your Excellency for the admirable review of the

4 P.M.

administration of last year and I beg to congratulate the Government upon the record of progress which is disclosed in all directions. It is a matter of great satisfaction that this Government is now in possession of a large bounty from the Government of India, and that it will be in a position to carry out many reforms which have long stood waiting for want of funds. I am particularly grateful to the Government of India for the liberal grants which they have made for the purpose of primary education, for the purpose of improvement and reorganisation of the Police and also for aid to District Boards--not that these bounties are all that we want or adequate for the purposes that we require, but that they are an indication of the sympathy and generosity of the Government of India and that they will enable the Government to take some steps towards carrying out some of very urgently needed reforms. With regard to the subject of primary education, it has been long felt both by the Government and the public, that it is an urgent problem of education. The deficiencies of the present system are all recognised and as to what steps are to be taken there is more or less a unanimity of opinion; but the main difficulty has been one created by want of funds. This difficulty having to a considerable extent been obviated, the department, I hope, will be able to advance the cause of primary education a great deal. The Director of Public Instruction has often remarked in his reports on the necessity of securing a further increase in the number of people attending primary schools. For that we must necessarily have a further allotment of funds. We must secure a better class of teachers, and that again is not possible, except by the expenditure of funds. It has also to be observed that the cause of primary education has not made any large advance in recent years; so far as minor villages are concerned, that is, villages with a population of less than 2,000, primary education has fallen back rather than advanced. All these defects may, to a certain extent, be remedied with the help of these funds.

As regards the subject of education of girls, it is not possible to make more progress without the application of more funds. There are various difficulties which depend upon other circumstances than want of funds. It may not be possible to attain the same measure of success with regard to the advancement of female education as with regard to primary education. Though the success that may be achieved may not be commensurate with the amount spent, yet with the larger application of funds we should be able to make some advance. It is necessary for Government to spend much more in that direction than it has been doing hitherto. Some of the measures which have already been taken by Government are of an excellent character. I wish in this connection to refer to the grant of scholarships for Hindu and Muhammadan widows for the purpose of securing a class of qualified female teachers. It has been remarked in the reports of the head of the Educational Department, that these scholarships have all been applied for, and that the experiment has so far been a success. The idea is so good that I venture to request the Government to develop the experiment on a larger scale and to grant more scholarships for the purpose of securing a proper and adequate supply of qualified female teachers. One of the circumstances which has contributed to the backwardness of female education, a circumstance which is connected, to some extent, with the prejudices of the people, is that the people are not willing to send their girls to schools, equipped with male teachers only. If female teachers were employed on a larger scale, there would be less reluctance on the part of parents to send their girls; and one might fairly expect a larger increase in the number of female pupils. In this connection, I wish to make one suggestion with reference to the higher education of girls. I beg to suggest that one or two high schools may be started in Madras for the education of girls. I find from the report of the Director of Public Instruction that there are high schools for girls in other towns, but I am not aware that there is any Government high school in the Presidency Town. If the experiment is to meet with fair prospect of success, it should be tried in the Presidency Town, which, on account of its population and on account of the better education of its inhabitants, offers much fairer conditions of success than the other parts of the Presidency. Two high schools should be established, one in Triplicane for the southern part of the city and the other in Black Town for the northern part. I think one may not be sufficient to serve the needs of the whole town. If two are established in Madras, though the immediate results may not be encouraging, yet I have no doubt that the experiment will be crowned with success, if especially the staff is composed of qualified

female teachers. There is no objection on the part of native parents to send their girls to schools which are equipped with European female teachers. All that they desire is that the teachers should be females and not males. If these schools that I venture to suggest are started in the Presidency Town and if the staff consists of qualified female teachers, European or Indian, I have no doubt that, in the course of a few years, the result of the experiment will be of a gratifying and encouraging character. Then again with regard to any such schools that may be started, one other suggestion may be allowed to be made and that is, a number of scholarships may be offered to pupils. There is only one institution of a high class character in Southern India and that is in Mysore. There students are offered scholarships of considerable value in order to induce them to continue their studies. In the case of pupils belonging to the more wealthy classes, such an inducement may not be necessary; but in the case of pupils of comparatively slender means such an inducement would be very valuable and would have the effect of inducing the parents to keep their girls at school longer than they would otherwise be disposed to do. The late lamented Mr. G. H. Stuart had this idea in his mind once and he convened also a small informal meeting of a few native gentlemen and a few Inspectors and Inspectresses of Schools, at which this subject was considered. What recommendation Mr. Stuart eventually made and what has been done upon it, I am not in a position to say. I know that he did consider this subject at one time. With regard to the offer of scholarships that I have recommended, it is not necessary that they should be kept up for any length of time. They may be continued for a few years till it is found that parents readily take to the education of their girls and allow them to go on to the high school stage.

I have just one or two observations to make on other subjects. The large grant that has been made by the Government of India will enable this Government to take some steps towards the reform and reorganisation of the police. I know that the whole subject is under the consideration of the Government and that it will be taken in hand presently. But there is one point to which I wish to advert for a moment. That is, confining the ordinary constable to the duty merely of preserving order and patrolling, reserving the duty of investigating to a class, specially trained, of more intelligent officers. The separation of the business of investigation from the other business of patrol will, I am sure, be attended with the most advantageous results. I may refer, in this connection, to the circumstance noticed by the Inspector-General of Police, in his report that detection has been on the decline, with regard to crime and that only 36 per cent. of the cases reported have been detected. He states also that this decline is specially noticeable in regard to such grave crimes as dacoities, etc. That is not a state of things with which one could be satisfied, and if anything can be done towards remedying that state of things, I think it ought to be done and the step which I now suggest of the separation of the investigation department from the ordinary duty of keeping peace and order will go a long way towards the accomplishment of that object. Then again, with regard to the morale of the police officers, I am sure that steps will be taken to employ a better class of Inspectors. At present, according to the statistics available, I find that only 10 graduate Inspectors were entertained in the year 1903-04. A larger number of graduate Inspectors may be entertained, subject of course to the necessary condition as to their physical efficiency and so on. I feel sure that that experiment will be attended with great advantage to the people and the service.

Passing on to the subject of Criminal Justice, there are at present a number of sub-divisional officers exercising magisterial functions. So far as the lower classes of Magistrates are concerned, they are mostly full-time men, who are stationary and who devote themselves to magisterial work. I believe the time has come, when a further step may be taken in the direction of a more complete separation of the revenue from the magisterial functions. This subject has been referred to on many occasions by the Government and public. It was described by one Viceroy as a counsel of perfection. The only difficulty which has prevented the carrying out of this counsel of perfection is again want of funds. I should imagine that it would not require very much funds to take a further step in this direction, of bringing about a more complete separation of magisterial from revenue functions. There are 88 sub-divisional officers and 51 Special Magistrates exercising magisterial functions. One inconvenience which attends the exercise of magisterial functions by these officers is that they are

roving officers and the people have to go from place to place, wherever these officers may happen to be in camp. That is one of the many evils which are incidental to this system. If persons are appointed as first-class magistrates to discharge magisterial functions and if some of those gentlemen who now attend to magisterial and revenue functions should devote their whole time to revenue functions, it would be possible to work the scheme so as to cost not very much more than what it costs at present.

I have just a word to say with regard to the administration of jails. I find from the report of the Inspector-General of Jails, that there was a considerable increase in the number of punishments for jail offences, which are breaches of jail rules. Curiously enough, he attributes the number of punishments to changes in the superior staff and also in the subordinate executive staff. That, I submit, My Lord, is not a desirable state of things. If the increase in the number of punishments was due to an increase in the number of breaches of discipline, something, not dependent on the changes in the staff, but connected with the prisoners themselves, there might not be much room for criticism, though that itself might require an explanation. But that there should be an increase in the number of punishments due to a change in the superior and subordinate staff is not a thing which can be accepted as a satisfactory state of things.

The only other point that I wish to touch upon, Your Excellency, is the redistribution of some of the districts now going on. Your Excellency will pardon me for saying that the public is as much interested as the Government is in the administration of the various districts and that it would be very desirable that the Government should take the public into its confidence and let them know what arrangements are intended to be made. As matters now stand, all the arrangements are planned, thought out and resolved upon by Government. And then a complete scheme is eventually published to an unknowing public. It is not a mere question of administrative convenience. There are considerations of administrative convenience no doubt, but they, by no means, exhaust the considerations which ought to be borne in mind by the Government in this matter. One can easily conceive that the redistribution of districts may cause very considerable hardship to the people of the districts. Suppose a man who has got a Police Court or a Civil Court close by is made to attend, on redistribution, a court which is situated several miles away, it will be a source of hardship to him. There are various other ways in which the rearrangement of districts may cause hardship to the people. I think it would be generous and wise on the part of Government to take the public into its confidence, before it resolves upon these schemes, and to take into consideration whatever representation the public may make and then come to a decision. I must confess that though I have tried to understand the reasons for the reticence of Government on this matter, I am not able to understand it. It seems to me incomprehensible why the Government should make a secret of it and why it should not take the public into its confidence and tell them what it proposes to do. The policy of taking the people into confidence inviting them to express their opinions on matters which may concern them very intimately would, I submit, be the right policy to pursue. I venture to make this suggestion in the hope and belief that if the hardships that people are likely to suffer by reason of a re-arrangement of which they are entirely ignorant, are properly represented to your Lordship, your Lordship will take steps to ascertain their wishes before resolving upon any scheme.

The Hon'ble L. A. GOVINDARAGHAYA AIYAR :—May it please your Excellency, I propose to say a few words on the budget so lucidly explained by the Honourable Member in charge of the Finance. But before I do so I hope I may be permitted to express the thanks of the people to the Government of India for the remission of taxation it has made and also for the contributions that it has made to various useful departments in which funds were badly needed. So far as these directions went, I submit that it is impossible to choose more happily than the Government has done—the directions in which help could have been rendered. I am also obliged to your Excellency for the review that your Excellency has made of last year's administration, so full of interest and sympathy with the needs of the population agricultural and otherwise entrusted to your care.

To turn to the budget, the first subject on which I propose to say a few words is that of Education. The Government of India and this Government have both recognised

4-20 P.M.

in as handsome a fashion as it is possible to do, the necessity for a large dissemination of primary education. But I must point to the fact, that the figures show that the whole of the budget amount allotted for expenditure on primary education has not been availed of in the year 1903-1904 nor is there much likelihood of its being done in 1904-1905. For the reasons given in the administration reports and also for the reasons that have been given by the Honourable Member in charge of the Finance, to some extent it was unavoidable that it should have been so; but still it appears to me that points to a danger in the situation which necessitates the putting forth of the best energies of responsible officers to avert it. I may point out that the budget estimate for 1903-04 was 23.98 lakhs and the revised estimate was 27.91 lakhs, the actuals being 21.32 lakhs. The budget estimate for 1904-05 was 24 lakhs; the revised estimate puts it at only 22.49 lakhs. For the year 1905-06 the budget estimate is 29.78 lakhs and I hope that this will not share the same fate as the previous budget estimates have done. With regard to the character of primary education that is needed to some extent, the points that I wish to lay before the Council are those whose utility has been allowed on previous occasions. I submit, My Lord, that there is very great necessity for changing the character of primary education that is being given. If I may be allowed to say so, the education that is now given is more bookish and literary than such as is suited to the needs of the people for whom it is intended. So long as agriculture continues to be the main business of the people and so long as a very large proportion of the people are ultimately to be engaged in it, any education which is primary in its character and which is given to lads who would only develop into agriculturists must be such as is specially suited to the duties of an agriculturist. I submit that the education now given in primary schools is not one calculated to bring about that thing. The kind of education that I would suggest is one which seems to have met with considerable success in the Central Provinces. I would also request that some differentiation be made in the character of education given in rural schools to lads who will become agriculturists, and the education given in urban schools, where it may be reasonably expected that some of the lads would get into higher classes. The object of these kinds of education must be to make the lads use their hands and develop their powers of observation, inherent in them, so that they might have inquisitive spirit in after life, in order that they might realise the responsibility of their duties and practise the habits of thrift and self-reliance, the want of which has been found to be a great dead weight in the administration of Government. I would also submit that the pay given to primary teachers is unduly low. It is impossible to expect that we can get teachers who will be in a position to give the necessary kind of instruction on a pay for which even a respectable peon could not be got. Now that surplus funds are in the hands of Government, it will not be out of place for them to devise means by which the pay of primary school teachers might be increased and in course of time it will not be also difficult for primary school teachers to be so trained as a body well fitted to discharge the duties that may well be expected of them.

Coming to girls' schools, I find that there is a large number of schools maintained solely at Government expense. The importance of female education is one that I need not dilate upon in this Council and it appears to me, now that we have some funds at our disposal, the number of schools maintained by Government, at its expense, might be increased. I would also add to what has been said by the Hon'ble Mr. Sivaswami Aiyar with respect to the necessity of having High Schools for girls in Madras, that, in a case such as this, wherein the elements of situation are altogether peculiar, the financial aspect of the matter ought not to be the only consideration nor should it be considered that only when there has been a demand clearly expressed, the supply must come. It appears to me that this is a case in which supply might stimulate demand; and when it is recognised that it is of the highest importance to everybody concerned, I don't think the experiment of having a high school or two for girls in Madras would be considered to be an undesirable one, even though in the beginning the prospect of its turning out to be a success ultimately cannot be altogether handsome.

The next point to which I would invite your Excellency's attention is one of agricultural education. I know that the view is largely held—I believe it is on the whole a correct view—that the Indian agriculturist does not require so much to be

taught how to pursue methods of agriculture, as to be helped in the way that he carries on agriculture. I don't think it will be gainsaid that there are a variety of ways in which the agriculturist stands in need of help and instruction, with reference specially to the superiority of one seed over another, of one kind of manure over another and of one kind of tilling over another. I think that the agriculturist will be quite thankful if some help were afforded him in that direction. The only suggestion that I beg to make is the Government may well try the experiment of having agricultural Inspectors, itinerant Inspectors, going from place to place, meeting villagers and pointing out to them the utility of using one seed in preference to another and of one method of cultivation in preference to another, so that they might themselves see in a practical sort of way what good there is by adopting the suggestions that are made to them. Now that the Government of India has been kind enough to sanction something like 20 lakhs to help purposes like this, some of that money could be utilised for the purpose of having a staff of agricultural Inspectors who will go to ryots' doors and explain to them the superiority of some of their methods over their own. As Dr. Voelcker has said, it often happens in the Madras Presidency the method of cultivation pursued in one part may well be availed of in another. When we get agricultural Inspectors who will point out to those persons who stand in need of advice that certain methods of cultivation are calculated to bring about a better outturn, I am sure that the agriculturist is intelligent enough to see that it is to his advantage to adopt the methods suggested. The only thing needed to secure his adoption is that the experiment he is asked to make should not end in a failure, because he is too poor to undergo the loss; but if he is once assured that it is sure to succeed no one would take to it with greater avidity than the Indian agriculturist.

The next point that I wish to touch upon is industrial education and I am very near the truth when I say that very little progress has been made in that direction. In 1904 the Government of India has passed a resolution wherein they indicated the main lines on which they would expect industrial schools to be started and worked. I simply request that effect may be given to that suggestion, so that a number of industrial schools might be opened, to which students might be attracted from the classes which adopt industries as their profession, so that they might be better trained in the accuracy and exactness of workmanship which are supposed to be the chief defects of their work.

The next point is Sanskrit education. I must confess I felt a strong sense of disappointment at the observations of the Director of Public Instruction in reply to the remarks made by some Honourable Members last year with reference to the utility and necessity of a wide imparting of Sanskrit education. He was pleased to say that if there was any institution in the Presidency which might well be left alone to indigenous effort and support it was the Sanskrit schools. I do not say he was quite wrong in this. If you think of the various things which may be left to indigenous effort and support, if you want to find out which can best be so left, it is the Sanskrit schools. But that, I submit, is not the point of view from which the question has to be looked at. Although it might be true that there is indigenous effort and support that could well be trusted to look after Sanskrit schools, such effort and support cannot have that expert knowledge and co-ordinate activity which for good length of time to come will practically be the possession of the department of Public Instruction. All that is requested is that the Director of Public Instruction might have also Sanskrit schools in his charge—not that the Government is asked to spend a large sum of money, but that some kind of supervision might be exercised over these Sanskrit schools, so as to bring them into line with other Educational institutions in the country and to see that they are so conducted as to be in line with Western methods. As to the preservation of Sanskrit literature, I do not believe that there is any difference of opinion. Everybody considers that it ought to be one of the important duties of any Government to preserve and maintain the ancient literature that a nation might own and which is not inferior in any of its aspects to any other literature in the world. I submit that some amount of attention might be given to Sanskrit schools and this cannot be considered altogether too much out of proportion to the necessities of the case. Now that the Director of Public Instruction has got a Deputy, who will look after his routine duties, it may be possible for him to have some time, which he might devote to the looking after of the superintendence of Sanskrit schools.

I shall now turn to the Budget and say a few words on the question of Land Revenue. Here I must confess that it is with considerable diffidence that I beg to make the few observations that I have, especially after what has fallen from your Excellency this noon. As your Excellency knows, the subject that is now claiming a large amount of attention not only at the hands of those who are considered agitators but also at the hands of others whose interest the Government has much at heart, is one of season. A proceedings of the Board of Revenue has been recently issued wherein the whole situation has been put forward and reasons have been given as to why there is no necessity for any alarm. Before I proceed to discuss the proceedings of the Board of Revenue, I may say, My Lord, with reference to the observations which your Excellency has been pleased to make as to the poverty in the Madras Presidency as compared with the poverty of London, that a great statistician, who unhappily is no longer alive, but who has had unique experience of the Indian people and their methods and conditions of living, has stated that in India there are quite 40 millions of people who pass their existence from one end of it to the other without knowing what it is to have a full meal a day. Those who may differ from the responsible officers of Government with reference to the present season are not oblivious of this fact, when they call attention to the unfavourable character of the season and require Government to adopt measures suited to it. What they say is that the circle of misery has widened and the sufferings of those who have been afflicted have become more acute. I am not going to enter into any controversy now, My Lord, as to whether it is likely that the Government will ignore the fact that there is great distress in the country, especially when it is so much to their advantage to get the necessary help from the Government of India nor am I going to enter into the controversy as to whether the view taken by the officers of the Government is not, on the whole, a correct one; but those who may happen to differ from Government are not necessarily in that way casting a reflection on the integrity of these officers who are my fellow countrymen and of whose work your Excellency was pleased to speak in words of just appreciation and approbation. I may, however, be permitted to make this statement, My Lord, that there are officers of Government, among whom the view is prevalent, that if they were only fully, plainly and unvarnishedly to give out the real situation, they will be put down as alarmists and therefore to prevent themselves from being considered as alarmists, they have, if at all, been actuated by what I may call a kind of bias, which does not do full justice to the actual situation. To go to the proceedings of the Board of Revenue, it appears to me, My Lord, that the proceedings is not after all quite so satisfactory as one should think it was. A variety of reasons have been given as to why it should be considered that we have not as yet reached the stage at which an alarm should be given. The first point to which attention is drawn is that we have had a series of years of normal rainfall and that last year was one of particularly abundant rainfall. In attaching to it the due weight that it deserves, I fear that sufficient attention has not been paid to what His Excellency the Viceroy has stated that in India it is impossible for any officer of Government or any Government to utilise the whole of the water that might fall from the heavens, in consequence of the rapidity with which the rain falls and the uneven distribution of rainfall. Last year which is supposed to have been a year of abundant rainfall, it is within common knowledge that much of the rain that has fallen has fallen so continuously that really as much advantage could not have been derived from it as was possible. Then, My Lord, it was said that there had not been any great variation in the extent of cultivation. Here again, I beg to appeal to one standard which has been adopted in the recent resolution of the Government of India. That is, it is much safer to look not to the extent of cultivation but to the extent of the outturn. The proceedings of the Board of Revenue did not give us any information with reference to the outturn of crops. The Indian ryot, hopeful as he is, that the heavens may favour him and anxious not to lose any opportunity that might afford itself to him, for the purpose of availing himself of what rain he could get, tills his field, sows his seed and keeps the field ready to receive whatever water that may be given him; and if it ultimately turns out that there is no water to get, the field becomes shavi and he is not able to get any outturn. The fact that to a large extent the field has been cultivated does not show that the whole of it has matured into crops or that the crop is anything like fair. One would have expected that there should be some information given as to the

extent of the outturn from which one could obtain an idea of the exact situation. Another circumstance to which attention has been drawn in the proceedings of the Board of Revenue is that there has been no rise in prices. Perhaps the Board's proceedings themselves go to show that that will not be a very good test to apply for this simple reason, that the Board themselves are aware that what are called normal prices have not been prevailing for a number of years. It is noteworthy that in most cases the prices have gone above the normal and have approached or passed beyond the scarcity rates. Although the point is not of much importance, yet because it is specially alluded to in the Board's proceedings, I would beg to call attention to the fact that it is not only with reference to one district or to one crop that prices have reached the scarcity rates. In South Arcot, with reference to cumbu, some explanation has been given, but in North Arcot where ragi is the staple food, the price is 16.1 as against 16.6, the scarcity rates. Again, it is stated that there are enough stocks in the country so that it cannot be considered that the situation is one for great alarm. I may submit, My Lord, that the vastness of the Indian continent has this one advantage in its favour: that in any year when there is famine at its worst in one place, there are other places in the country which yield abundant crop, so that the famine that we have in India is not one of food, but one of money. This is a matter which is recognised by the Government itself. I therefore submit that the mere fact of the existence of stocks in the country is no argument to show that the distress is not quite so acute as it is believed and represented to be. I must say I am exceedingly thankful to the Government however, for the preparation that it has made to meet famine, should it unfortunately develop and also for the help that is being given to ryots to tide over the present situation. But I think it is desirable as well that the exact situation should be more fully realised than possibly it has been done. In giving us a clue as to what the exact situation is the touring of responsible officers of Government will be of great use; but one condition has to be satisfied that in such tours the people of the localities visited should be taken into confidence by the touring officers. Unless that be done it is not possible to have both sides of the case—and it could not be otherwise—so that all the materials for forming a sound judgment are not had. I may say that the correspondence which has been going on in the columns of the *Madras Mail*, which is not usually suspected of alarmist-tendencies, for the past few months would go to show that the distress is of a much wider extent than is shown by the proceedings of the Board of Revenue. I am thankful, however, for the steps taken and the promises that have been made for the alleviation of the distress.

4-40 P.M.

I have only one more observation to make, My Lord, and that is with reference to the question of income-tax. The Hon'ble Mr. Krishnan Nayar has, to some extent, discussed that question. It will be observed that in the answer that has been given to the question put in the matter that in 1903-1904 the number of persons whose income has been assessed at Rs. 1,000 to Rs. 1,250 has increased by 87 per cent. over the number that had been assessed in the previous year; whereas the number of those whose incomes were assessed at Rs. 2,500 and above has fallen, as a matter of fact, by 2 per cent. The reason that has been given for this increase in the number of those who had been assessed in the class from Rs. 1,000 to Rs. 1,250 were the general prosperity of the country and greater attention and activity on the part of the assessing officers; but still it was said that some enquiries were being held in the matter. It is rather difficult to realise, My Lord, that general prosperity of the country should have favoured only those whose incomes have been assessed between Rs. 1,000 and Rs. 1,250 or that the attention of the assessing officers should have particularly been directed to those persons whose incomes were assessed between Rs. 1,000 and Rupees 1,250. The facts disclosed largely justify the apprehension that has been felt and given expression to in the resolution of the Government of India during the time that your Excellency was at its head that it must be some of those who were not bound to be taxed were made to pay the tax. I feel that the facts that have so far come to light justify the supposition that there are a number of persons who were not bound to pay the tax and yet are made to pay it, and if in the enquiry that is being held, the apprehension that is felt should be found to be correct, I submit that it is but just that they should be refunded the money that had been realised from them as tax.

The Hon'ble V. C. DESIKA CHARIYAR:—May it please your Excellency, I beg to make a few remarks on this occasion. The first subject to which I should like to draw your Excellency's attention is in connection with the Madras Corporation which I have the honour to represent on this Council. Under the new Act under which we are now working, our resources have been crippled to a certain extent by two new provisions which have been introduced into it. First of all, there is the exemption which is claimed and which has been allowed in favour of the Government, from having to pay the license duty on imported timber and fire wood; and secondly the exemption in favour of hospital buildings from having to pay house-tax, water-tax and lighting tax. Of course, these things would not affect a more opulent Corporation, but our resources are crippled to an appreciable degree. Out of the Rs. 20 lakhs which form the receipts of the Corporation, something like 11 or 12 lakhs are derived from taxation, while the other 8 or 9 lakhs, as the case may be, is a sort of a fluctuating income that we derive from license duties and from similar receipts. Already the Town duties to which if I may be permitted to say, the City Corporation is legitimately entitled, have been taken away from it and your Excellency will pardon me if I say that a pittance of a contribution was being made in that connection even which has now been stopped. The small contribution that we get may not have been due to the Local Government, but may be due to the directions of the Supreme Government. But I only wish to represent the situation to the Madras Government so that they should continue to be generous as they have been in the past, so far as this Corporation is concerned. Now we are trying to settle an unfortunate budget and for three days we have been sitting over it in the Corporation meeting to avoid a deficit. We started, when the budget was placed before the Standing Committee, with a deficit of nearly 2 lakhs and odd. That is, if we want to carry out desirable reforms, which are not probably very necessary, but yet having regard to the fact that this is the metropolis of this Presidency, may be carried out as desirable, we should have at least two lakhs. We will not be able to carry out even these small measures of reforms mentioned in the budget, even if we raised the new drainage and sanitation tax to its fullest extent, namely, 2½ per cent. I think every body is aware that it is the house-owner in Madras that has been unduly taxed. He is already paying 15¼ per cent., that is, on the annual income of the house property, he is paying 10 per cent. as house-tax, 4 per cent. as water-tax and 1¼ per cent. as lighting tax. Roughly, this comes to one-sixth of his income. This hits hard against people who do not let their houses but keep them for their own use. By a recent power that has been given to the Corporation, they could raise the tax by 2½ per cent. Of course, I need hardly say what the effect of that raising of taxation would be. Those that make their income out of house-rent would naturally raise it not proportionately to the increase in the tax, but out of all proportion to it. If the tax is raised by 2½ per cent., the rent would be raised by 10 or 20 per cent. The result would be that in the crowded parts of the city (in Black Town) there will be over-crowding which is not at all desirable. Therefore, we tried our best to tide over the difficulties. In considering the budget we try to put off every reform which could wait for sometime and with great difficulty we have been taking away item after item from the Budget; still we have not been able to close it with a plus balance. I mention all these facts with the hope that your Excellency's Government will be pleased to help us in our appeal which we shall later on make through your Government to the Government of India to enable us to raise taxation on other lines than by imposing additional taxation upon house-owners. As I have said, out of an income of 11 lakhs from taxes, house-owners pay nearly 8½ lakhs and this is an undue proportion which they are made to pay. So far as the floating population of this large metropolis is concerned, they escape all taxation; while they enjoy all the benefits, they do not pay a pie. We suggested on a former occasion—I believe that so far as the Local Government was concerned, it listened to it sympathetically but unfortunately for us the supreme Government would not listen to us,—the imposition of a terminal tax—which would not affect any body. If every body who came to Madras and purchased a ticket for a rupee is made to pay three pies, no body would grudge it and the amount the Corporation would derive from it would be so appreciable that it would help us a good deal. Then there is the question of increasing the profession tax. The objection taken to it by the Government of India was that it is in the nature of an income-tax. No doubt it is. But what is the position of the house-owner? Not only does he pay

extent of the outturn from which one could obtain an idea of the exact situation. Another circumstance to which attention has been drawn in the proceedings of the Board of Revenue is that there has been no rise in prices. Perhaps the Board's proceedings themselves go to show that that will not be a very good test to apply for this simple reason, that the Board themselves are aware that what as far as normal prices have not been prevailing for a number of years. It is noteworthy that in most cases the prices have gone above the normal and have approached or passed even quite the scarcity rates. Although the point is not of much importance, yet because it is specially alluded to in the Board's proceedings, I would beg to call attention to the fact that it is not only with reference to one district or to one crop that prices have reached the scarcity rates. In South Arcot, with reference to cumbu, some explanation has been given, but in North Arcot where ragi is the staple food, the price is 16-1 as against 16-6, the scarcity rates. Again, it is stated that there are enough stocks in the country so that it cannot be considered that the situation is one for great alarm. I may submit, My Lord, that the vastness of the Indian continent has this one advantage in its favour: that in any year when there is famine at its worst in one place, there are other places in the country which yield abundant crop, so that the famine that we have in India is not one of food, but one of money. This is a matter which is recognised by the Government itself. I therefore submit that the mere fact of the existence of stocks in the country is no argument to show that the distress is not quite so acute as it is believed and represented to be. I must say I am exceedingly thankful to the Government however, for the preparation that it has made to meet famine, should it unfortunately

4-40 P.M.

4-40 P.M.

develop and also for the help that is being given to ryots to tide over the present situation. But I think it is desirable as well that the exact situation should be more fully realised than possibly it has been done. In giving us a clue as to what the exact situation is the touring of responsible officers of Government will be of great use ; but one condition has to be satisfied that in such tours the people of the localities visited should be taken into confidence by the touring officers. Unless that be done it is not possible to have both sides of the case—and it could not be otherwise—so that all the materials for forming a sound judgment are not had. I may say that the correspondence which has been going on in the columns of the *Madras Mail*, which is not usually suspected of alarmist-tendencies, for the past few months would go to show that the distress is of a much wider extent than is shown by the proceedings of the Board of Revenue. I am thankful, however, for the steps taken and the promises that have been made for the alleviation of the distress.

I have only one more observation to make, My Lord, and that is with reference to the question of income-tax. The Hon'ble Mr. Krishnan Nayar has, to some extent, discussed that question. It will be observed that in the answer that has been given to the question put in the matter that in 1903-1904 the number of persons whose income has been assessed at Rs. 1,000 to Rs. 1,250 has increased by 87 per cent. over the number that had been assessed in the previous year; whereas the number of those whose incomes were assessed at Rs. 2,500 and above has fallen, as a matter of fact, by 2 per cent. The reason that has been given for this increase in the number of those who had been assessed in the class from Rs. 1,000 to Rs. 1,250 were the general prosperity of the country and greater attention and activity on the part of the assessing officers; but still it was said that some enquiries were being held in the matter. It is rather difficult to realise, My Lord, that general prosperity of the country should have favoured only those whose incomes have been assessed between Rs. 1,000 and Rs. 1,250 or that the attention of the assessing officers should have particularly been directed to those persons whose incomes were assessed between Rs. 1,000 and Rupees 1,250. The facts disclosed largely justify the apprehension that has been felt and given expression to in the resolution of the Government of India during the time that your Excellency was at its head that it must be some of those who were not bound to be taxed were made to pay the tax. I feel that the facts that have so far come to light justify the supposition that there are a number of persons who were not bound to pay the tax and yet are made to pay it, and if in the enquiry that is being held, the apprehension that is felt should be found to be correct, I submit that it is but just that they should be refunded the money that had been realised from them as tax.

The Hon'ble V. C. DESIKA CHARIYAR :—May it please your Excellency, I beg to make a few remarks on this occasion. The first subject to which I should like to draw your Excellency's attention is in connection with the Madras Corporation which I have the honour to represent on this Council. Under the new Act under which we are now working, our resources have been crippled to a certain extent by two new provisions which have been introduced into it. First of all, there is the exemption which is claimed and which has been allowed in favour of the Government, from having to pay the license duty on imported timber and fire wood ; and secondly the exemption in favour of hospital buildings from having to pay house-tax, water-tax and lighting tax. Of course, these things would not affect a more opulent Corporation, but our resources are crippled to an appreciable degree. Out of the Rs. 20 lakhs which form the receipts of the Corporation, something like 11 or 12 lakhs are derived from taxation, while the other 8 or 9 lakhs, as the case may be, is a sort of a fluctuating income that we derive from license duties and from similar receipts. Already the Town duties to which if I may be permitted to say, the City Corporation is legitimately entitled, have been taken away from it and your Excellency will pardon me if I say that a pittance of a contribution was being made in that connection even which has now been stopped. The small contribution that we get may not have been due to the Local Government, but may be due to the directions of the Supreme Government. But I only wish to represent the situation to the Madras Government so that they should continue to be generous as they have been in the past, so far as this Corporation is concerned. Now we are trying to settle an unfortunate budget and for three days we have been sitting over it in the Corporation meeting to avoid a deficit. We started, when the budget was placed before the Standing Committee, with a deficit of nearly 2 lakhs and odd. That is, if we want to carry out desirable reforms, which are not probably very necessary, but yet having regard to the fact that this is the metropolis of this Presidency, may be carried out as desirable, we should have at least two lakhs. We will not be able to carry out even these small measures of reforms mentioned in the budget, even if we raised the new drainage and sanitation tax to its fullest extent, namely, $2\frac{1}{2}$ per cent. I think every body is aware that it is the house-owner in Madras that has been unduly taxed. He is already paying $15\frac{1}{4}$ per cent., that is, on the annual income of the house property, he is paying 10 per cent. as house-tax, 4 per cent. as water-tax and $1\frac{1}{4}$ per cent. as lighting tax. Roughly, this comes to one-sixth of his income. This hits hard against people who do not let their houses but keep them for their own use. By a recent power that has been given to the Corporation, they could raise the tax by $2\frac{1}{2}$ per cent. Of course, need hardly say what the effect of that raising of taxation would be. Those that may increase their income out of house-rent would naturally raise it not proportionately to the increase in the tax, but out of all proportion to it. If the tax is raised by $2\frac{1}{2}$ per cent., the rent would be raised by 10 or 20 per cent. The result would be that in the crowded parts of the city (in Black Town) there will be over-crowding which is not at all desirable. Therefore, we tried our best to tide over the difficulties. In considering the budget we try to put off every reform which could wait for sometime and with great difficulty we have been taking away item after item from the Budget; still we have not been able to close it with a plus balance. I mention all these facts with the hope that your Excellency's Government will be pleased to help us in our appeal which we shall later on make through your Government to the Government of India to enable us to raise taxation on other lines than by imposing additional taxation upon house-owners. As I have said, out of an income of 11 lakhs from taxes, house-owners pay nearly $8\frac{1}{2}$ lakhs and this is an undue proportion which they are made to pay. So far as the floating population of this large metropolis is concerned, they escape all taxation; while they enjoy all the benefits, they do not pay a pie. We suggested on a former occasion—I believe that so far as the Local Government was concerned, it listened to it sympathetically but unfortunately for us the supreme Government would not listen to us,—the imposition of a terminal tax—which would not affect any body. If every body who came to Madras and purchased a ticket for a rupee is made to pay three pies, no body would grudge it and the amount the Corporation would derive from it would be so appreciable that it would help us a good deal. Then there is the question of increasing the profession tax. The objection taken to it by the Government of India was that it is in the nature of an income-tax. No doubt it is. But what is the position of the house-owner? Not only does he pay

who had been in the High Court as a Judge and who had been known to be an eminent Judge subsequently became Chief Secretary to Government and entered the Council. That instance shows that gentlemen of this illustrious service who become District Judges are not incapable of discharging the duties of other offices. Therefore, I would respectfully submit that capable District Judges may be appointed as Members of the Board of Revenue, Secretaries to Government and eventually taken into your Excellency's Council. Men like Sir George Parker and the late Mr. H. T. Ross would have done credit to any of these appointments if they had been given a chance. It must be conceded that persons who have received a judicial training and who in every hour of their working days have been accustomed to hear the two sides of every question argued before them, must be much better qualified to hold the highest offices open to the Members of the Civil Service and discharge their duties to the satisfaction of the public and Government than gentlemen who never had any judicial training and who unfortunately have to depend, to a large extent, upon the one-sided versions of their subordinates and who unconsciously become accustomed to pass laconic orders like "see no reason to interfere" and "decline to interfere". The fault I can see is not personal but is due entirely to the system. No fresh statute nor legislation is necessary for an improvement in this matter. If your Excellency would only introduce this much desired and desirable improvement, you will be doing immense good to the province and will raise the tone of both the branches of the Indian Civil Service.

One other subject that I will touch upon is with reference to the constitution of the Legislative Council. The expansion of this Council for making Laws and Regulations was ordered in the year 1892. The Indian Councils Act of 1861 provides that exclusive of the two ordinary Members of the Council (and the learned Advocate-General), not less than one-half the number of the members nominated shall be non-officials. In the application of this rule, in practice for the last 15 years, the Madras Government has been pleased to construe the rule as meaning that the number of non-official members should not exceed one-half. The framers of the Act intended to fix the minimum which has been in practice treated as the maximum. I don't know. My Lord, what apprehensions are entertained against any increase in the non-official element. Two courses are open to your Excellency in increasing the number of the non-official members in this Council. Your Excellency might nominate eminent retired Anglo-Indian Officials who have done good service during their official career—I mean gentlemen like Sir Frederick Nicholson and Sir Frederick Price, who have practically made India their home. Or your Excellency might nominate tried retired Indians, who had occupied high and important places in this province—I mean gentlemen like Diwan Bahadur P. Rajaratna Mudaliyar and Diwan Bahadur T. Venkaswami Row. By the addition of these gentlemen, the Council will very much be strengthened and their varied experience while in office and their subsequent contact with the people at large would be very useful to this Council. In conclusion, I trust that these suggestions of mine may be taken in the spirit in which I have made them. In my humble opinion these changes are not only necessary but highly desirable both in the interests of Government and of the people of this Presidency.

His Excellency the PRESIDENT (*to the Hon'ble C. Muttukumaraswami Mudaliyar*):—Are you going to speak?

The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR:—Previous speakers, especially the Hon'ble Mr. L. A. Govindaraghava Aiyar, have spoken at length on the primary and agricultural education and on agricultural development—subjects on which I intended to offer a few remarks. I do not wish to take up the time of the Council by repeating what they have said. I wish, however, to invite the attention of the Council to one point which in my opinion requires the just consideration of the Government. The Government is now contributing to the Municipality of Madras annually Rs. 1,500 per mile for the upkeep of the two roads leading from Madras to the two cantonments of Pallavaram and Poonamallee and situated within the Municipal limits of Madras. It seems to be inequitable that no contribution whatever is paid by the Government for the upkeep of these roads continuing outside the Municipal limits of Madras and falling within the limits of Chingleput district. Since the maintenance of these roads is a great burden on the admittedly slender

resources of the Chingleput District Board, I respectfully submit that the District Board of Chingleput may be shown the same consideration as the Municipality of Madras in the matter of the maintenance of these roads.

The Hon'ble Dr. A. G. BOURNE:—Your Excellency, I have only a few words to say. I sincerely hope, as the various gentlemen who have already spoken to-day have hoped, that primary education will now at least get a real impetus. Certain remarks have been made in regard to rural schools in the Central Provinces. The subject of an improved curriculum in our primary schools has been engaging my attention for some time, but I cannot help thinking that, if we had published an account of some of our best primary schools nicely printed and nicely bound, it might be possible that the Central Provinces would have envied these schools of Madras. I am speaking without any knowledge of these schools. But I think it is quite possible to set up those schools as an ideal without really knowing whether they are better than our present schools or not. I am, however, convinced that there is immense room for improvement in our schools. I cannot help thinking when I go into some primary schools, that the children are more stupid inside the school than they are outside it. In the school they seem to lose all the intelligence which they possess so long as they are outside the school. The education that we are offering them does seem to have some stultifying effect. That, I think, must be primarily the fault of the teachers. Some change is wanted to make them more intelligent and more observant. There is no doubt that, if we want better teachers, we must arrange to pay them more. The proposals that I shall submit to your Excellency will entail the payment of larger salaries to the teachers in primary schools in order to attract the services of better men. Another great desideratum is that we want better buildings. Our primary school-houses, in some of the districts, are disgraceful. I have recently seen several districts where school-houses consist of a single room with no aperture but the door, where the children are simply crowded into it and the air is so foul that one could hardly make up his mind to go in. It is comforting to hear the appreciation, from my native friends, of the efforts made by Government to educate girls and particularly to hear the satisfaction expressed with regard to the scheme which was introduced by my predecessor, at the instance, I believe, of Miss Carr, of employing widows in girls' schools as teachers. So far, the scheme has undoubtedly worked well and I can assure your Excellency that if I am permitted to divert further funds towards this object, I shall be perfectly willing to do so. I think there will be no difficulty in providing sufficient funds to educate and train as teachers all the widows who will come forward. Special reference has been made to the necessity of having high schools for girls in Madras. The Hon'ble Mr. Sivaswami Aiyar has probably overlooked the fact that we have one high school for girls in Madras, attached to the Presidency Training School for Mistresses. An attempt has always been made to maintain it as a successful high school, but I am sorry to say that it has not been a great success. The teachers in this institution are all female teachers, under a European Superintendent; but it has been found extremely difficult, in spite of definite efforts, to get Hindu girls to attend the school. It is not now necessary that I should enter into any details with regard to the proposals that will follow. The intimation at the top of the financial statement has been, so far as I am concerned, altogether neglected. I have had no notice of any question being raised on the subject of education. I understand, speaking from memory that the meeting which was alluded to by the Hon'ble Mr. Sivaswami Aiyar was held by the late Mr. Stuart, to consider whether a new high school for girls should be founded in Madras; and although almost every influential native gentleman who was expected to be interested in the matter was asked to attend, it was found impossible to get the gentlemen to come to the meeting. We have been waiting ever since for further suggestions. I should be perfectly willing to recommend to your Excellency's Government the development of the existing girls' schools in Mylapore and Triplicane into high schools, should there appear to be any real demand for this being done.

The Hon'ble Mr. H. BRADLEY:—I beg to offer my heartfelt thanks to the Hon'ble Mr. Srinivasa Rao for the remarks which he made on the last budget, which enabled me to say a few words on the subject of the location of liquor shops in towns in this Presidency, which practically became a reply to a memorandum written by Sir F. S. P. Lely which reached my hands three months later. But for his remarks, I

should not at that time have had the opportunity of expressing my views on the subject. The Hon'ble Mr. Krishnan Nayar has drawn our attention to-day to several matters. One relates to the subject of irrigation in Malabar and I beg to express my thanks to him for the admission that the Government can make irrigation works in Malabar and the water of the rivers there can be controlled by Government. When I was Collector of Malabar, I had the greatest trouble in preserving the beds of streams from landowners for the sake of the Pariah cooly. The only way for them to get about parts of the country was to walk along the beds of rivers and streams, and we fought a suit with a certain landholder on the subject, which was decided in favour of Government and the decision has not been appealed against. This is the first time that I have heard any gentleman of Malabar saying that the Government has the power to claim and control the water of the rivers in Malabar and to construct irrigation works.

The Hon'ble Mr. Krishnan Nayar has referred to the reduction of salt duty and asked that it may be proclaimed throughout the country. Two years ago when the salt duty was reduced, it was duly proclaimed to the best of our ability; all Collectors were directed to have it proclaimed by tom-tom in every village and a copy of the orders issued two years ago has again gone out, so that the suggestion which the Honourable Member makes has, therefore, been carried out. I would suggest to him that he should himself take a little trouble to make the people in his district understand that salt duty has been reduced. He referred to the Salt Administration Report and said that therein it was stated that the reduction has not reached the poorest classes, and he implied thereby that this was because the reduction of duty was not published. There is nothing in the Salt Administration Report which justifies that inference. The reasons why the reduction of the salt duty has not reached the poorest classes are given there and it is not suggested there that this was due to want of proper proclamation. He refers to the increase in abkari revenue and infers therefrom that drunkenness is increasing. I hope it has not increased in Malabar. It is not my experience that drunkenness has increased. I have a strong recollection of what the West Coast was like some twenty-six or twenty-seven years ago and I say that there is not nearly so much drunkenness now as there was then. I would ask the Hon'ble Mr. Krishnan Nayar, when he makes the suggestion that drunkenness is increasing, how people can be prevented from drinking. Did Government invent abkari? Can Government stop drinking or fermentation of alcohol or fermentation of toddy? If you reduce the number of shops in any way and prevent people from getting their liquor, there will be very much greater consumption of illicit liquor. People will get their drink any how. He suggests that we should not have shops in the more public streets in towns and in that respect follows Sir F. S. P. Lely who suggested that all liquor shops in towns should be put in one street. I pity the police who have to control that street. When a man is on the verge of falling into temptation to go to a liquor shop, it is much more probable that he will go into a shop in an out-of-the-way street than into a shop in a public street where he will be more or less ashamed to be seen. If we were to put all liquor shops out of reach in the back streets no doubt the illicit distiller would be very glad, and would be greatly obliged to the Hon'ble Mr. Krishnan Nayar if it was due to his efforts. On the subject of Income-tax, an enquiry is now being held. The assessments of 1903-1904 are practically being made over again and that is a matter of considerable time. Whatever assessments have been made, were made by Tahsildars and Deputy Tahsildars who are all Indian gentlemen, and these gentlemen, it has now been suggested and it was suggested last year and in certain of the questions put since, are supposed to have imposed the taxes in order to curry favour with their superiors. I would ask whether that is at all likely. There has always been an increase in Income-tax from year to year and it is reasonable that there should be a further increase. Is it likely that these gentlemen who are said to make their assessments from unworthy motives would suddenly raise the tax when they might keep a margin for steady and gradual increase? It was stated last year by Government that the real explanation of that increase is the fact that Tahsildars had certainly more time at their disposal than in previous years to make enquiries and this is a reasonable explanation. The Hon'ble Mr. Srinivasa Rao made a comparison between the Madras Presidency and other parts of India in regard to liquor. I am not aware whether the Honourable Member is acquainted with other parts of India. I am sure that if he

does become acquainted with other parts of India, he will be thankful for the administration which runs the liquor department in this part of the country. We have heard that people from the various parts of India come here to learn what they can from our system. We have sent men to teach the men engaged in other parts of India to improve the system prevailing in those parts. I have seen some thing of other parts of India during a tour which lasted five months; and I found that all through the Bombay Presidency, excepting in the largest towns, there was no establishment whatever to control illicit production of liquor and there was no establishment to prevent the growth and manufacture of illicit ganja. The result of stopping

5-20 P.M.

illicit manufacture may be seen from a small example which has just come before my notice in the district of Kurnool in connection with ganja there. The shops which were sold for just over Rs. 3,000 last year were sold this year for getting on for Rs. 12,000, and this in a season of scarcity, of course. This result is attributable merely to the fact that the principal source of illicit supply of ganja from the State of Banganapalle has been closed up. The same is the case with regard to illicit liquor. The Hon'ble Mr. Govindaraghava Aiyar also referred to income-tax and my remarks also apply to what he said. To the Hon'ble Mr. Krishnan Nayar I would say a few words in conclusion. With regard to the consumption of liquor, the present rise in the consumption began in the year 1901-1902, when an entirely new system was introduced in this Presidency. Under that system, the contractors for supplying the districts with liquor are compelled to have a supply of licit liquor in every part of each district, with the result that consumption has gone up steadily. I trust that it will go on increasing. I attribute the present rise in consumption to the replacement, in out-of-the-way places, of illicit liquor by licit liquor. I am in no way responsible for this improvement, as that system was introduced before I became responsible in any way for the department.

The PRESIDENT:—I think it would be convenient if we adjourn now. Honourable Members have raised a number of important questions and it is impossible that they all could be answered as we should like them to be answered within a reasonable time. It would be a pity if we conducted our proceedings under any pressure or haste. To-morrow, as I understand, is the Telugu New Year's day and, therefore, I propose that we should not meet to-morrow. The Council will accordingly be adjourned till 12 o'clock on Thursday.

H. D. TAYLOR,

Ag. Secretary to Government, Legislative Dept.



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 Vic., cap. 67, and 55 and 56 Vic., cap. 14.

The Council met at the Council Chamber, Fort St. George, at noon on Thursday the 6th day of April 1905.

PRESENT:

His Excellency Baron AMPHILL, G.C.S.I., G.C.I.E., Governor of Madras—

Presiding.

The Hon'ble Sir JAMES THOMSON, K.C.S.I.

The Hon'ble Mr. G. STOKES, C.S.I.

The Hon'ble Diwan Bahadur R. V. SRINIVASA AIYAR Avargal.

The Hon'ble Mr. A. G. BOURNE, D.Sc., F.R.S.

The Hon'ble M. KRISHNAN NAYAR Avargal.

The Hon'ble GHULAM MUHAMMAD ALI SAHIB BAHADUR, Khan Bahadur, Prince of Arcot.

The Hon'ble Mr. H. P. HODGSON.

The Hon'ble Mr. H. BRADLEY.

The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR Avargal, Zamindar of Chunnampet.

The Hon'ble Mr. A. E. CASTLESTUART STUART.

The Hon'ble P. S. SIVASWAMI AIYAR Avargal.

The Hon'ble V. C. DESIKA CHARIYAR Avargal.

The Hon'ble Mr. J. E. P. WALLIS (Advocate-General).

The Hon'ble Mr. J. TWIGG.

The Hon'ble Mr. G. S. FORBES, C.S.I.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR Avargal.

The Hon'ble Mr. A. J. YORKE.

The Hon'ble Mr. M. HAMMICK, C.I.E.

The Hon'ble K. VASUDEVA AIYANGAR Avargal.

The Hon'ble Mr. W. B. DEWINTON, C.I.E.

The Hon'ble Mr. C. J. WEIR.

FINANCIAL STATEMENT.

The Hon'ble R. V. SRINIVASA AIYAR:—The Hon'ble Mr. Srinivasa Rao perhaps expects me to say a few words in reply to his remarks about the Registration department. He observes that in spite of the increase of revenue in 1904-1905 and the expected increase in 1905-1906 owing to the unfavourable character of the season, no provision has been made in the budget for giving relief to the public by way of reduction of fees or for improving the pay and prospects of the Registration officers.

The increase in receipts due to special causes in one or two years is often followed by a corresponding decline in subsequent years, and such temporary increases will not justify any step being taken in the direction suggested by the Honourable Member. The policy of Government is to devote a fair proportion of assured surplus in Registration revenue, after meeting the direct as well as the *indirect* charges of the department, for providing additional facilities for registration and for improving the status and prospects of the officers employed in it. One important point to be noted in this connection is that the expenditure shown in the Registration budget does not include all the items of expenditure incurred on account of that department. To name only a few of the main items left out, about a lakh of rupees was expended in Registration buildings during last year, and the stationery and printing charges amounted to another half a lakh in the same year. These items are not included in the charges shown in the budget under Registration, and another large item not shown under this head, is the cost incurred on account of pension and gratuity allowances.

I believe the Honourable Member will agree with me when I say that the provision to the people, of facilities for registration should be regarded a first charge on the departmental income. For this purpose, new offices are being opened every year when the work in an existing office is found to have become too heavy to be attended to promptly by a single officer and when it is found necessary to have offices in places within easy reach of the registering public.

The Honourable Member doubts the utility of opening new offices in out-of-the-way stations. The experience of the department is that the public, especially the poorer classes, appreciate the establishment of offices nearer to their villages, apparently because in their case it is not so much the registration fee that deters them from registering documents as the cost they have to incur in going to a distant registration office taking with them all the parties concerned in the documents and the witnesses to be produced before the registering officers. This is evidenced by the fact that registrations have always increased whenever new offices have been opened and most of such offices have been opened in what the Honourable Member may regard as outlying villages. I may add that whenever subsequent experience showed that the centres selected for the new offices were not the best, the offices have been shifted to more convenient stations.

The Honourable Member has said that he has been making the Registration department his own in the annual budget debates in this Council and he has also referred to certain correspondence which has taken place between this Government and the Government of India and the Secretary of State in connection with certain reorganization schemes of this department. He will therefore be aware, I presume, that the Secretary of State has observed that registration facilities have been brought nearer to the people in this Presidency and that the proportion of registered documents to the population is larger here than in any other Province and that the registration expenditure in Madras is considerably larger in proportion to registration income than in any other Province.

Two urgent items of improvement now engaging the attention of Government are (1) the provision of suitable fire-proof buildings for the preservation of the valuable records of the department and (2) the maintenance of proper indexes for documents to facilitate the ascertainment of titles to properties and of charges and encumbrances thereon. These improvements are sure to involve a large expenditure.

The Government do not consider that any reduction in the existing rates of fees is called for. The transactions of the poorer classes of the people will generally be confined to documents of value less than Rs. 100 and the fee of As. 8 or As. 12 now charged therefor is just sufficient to cover the cost of the transcription of those documents and the valuable stationery used therefor.

The Honourable Member himself suggests the desirability of taking up the existing midhis under the Co-operative Credit Societies Act. When the midhis get themselves registered under the provisions of that Act, the concessions in the matter of stamp and registration fees will apply to them.

As regards the pay and prospects of its officers the Registration department is by no means less favoured than other Government departments. It has been coming up with schemes for the improvement of the prospects of its officers every 5 or 6 years during the last decade and half. And those schemes have all been sanctioned. The clerical scheme was revised in 1888 and the status of the clerks was further improved in 1894. In 1899, the regrading of Registrars and Sub-Registrars was sanctioned and this year a provision has been made for a large addition to the strength of the clerical establishment.

In the new gradation of the Registrars and Sub-Registrars sanctioned in 1899, the Government of India have duly considered the scope for free flow of promotion in the several grades. On a reference to the last printed list of Registrars and Sub-Registrars the Honourable Member will find that an officer entering the last grade of Registrar on Rs. 50 usually gets Rs. 60 in a couple of years, Rs. 70 in another three years, Rs. 80 within eight years and Rs. 90 within 14 or 15 years of his total service. I doubt whether a graduate who enters any other branch of service will get the same pay within that period. For the higher grades, selection is made on considerations of capacity and merit and there is nothing to prevent competent men from aspiring to get into the higher grades of Sub-Registrars or into the grade of District Registrar. To improve the chances of promotion to Sub-Registrars, the

Government have been creating appointments in the higher grades when new offices are opened and this will be seen from the current budget in which for the five offices proposed to be opened during 1905-1906, one appointment has been provided on Rs. 125, two on Rs. 90, one on Rs. 80 and one on Rs. 70.

As regards the retention of some superannuated District Registrars alluded to, I need only remark that the policy in this matter is as laid down in article 459 of the Civil Service Regulations, not to deprive the public service of the valuable experience of really efficient officers by the untimely exercise of the powers of compulsory retirement or pension, and that in granting extensions in such cases, the prospects of the men in the lower grades for promotion are also duly considered. As regards the Registration department, the Honourable Member will note that all the available competent and qualified Sub-Registrars of the first two grades have already been promoted to the posts of District Registrars.

The Hon'ble Mr. A. E. CASTLESTUART STUART :—Your Excellency, the pæans of praise sung in this Council Chamber on Tuesday last in grateful acknowledgment of the Financial Statement, the benefactions of the Supreme Government and Your Excellency's review will be widely echoed in this Presidency. By none will they be more heartily applauded than by the local Departments of Revenue Settlement, Survey, Land Records and Agriculture. The prospect afforded of increasing, in the near future, the efficiency of each of these branches of the public administration, more especially in regard to agricultural, technical and industrial development, is, for obvious reasons, peculiarly gratifying to myself. The difficulty of making bricks without straw—at least without a sufficiency of straw—has hitherto been considerable, and with the removal of that difficulty, a much more progressive and fruitful policy will be rendered possible. In spite of the difficulty, some progress, however microscopic, indeed, compared with what remains to be achieved, has undoubtedly been made and the kindly recognition of the fact by Your Excellency and the Honourable Members who have touched upon the point, can only serve as a stimulus to further effort. No department, least of all perhaps the department of Agriculture, can do much for the public welfare without the cordial co-operation of those for whose benefit it exists. During the past official year, My Lord, this department has been singularly fortunate in having secured such co-operation and I gladly seize this opportunity of publicly thanking all who have thus helped it. To the various district agricultural associations, —many of which were not in being this time last year,—to the many public and private bodies among whom I would name the Chamber of Commerce, Cocanada, the mercantile firms of Messrs. Parry & Co., who have given us a great deal of assistance in regard to jaggery and sugarcane both in Samalkota (Gódvani) and in South Arcot, of Messrs. Dymes & Co. and Messrs. Oakes & Co., Madras, and Messrs. Spencer & Co., Dindigul, who have helped us in the matter of tobacco-curing, and Messrs. A and F. Harvey of Tuticorin who have given us aid in the matter of the collection and ginning of cotton, to the Rev. Mr. Andrew, Chingleput, and to many others, including the public press, the thanks of the Agricultural department are due. I wish to pay that debt by thanking all who have been of help to us in the past year and only hope that they will continue that help to us in the future and that their example may be followed by many others.

With these few remarks, Your Excellency, I would gladly resume my seat; but as I might be thought to be wanting in courtesy to the Hon'ble Mr. Govindaraghava Aiyar if I failed to refer to the remarks which he made regarding the "Synopsis of the general condition and prospects of the season in this Presidency," published some little time ago, I will say that there is some misapprehension on the part of the Honourable Member in regard to that document which he said "did not appear to him to be quite as satisfactory as one would think it was". For that opinion the Honourable Member gave certain reasons. One of these was that though attention was drawn in that document, for which I was responsible, to the fact that for a series of years there had been normal rainfall and that last year there had been a superabundant rainfall, sufficient weight had not been given to what His Excellency the Viceroy had stated "that in India it was impossible at any moment to utilise the whole of the water that fell from the heavens". That statement, of course, is very true, but it does not affect the fact that the rainfall of 1903-1904 was extremely abundant, even if some of it was unseasonable and could not be wholly utilised. It followed years of plentiful rainfall and abundant harvests. The Honourable Member complained that the view presented

by the synopsis "was not based on the outturn in previous years." That document was a true representation of the general state of affairs and indicated the extent of the remissions due to the failure, total or otherwise, of the crops. In the case of complete "shavi" the return was "nil"; as also in the case of "waste". In other cases the yield, generally speaking, was, as Your Excellency observed "from poor to fair". In many cases it was excellent. It must be remembered that the document dealt with the Presidency as a whole and not with particular fields and that before the completion of the azmaish, it was quite impossible to say what was the outturn of each acre. I may mention that the Board of Revenue receives from the Collectors of all districts (a) a weekly report giving information as to the prices of the principal food-grains, rainfall, water-supply, agricultural operations, condition of standing crops and their probable outturn, supplies of pasture and fodder and health of agricultural live-stock, and (b) a monthly report showing rainfall, extent of cultivation and prices of the principal food-grains. These returns are published in the *Fort St. George Gazette* and the District Gazettes. There is, therefore, no difficulty in the way of any one who wishes to inform himself as to the condition of the Presidency at any particular moment by reference to these authoritative publications. The Honourable Member criticised the remarks in the synopsis relating to stocks of staples, urging that though "there were places in the country which yielded abundant crops while other parts were suffering from famine, famine in India was often not one of food but one of money". This is, of course, perfectly true; but surely it is better to be able to face a bad season with plenty of food than with little or no food. Unfortunately the past season has been undoubtedly bad, but it found the Presidency provided with ample stocks as shown by the prices that have prevailed. Though high compared with what we should like to see them in the interests of the poorer classes, they have by no means been extraordinarily high. Nowhere have they touched or even approached "scarcity rates", except in the case of cumbu in one district and even there the price has recently fallen. While unhappily a "money-famine" so far as certain classes of the people are concerned is not limited to bad seasons, but is a chronic complaint, sufficient importance has not been given by some critics to the fact that enormous profits have been realised by those who were fortunate enough to hold superfluous stocks and sold them at the proper time. Enormous quantities of grain and fodder have been sold by those who held them and large fortunes have been made by them and by brokers whose speculations were successful. On the other hand, possibly some have lost their opportunities. On the rise of prices, there was extensive gambling in the grain market but that has, for the present at least, come to a standstill. Prices have for the last three months been for the most part stationary and I am glad to say that they have now, for the most part, a downward tendency. I have not the slightest hesitation in stating my opinion, based upon very careful enquiries and supported by everybody best qualified to speak on the subject, that provided the next south-west monsoon comes in due course, there need be no anxiety on the score of prices nor on any other score connected with the season.

The Honourable Member seems to think that the official view of the season and of the degree of distress is incorrect, and, in support of his own view, he referred

12-30 P.M.

to certain correspondence in the "Madras Mail". Before dealing with this, I would refer to the mistaken view that there has been any general difference of opinion on these points between myself and the district officers. In the case of two districts alone there was, at one time, a difference of opinion as to the necessity of adopting certain extraordinary measures and of undertaking certain special works. The Collector of one of these districts was scared—possibly from insufficient experience of famine matters—by somewhat extensive failure of crops necessitating considerable remissions. He seemed to me—and this was also the opinion of all other officers in that district—to have taken an unduly pessimistic and unwarranted view of the situation. This was three months ago. I am glad to say that events have proved, and it has been admitted by that officer, that my view was correct. In the other case, the Collector, so early as November last was anxious to embark on undertakings which appeared to me altogether premature, unjustifiable and unnecessary. Events have again proved the correctness of my view and much public money which would have been spent quite unnecessarily had that officer's views been supported, has been saved to the general body of taxpayers. These were the only two cases in which there has been the slightest difference

of opinion between myself and any of the officers in the Presidency in regard to the seasonal situation. Perhaps I may be permitted to say the erroneous notion originated in an answer given to a question put in this Council Chamber, and with your Excellency's permission I should like to explain. As your Excellency is aware, the Board of Revenue, that is myself in this matter, took early opportunity to call for special reports from certain districts in which the rise of prices had been most marked. Having issued the proceedings, I visited, at the request of Government, twelve districts of certain groups and submitted a report on each district as it was visited. These reports were contained in demi-official letters, written in the intervals of travelling, often day and night, after I had conferred with every district officer, both European and native, whose attendance could be secured, from the Collectors downwards, as also with others who could furnish information, e.g., landholders, merchants and other non-officials. My travelling at the time was necessarily rapid as I had to get round twelve districts as quickly as possible and to submit my reports for the information of Government. Efforts were made by certain curious persons to obtain the publication of these demi-official reports which were confidential communications between myself and your Excellency's Government, and when their publication was refused, a wrong impression was created in the minds of those who had sought in vain to have the letters placed upon the table. I will not dwell on the absurdity of their request as it must be patent to all who are conversant with the necessities of public administration. Then a question was asked in this Chamber to this effect:—Is it true that there was any difference of opinion between the Commissioner and the district officers? The answer was to the effect that, as was natural in such a matter, there was some difference. I have explained what that difference was, but the answer was interpreted in a sense entirely different from what was intended to be conveyed by Government. The notion arose that the Commissioner and the district officers generally viewed matters in a different light. Your Excellency knows better than anybody else the incorrectness of that notion. I am surprised that any Honourable Member should have thought it possible that the view put forward officially in the synopsis, with full sense of responsibility, after full enquiry and in the light of the latest official information, should be incorrect. There is, of course, not the slightest doubt that among the poorest classes of this Presidency there is always "distress", and, at this particular time, perhaps, in some places there may be more distress than usual; but the distress is nowhere of such extent or degree as to necessitate or justify State interference. In this matter, all officers in the Presidency and most other reasonable people who know the facts are fully agreed.

Your Excellency is aware that I have just returned from a ten days' tour in the Kurnool district. It was my habit to leave my camps at 5-30 in the morning and after walking some 14 to 18 miles a day, to return at about 3 o'clock in the afternoon, having personally inspected villages and searched the houses of the poorest inhabitants. The pariah quarters where the Madigas, Malas and other representatives of the poorest classes live received my particular attention. I did not see a single case of emaciation. There was, in one hamlet, an old and decrepit woman whose days in this world were evidently drawing to an end, but her condition was due solely to the infirmities of age, for she admittedly had plenty of food provided for her by her relations. In another village, there was a blind Komatti widow who had no food in the house. On questioning her as to how she lived, she said she had Komatti relations who daily brought her food. I have here my notes of inspection and enquiries. I have noted down what I saw and heard on the spot, as I searched house after house, and these notes will shortly be submitted to your Excellency. I need not weary the Council by reading many extracts from them. Some of them show how easily people may be imposed upon in this country, if they are not extremely careful, for I regret to say that in many cases the information given to me by the people before I searched their houses was absolutely untrue. I agree with the Hon'ble Mr. Govindaraghava Aiyar's opinion that touring officers should "take into confidence the people of the places they visit". I go further and say that they should take care to ascertain the truth and not allow themselves to be duped by facile falsehood. Unfortunately facts are very apt to be concealed by the people of this country when they consider it likely to be to their advantage to conceal them. Irresponsible persons, with the best intentions, are often duped into writing what they are afterwards sorry for, and I know that to be so in the case of some of the correspondence to which the

Honourable Member referred. Some of that correspondence was anonymous and of such it is impossible to take notice. If unknown scribes have not the courage to sign their names to their writings, no great importance need be attached to them. For my own part, I hold that if a writer is stating the truth, he should not be afraid or ashamed to authenticate his statement by signing his name. Some of the correspondence, however, was duly authenticated and I have no doubt that these writers fully believed what they wrote to be true; but the standard of distress which a Missionary may view with much concern is not necessarily the standard of distress which, according to the provisions of the Madras Famine Code, calls for State interference. In the particular cases referred to enquiry has proved this to have been so. I yield to no Missionary the monopoly of benevolence; and while, on the one hand, in my private capacity, I cannot but feel great sympathy with people living from hand to mouth, on perhaps a seer of cholam or korra a day, I cannot, on the other hand, ignore the fact that many of the poorest classes habitually so live and that a multitude of people by no means confine themselves to the consumption of grain, the price of which is high during unfavourable seasons. Many also consume fruits, roots, herbs, fish and flesh. Not only are they carnivorous, but practically omnivorous animals. This variety of diet is nothing new to them; they have varied it all their lives and will continue to do so until their social and economic condition is completely changed. There are people among the Maligas and Malas and other low tribes, and no one should know this better than the Honourable Member, who habitually live on food that no civilized being would touch. I know people who consume, with avidity, lizards, snakes, rats, village pigs, cattle that have died of disease, and any carrion they can get hold of, land crabs, snails, and similar lowly organisms being delicacies by no means despised. I can, therefore, understand a young Missionary or other unexperienced person being easily alarmed by the high price of grain and rushing into print in the hope that the State may thereby be induced to abandon its well-considered policy in regard to Famine relief. But the Government and the Board of Revenue are not so easily carried away by sentiment. They would be failing in their public duty if they were to cause untimely interference on the part of the State by starting famine-relief works when none were necessary. The Madras Famine Code distinctly recognizes the duty of Government to save life, subordinating all other considerations to this end; but it also recognizes the possibility of a lower level of comfort obtaining in periods of distress than exists in good years, without the interference of the State being justified or justifiable. In the words of the Code itself: "The object of State intervention is to save life At the same time it must be remembered that though the State is bound to protect the people from starvation in times of distress, it is no part of its duty to maintain them at their normal level of comfort or to insure them against all suffering, and that its interference should impair as little as possible the traditional and family obligations of the social system of the country, such, for instance, as those involved in the relationship of the members of a family, of landholder and farm-labourer, of master and servant, of alms-giver and alms-receiver".

There is no question of starvation or saving of life in the present situation and the untimely interference of the State would certainly tend to impair the moral obligations referred to, and would relieve private people of the burden of those obligations and impose them on the general body of tax-payers. Government hold the public revenues in trust and are responsible for the proper administration of those revenues and the discharge of their trust to the general body of tax-payers. No officer of Government—least of all the Commissioner—should unnecessarily plunge the State into the untimely starting of famine-relief works, which, however, well managed, experience has proved lead to a great deal of speculation, waste of public money and wholesale demoralization. It is, in my opinion, a most serious matter for Government to embark upon anything of the kind without necessity. Should the necessity arise, we are all prepared to act; but that it certainly is not necessary at present for the State to intervene is the opinion of every officer in the Presidency, high and low, from the Collector to the Revenue Inspector and Karnam. That opinion is shared, I think, by all reasonable non-officials. Should the next south-west monsoon fail—which God forbid—the adoption of further measures may become necessary. In the meantime, orders have been issued to ensure that as much as possible of the budget allotments for the current official year—1905-1906—under the various heads of Public

Works Department, Minor Irrigation, Local Funds, Forests and Court of Wards—may be spent on such works as may be suitable for unskilled labour in each district before the end of June. I say "as much as possible", for it is probable that much of these allotments cannot be spent by that time for the simple reason that in trying to secure twelve months' expenditure in three months, the supply of labour will be inadequate; at any rate, no cry of "want of employment" can with any truth be raised. Ample provision for the grant of State loans has also been made. I hold here a map of the Kurnool district which shows the various works sanctioned for execution in the current year. It will be seen that there are works scattered all over the district. I do not think there is any place which has not within five miles of it some work or other, Local Fund, Minor Irrigation, Public Works Department or Forest work available for unskilled labour. The money available for expenditure on the works shown in this map is 1.52 lakhs. The Collector is not confident that he will be able to spend the whole of this amount by the end of June. I do not myself expect that he will be able to spend half of it. Similar orders have been issued in other districts so as to afford ample labour for all who may need it between now and the coming of the south-west monsoon. I hope, therefore, that the Honourable Member and those who have misunderstood the facts will see that there is no need for any present anxiety. I have had my fingers, so to say, on the pulse of the Presidency since last November, keeping myself fully informed by all possible means in regard to the situation, and I am convinced that, unless the next south-west monsoon fails, no measures other than those which have been taken are necessary or expedient. Should, however, that monsoon unfortunately fail, and should famine conditions consequently arise, we have in the budget statement, as your Excellency explained to the Council, 15 lakhs of rupees with which to start famine-relief works. We may, I think, view the future with equanimity. I strongly deprecate the attitude, indicative

12-50 P.M.

of exaggerated alarm and quite unnecessary anxiety, occasionally taken up by a portion of the press. The public press has, in my opinion, a grave responsibility in the matter. It must know that there are people much interested in "getting up" a famine. I do not say that the Missionaries or other respectable persons are so interested, but no one can know better than Honourable Members on the other side of this table that there are in this country, have always been and always will be, a large number of people deeply interested in obtaining a formal declaration of "famine", when the scope for speculation and misappropriation of public money, together with other irregularities, becomes so great that the temptation has never been properly resisted. The demoralisation is also enormous on such occasions. As an example I may mention that the Registrar of Co-operative Credit Societies was lately deputed to the Jammalamadugu taluk to start a co-operative society of weavers. His enquiries disclosed, and the weavers practically admitted, that a famine would be a god-send to them. They declined to entertain the idea of any scheme of association, though weavers are usually among the first to feel the pinch of famine. When asked to subscribe three pies in the rupee of their earnings to institute a fund for mutual benefit, they refused, stating that in ordinary times they only made 4 annas a day, but that in the last famine they made 6 annas a day, and at the end of the famine they were largely subsidised and given an enormous bonus, most of which, in my opinion, only served to complete the fraudulent demoralisation of these people. I do not of course suggest that there was any fraudulent intention on the part of the misguided donors, but the money was undoubtedly misapplied. That the present "distress" is not really so great as is sought to be made out by people who do not know the facts can be gauged by the fact that in spite of the ordinary works available for labour, we are unable to obtain a sufficiency of coolies. These works are not "test-works," but ordinary works whereon ordinary wages are obtainable. I lately visited a place called Kaserla, where some twenty-five or thirty people were working. I went to the village, some three furlongs off from the work and found numbers of idlers. I asked why they would not work. Some said the sun was too hot. Your Excellency, people cannot be starving if they find it too hot to do ordinary work at their doors. I asked one Madiga why he would not work. He said he was a Christian and as this was Sunday he did not work. He had not been taught the truth "*laborare est orare*." I informed him that I had been working all that Sunday, in the heat of the sun, endeavouring to find out for myself the real condition of the people and that I con-

sidered that he should go out and work for his family. Some others had gone to this work, some pressure having been brought to induce them to go, but they had abandoned it. One of these said he had worked for two days, but got fever and left. He looked perfectly well and I asked him if he intended to return to the work. He said he would not go just then, but would do so by and by. At the risk of wearying the Council, I should like to mention my visit to certain Binji houses. A Binji is a professional beggar. At the first house, I was told that the Binji and his wife had gone to Nandyal in the exercise of their profession. I have no doubt they told woeful tales of distress to soften the hearts of credulous people. They left in the house a mother-in-law and three daughters, who informed me that they had nothing. I searched the house and found four large chattis of cholam, one pot of cooked cholam, one pot of tamarind pickle and several fowls. At the next Binji's home, I found that the owner had gone to Kurnool to beg accompanied by his brother-in-law, leaving behind a wife, son and daughter who also stated that they had nothing. On searching their home, I found three chattis, containing cholam both cooked and uncooked, and tamarind pickles, as also four caged quails which I was told were used as decoys to catch other quail which they ate. They showed me a curious net used for this purpose and I discovered that these people also owned two bulls, one buffaloe, three cows, one calf and some poultry. This family was very comfortably off though doubtless the male members were at the very time of my visit making wry faces and telling false tales of distress to impose upon soft and kind-hearted people who in parting with their alms probably imagined that they were helping really "deserving" cases. The third Binji house was quite superior and its owner possessed twenty acres of land, four bulls, four buffaloes, two cows, one calf besides poultry. He was above catching quails. He had ten persons depending upon him. In this house I found a large quantity of cotton intended to be made into cloths, so the women said, 60 measures of korra, 40 seers of horse-gram and some cholam. The women were wearing jewels. Such was the home of the professional beggar and it must be remembered that my visits to the villages were veritable "surprise visits". They had no idea what villages, much less what houses I should visit, for the excellent reason that I myself had none when I started on my daily inspections. With map in hand I went from village to village, accompanied by either the Ranger, Tahsildar or Divisional-officer. I visited villages and searched houses as I came to them, paying special attention everywhere to the poorest quarters. The physical condition of the people is excellent and that of the cattle is everywhere generally good. There is ample food and ample employment everywhere.

I merely mention all this to show that the Honourable Member is wrong in thinking that what has been put forward as the official version of the facts has been "faked up" or that an attempt has been made to conceal distress which he thinks is greater than is apparent. I admit the existence of distress. Such exists always, in all years, in certain places and among certain people. That distress is, perhaps, somewhat greater now than usual owing to the unfavourable character of the last north-east monsoon, but nowhere in the Presidency is the distress of a kind to justify State interference. Should necessity for such interference arise, the State will take action and the responsible officers of Government will not be found wanting. I am responsible to your Excellency's Government for the proper performance of my duty. I am not responsible to those who think it their privilege to cast unfounded aspersions.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—I never did that.

The Hon'ble Mr. A. E. CASTLESTUART STUART :—I never said the Honourable Member had done so. I referred to certain remarks made outside this Chamber by the *Hindu*. Your Excellency was anxious that inspection should be rapidly pushed forward and suggested that while I went to the Kurnool district another Member of the Board of Revenue should go to another. This simple fact was interpreted in a paragraph of that paper of which the Editor ought to be ashamed to mean that the Government had no confidence in their Commissioner and that that was the reason why another Member of the Board had been sent to one of the districts. Public officers, My Lord, are well accustomed to misrepresentation; but I would appeal to those who have influence with the press not to attribute motives of this kind. It does not help the officers of Government who are trying to do their duty. I do not think, Your Excellency, that I have anything more to say on this subject, and if I have

1 P.M.

detained your Excellency and the Council unduly, I beg to apologize for the detention.

The Hon'ble Mr. J. TWIGG :—Though I have not yet completed my tour through the Chingleput district I may perhaps be permitted to say a few words on the result of my investigation so far. A good deal has been said about certain communications that have appeared in the press about the condition of the people in the district. I am not concerned to compare and contrast what has been so written with the state of things I have found to be now existing. I would only say that when I commenced my tour at Tiruvallūr the first thing that occurred to me to do was to visit the Wesleyan Mission at Ikkadu and the Lutheran Mission at Periyakuppam with a view to benefit by the information which Missionaries are so particularly qualified to give. I did so in full confidence that they would afford me all the information and assistance in their power, and I was not disappointed. It seems to me that a great deal of misunderstanding in these matters is merely a question of the meaning of words. For instance we officials reserve the word "famine" to denote a condition of things in which State relief has become necessary. But the lay community knows nothing of such official limitations; they use the word "famine" where we should use scarcity or privation or say that people are beginning to feel the pinch. Another fruitful source of misunderstanding is that the attitude of Government in the matter of affording relief is very little understood outside the official circle. It is perhaps a pity that the information that appears in the introduction to the Famine Code is not more widely advertised and known. Speaking of misunderstanding as to the use of words I have always found it necessary whether a person's views might be supposed to be gloomy or optimistic to get some standard by which to estimate the value of the expressions they use. My plan is to ask them to show me the worst they can, the village they consider to be in the worst state, so that after examining on the spot what that worst is one can ascertain as it were the pitch of their language and know how far in using the same words and expressions we are really speaking of the same things. Well as I mentioned, I went to the Missions in pursuit of information. Unfortunately I was not able to see the Rev. Mr. Goudie, as he was on tour; but the lady doctors gave me information about the villages and tracts that they believed to be in the worst condition. I wrote to Mr. Goudie telling him the substance of the information that I had thus received in his absence, so that he might supplement or correct it if he desired. Some days after I received a very courteous letter from him in which he said he would be happy at any time to give any information that he could. He also wrote :—

"Generally speaking the pressure on the labouring classes is not so great now as it was in December and the first half of January. There is in most places a certain amount of ragi cultivation which affords at one time work for the women in planting and at another time work for the men in watering. My impression is that for the present the extension of ordinary works being undertaken is all that the Government can be expected to do, but you will forgive me saying that this help would have been a much greater boon in the end of December and the first half of January."

I think it is not altogether hard to understand that the condition of the people might have been worse three months ago than at present. Prices were slightly higher, and the people had not yet adjusted themselves to the new state of things. Perhaps they were feeling the pinch all the more because it came after a particularly fat year. Also as Mr. Goudie has pointed out, there is now a large amount of cultivation under wells in almost every village and the ragi harvest is about to begin. But the point I would like to notice is that we have here an illustration of what I have already said that the attitude of Government towards relief is not properly understood. The simple fact that the people who were in worse state three months ago, have managed to pull through to the present time, showing as few signs of privation as I am glad to say they do, is absolute and positive proof that Government would have been wrong if they had gone to their assistance three months ago, as so many would have had them do. It is not the duty or the intention of Government to interfere at the first pinch. Private charity must do its duty and also self-help must be brought into action. If relief had been given in December, people would be in no better condition now than they are, and the aid would only have tended to demoralise the people. The information that I obtained from the Lutheran Mission was something to the same effect. The Rev. Mr. D. Gabler told me that he had seen no case of starvation, and in his opinion there was no necessity for opening famine-relief works. That, I may say, was the information that I universally received from

official sources throughout the taluks of Ponnéri and Tiruvallūr. But I think that perhaps Honourable Members will be inclined to lay more stress on the opinion of the non-official gentlemen whom I have mentioned. It is satisfactory to know that in the opinion of those so well qualified to judge what is being done now, viz., the extension of ordinary works, is really all that is necessary now, and that there is no necessity for starting any famine-relief measures. I have only to add that my own observation of the condition of the people in a large number of villages in the worst tracts enables me to endorse the above views. I am able to say confidently that there is no necessity for famine relief in the taluks I have visited and that the extension of ordinary works will meet the needs of the people for the present, and until, I hope, the south-west monsoon brings things into step again.

The Hon'ble Sir JAMES THOMSON :—Your Excellency, we have had our annual field day, and though the Council has not discussed my budget much I am far from feeling aggrieved: indeed am rather pleased than otherwise; for I believe there is a growing knowledge of the difficulties under which Government is conducted and of the limits within which we are restrained, and that in course of time we shall get full credit for honest endeavour however short we fall in performance and find condolence instead of censure. Frankness I regard as a virtue whether in a Government or in a private person, but it is impossible for the business of either to be conducted altogether in the market place; and, though occasionally murmurs are raised that we are not frank enough, I take it on me to say that your Excellency's Government is always ready to afford whatever information it properly can afford and I would fain hope that most fair-minded persons are inclining to the same opinion. The remarks that Honourable Members have offered not so much on the budget as on the methods of Government have been considerate and soberly stated, and I should be very sorry if there were no such opportunity as the Budget day for their presentation, for they are an increasingly valuable aid to good Government.

I shall range the observations I have to make round the particular subjects that have been handled.

One cannot but regret to hear the serious views of the condition of planting interests taken by the Hon'ble Mr. Yorke and the Hon'ble Mr. Hodgson, and is bound to sympathise with them when the industries they refer to are all in the poor way described. It is truly said that the tea industry is a great industry and I am sure there is nothing further from the mind and wish of the Government of India or of this Government than to do anything to injure it or any other agricultural industry, or to minimise their extension. But is it not rather putting the saddle on the wrong horse to say that as the Home Government puts a crushing import duty on tea, this Government should unweigh its land assessments? Whether these were fixed in a time of prosperity or not they cannot be regarded as a high rate of assessment for special products; and I fear that if tea cannot live under them as they now are it will not live if they were entirely removed. More has been done for the planting interest of late years than could legitimately have been expected. The matter of the Vellera Mulla Road repair will be taken up again for consideration since we have now more money at our disposal for such a purpose. But when it is proposed that we bring Ceylon to a sense of her unreasonableness in her taxation of Indian teas by placing difficulties in the way of her obtaining labour freely from this country, does not the proposal savour of administration on behalf of one class of the population to the detriment of another class and of the application of preferential trade theories which I am not aware that India has yet adopted? I would fain hope that the appropriate remedy for the present state of things will be found by the Ministry of Commerce which has recently been created, and I need not say that this Government will give to the planting interest whatever support is in their power towards the removal of a grievance which cannot but be severely felt.

Under District Administration we have been asked by the Hon'ble Mr. Krishnan Nayar to consider the grant of batta to village officers and of travelling allowance to Deputy Tahsildars. As to the former it is part of the duty for which village officers exist and are paid to go to the taluk office when they are required. It is the karnam that has most to do in that way and as recently as last October his case was considered and it was held for various reasons that batta should not and could not be given. They at present get batta when employed on settlement work and when at survey school. With regard to Deputy Tahsildars, the Government of India

declined to entertain any claims on their account to travelling allowance because they were paid much higher salaries than others of that class in the rest of India and because the fact of their travelling was taken into account when the salaries of the office were fixed at Rs. 120 and Rs. 100. The Honourable Member has reverted to his complaint against clerk sub-magistrates and I can only repeat my opinion that there are among clerks men in every way fitted to be sub-magistrates whose character and ability must be better known to the officer responsible for the administration of the district than the character and ability of men practising at the bar can be; and I would do nothing to fetter choice in this regard. The Board's previous approval of every sub-magistrate is a condition precedent to appointment. I must admit there are not so many graduates among the sub-magistrates of Malabar as I would like to see, but that defect will probably right itself in time. I could not accept the Hon'ble Mr. Desika Chariyar's suggestion that the Board of Revenue should themselves appoint to the offices of Tahsildar and Deputy Tahsildar: if you hold a man responsible for a district he should have the first voice in the selection of his native subordinates. I trust that before very long the difficulties attendant on the proper training of men of the covenanted service in civil judicial work will be made to disappear; I am sure that no one is more cognizant of the resulting trouble and inconvenience than the Civilians themselves.

As for the reduction in the value of salt being made to reach the consumer, there need be no doubt of that wherever there is effective competition in the supply market; remote villages will take some time to find out the fact and more time to appropriate the benefit.

Once more our unhappy Abkari administration is damned for its exuberance and not even with faint praise. I have been told by persons who ought to be able to judge that drunkenness is increasing, but I cannot say that I agree, and out of 33 years' observation I seem to have some right to speak or to have an opinion. What is certain is that the consumption of licit as against illicit liquor is increasing, but I am very far from saying that illicit liquor will ever be put an end to. As the Hon'ble Mr. Bradley says Government must not be blamed because men will drink, and wise men ought to praise Government that they make drink dear and the procuring of it difficult. Only the other day I heard from a Native State into which British methods of excise have never entered that my informant counted a still for every mile of road he had happened to traverse and thirteen drink shops at a fair within the field of his quarter plate camera. And that I expect is what things were when each man sat under his own toddy tree and there was no Abkari peon to make him unhappy or afraid.

Then comes our income-tax. The Government of India was moved to express its concern at the extraordinary increase in the number of assessments in the lower grade that followed on the abolition of the classes under the thousand rupees of income, and its doubts have been vigorously re-echoed throughout the country. We ordered a scrutiny of all the cases concerned for the year 1903-1904 in last December, but so far have received returns from only seven Collectorates. The general result so far goes to show that in the opinion of the Collectors the relief intended by the Government of India had reached the persons intended to be benefited, that the increase in the 1,000—1,250 rupee grade of assessee might reasonably be considered the direct result of the usual expansion of trade in the individual cases, and that, with variations attributable to individual Tahsildars the assessments were carefully gone about. In the town of Madras there were 151 cases, and in the opinion of the Collector the reasons for these were satisfactory in 150 and the other was in error by misconception of the rules. The Collector of the Nilgiris has found no case to which exception could be taken. The same remark holds for South Canara. A note put into my hands at the present moment shows that reports have come in from 11 districts and that of 1,408 cases raised from below Rs. 1,000 to the higher class only 71 cases or 5 per cent. are declared by the Collectors to have been overassessed. The reports still due may disclose a

1-20 P.M.

different set of facts: so far I do not find that blame is properly attributable to the assessing officers, and I confess myself unable to find any adequate reason for these officers overstepping their duty or wilfully making the boon of the Supreme Government of no avail to those affected. We are all aware how unjustly the minimum assessments were made when the Income-tax Act was first introduced; but surely there

is all the difference in the world between a Government in search of income and a Government seeking to get rid of income, and every reason in the latter case would conduce to make an assessor sit still.

With regard to the Hon'ble Mr. Srinivasa Rao's complaint of the ill-treatment of the Registration department, I would say that no proposals for improving the position or prospects of the higher ranks of the service have come before Government in my time. What has happened however is only what was bound to happen. The Registrarships and Sub-Registrarships were very quiet respectable posts when created and were gladly taken up regardless of the prospects the whole department afforded being so small. Now the time for repentance has come. If the Inspector-General has any case to present on their behalf Government will give it consideration, but having consideration to the duties they have to perform, I cannot say that I think an expensive staff is a necessity.

With regard to another remark of the Honourable Member, it may be observed that there is further expenditure on registration than what appears on page 23. Buildings, pension charges, stationery, etc., are booked under their appropriate heads. This the Hon'ble Mr. Srinivasa Aiyar has just told us.

On Education a deal has been said to the most of which no objection should be taken. The advancement of primary education must begin to manifest itself presently but too much must not be expected at once. After the Hon'ble Dr. Bourne's statements regarding the buildings in which primary schools are held, it is probable that a deal of the recent grant will go in providing or helping to provide healthy school-rooms. The education of girls is a perplexing problem to me; when dealing with the subject two years ago, it seemed as if most of the Government schools that existed were *crèches* rather than schools and in the best appointed schools the numbers in the senior classes were miserably small. The provision of female teachers is as great a difficulty as the keeping of a school together; widows may solve the difficulty; at any rate Government is quite prepared to foster that experiment by scholarships and otherwise, but the Hon'ble Mr. Sivaswami Aiyar must forgive me for the expression of my belief that until the men of the country insist that their daughters shall be educated and order their homes accordingly not all the power of Government will effect any impression worth speaking of. Scholarships for pupils are good enough in their way; what is more wanted is example and leading so as to make the schoolgoing of girls into a practice and fashion. The Hon'ble Mr. Govindaraghava Aiyar's idea of suiting education in primary schools to the country and to the town has good sense in it after the merest elements are acquired; no doubt the Director will consider it. Itinerant instructors on special subjects is an idea or practice favoured by my Honourable colleague when we were discussing industrial education recently and found it, as everybody else has found it, a very insoluble problem. Hon'ble Mr. Vasudeva Aiyangar's desire for more secondary schools or for more money to be spent on secondary education is hardly according to the present programme. I am quite ready to help deserving poor scholars by scholarships, but ordinarily now-a-days we are bound to think that secondary education should pay its way. The grant by the Government of India of Rs. 70 to the University for the last year is more than I expected to obtain; grants are to extend over five years and it is for the University to show itself capable of making a proper use of them and thus founding a claim for more. The Director hopes to find time to attend to the Sanskrit schools, which the Hon'ble Mr. Govindaraghava Aiyar is anxious over, when he has had any time to spare from the legion of more pressing matters that so far has enveloped him.

The Hon'ble Mr. Vasudeva Aiyangar has referred to agricultural education. I think I may say that that has been a burning question for a considerable time with us, and is clearly one very much exercising the Government of India. Our college has not served its purpose; what eventually will be done with it I cannot now foretell, but Honourable Members will have noted that the Government of India mean to have a college in every large province.

As for the Cauvery channels and their proper upkeep, is it not a matter for those concerned to band themselves together to secure proper management and, if necessary, to assess themselves to that end? If the help of Government officers is necessary no doubt the local officers would be glad to render it. The disappearance of *padials* is a matter which the employers of labour must consider and settle for themselves; no Government worth the name can tie any man to a place or occupation.

As to the proposed reduction of interest on loans, the present arrangement with India is that we pay $3\frac{1}{2}$ per cent. on what we take, charge Municipalities 4 to $4\frac{1}{2}$ per cent. and cultivators 3 to $6\frac{1}{4}$ per cent. according to the particular purpose for which loans are made. We have to sustain all losses. It is not a money making business, and we should not work it so as to make a loss on it.

The proposals to finance the construction of roads within the Periyár tract, are now before the Government of India and I trust will come to a successful issue. The Honourable Member's proposals for better distribution of water will be transferred to the head of the department for consideration.

The police reorganization will immediately be in hand. I would not add a word more to that controversy, nor to the as much vexed question of the separation of judicial and executive functions.

We are apparently much blamed for withholding information from the public over changes in districts and in staffs which are impending. These proposals went to India long ago; but I must be pardoned for saying deliberately that I will undertake to make such a distribution of a district as will please nobody and yet will be the best possible, and that Government did its best by appointing a specially competent officer who acted on the fullest information and consultation with the authorities from the Government downwards.

I shall not add anything to what His Excellency has said over the season and I regret that the Hon'ble Mr. Govindaraghava Aiyar refuses to find any hope in the situation. I would trust that the statements made to-day by the Hon'ble Mr. Castle Stuart and the Hon'ble Mr. Twigg will do something to reassure him.

I dread to think of what is coming to me in Municipal from the Madras Corporation as outlined by the Hon'ble Mr. Desika Chariyar and at present would only ask him to consider well whether the present sources of taxation are being efficiently worked. A very general opinion is abroad that they are not, and I would say that while Government is prepared to be liberal towards the needs of Madras it will not permit that liberality to become any cover for slackness.

The Hon'ble Mr. Muttukumaraswami Mudaliyar may feel certain that his district of Chingleput will get its due share of the grant to District Boards. I know from experience how great its needs are in respect of road maintenance.

His Excellency the PRESIDENT:—Honourable Members, I have taken notes of everything that has been said by the Honourable Non-official Members, but in glancing through them now, I cannot find anything to which replies have not been made by the various Members of Government generally, and in the speech, which I am sure you must acknowledge was careful, concise and exhaustive, which has just been made by my Honourable Colleague. It would be merely wasting time to reiterate anything that has already been said. I have, moreover, already taken up a full share of my time, and if a third reason were wanted to make me refrain from speaking, it would be that those on whom the laborious duty of reporting the proceedings falls have already taken down a great deal of extempore speaking and a great deal more is before them.

There is, however, only one thing that I would like to say. This is the fifth occasion on which I have had the pleasure of presiding at the annual discussion of the Financial Statement: it is always an interesting and pleasant occasion and one to which I attach great importance, and I can fairly say that on no occasion have I been able to listen with greater pleasure and interest to the discussion than I have on this. It used to be a common practice, not only in outside criticism but also in this Chamber to say that this annual debate was a farce and served no useful purpose. It is with the greatest satisfaction that I have observed a complete absence of any such suggestion. Moreover, it is clear from the speeches made by the Honourable Non-official Members that they don't think they are wasting time or taking unnecessary trouble when they go carefully into the subjects which are of public interest and represent their views regarding them at this budget discussion. I think that the Honourable Non-official Members will recognise from what my Honourable colleague has said that we appreciate the assistance of our non-official colleagues very highly, and that we, at any rate, have never considered the discussion of the annual budget to be a waste of time or a fruitless endeavour. With these few words I will declare the discussion closed.

THE MADRAS ESTATES LAND BILL, 1905.

The Hon'ble Mr. G. S. Forbes, in introducing the Bill to declare and amend the law relating to the holding of land in estates in the Presidency of Madras, said :— My Lord, it now devolves upon me to introduce the Madras Estates Land Bill, a measure which it will be universally admitted is the most important which has been laid before this Council for many years. If this Bill passes into law it will be the first enactment on the statute book of this Presidency defining the substantive rights of landholders and ryots, and so affecting intimately the whole agricultural population under your Excellency's administration to their lasting benefit. The two great objects of the Bill, are first to amend the procedure of Act VIII of 1865, and secondly to declare the substantive rights and obligations of ryots and landholders. I have explained all this in the Statement of Objects and Reasons and I need not say here any more on that point. I will also not repeat here the explanations I gave there, as to the terminology of the Bill.

There is nothing either new or revolutionary in the principles which the Bill embodies. The principles are founded on the true rights and obligations of both classes, as recognized by all who have any real knowledge of the subject, and they are in consonance with the general consciousness of the people. Legislation on the subject, as the Council is well aware, has been under consideration for many years, and the present Bill is after all, except in one or two points, substantially a reproduction of the Bill which was introduced into this Council in 1898. But these points affect the measure very vitally and essentially. It is not necessary for me to advert to the long history of the attempts made during the last twenty years to bring legislation on the subject to a final conclusion. An examination, however, of the various projects inaugurated brings very prominently to the front this fact that the efforts of the Governments under whose auspices they were undertaken were rendered barren and futile by the vain endeavour to prop up an artificial fiction into a principle of the common law of the country. With regard to the fundamental rights which a ryot ought to be accorded, there was little, if any, real difference between the highest authorities. But an idea had been thrust upon the Madras Government that there must be somewhere a non-occupancy ryot who was vainly endeavouring to secure occupancy rights and whose efforts it was essential, on sound administrative principles, to help on and give effect to. This notion was not native to this Presidency, though the agitation of the last 20 years has almost persuaded some people that it had a real existence. The method of assuming to convert a non-occupancy tenure into an occupancy tenure by some artificial rule of limitation received legislative baptism in the Bengal Act X of 1859, in which the 12 years' rule was first embodied. The godfather was found in a pigeon-hole in the Board of Revenue of the North-West Provinces. That Act has been the source of ever-increasing troubles in the parts of India which it affected, owing to the fiction which it sanctioned; and it is to the endeavours of successive Governments in Madras to follow on the lines of that Act to which must be attributed the great delay which has ensued in giving to the rural population in this Presidency the much needed relief for which they have so long looked. The consequences which have flowed from that enactment can be held up only as a warning. Ever since it was passed, the legislatures of Bengal, the United Provinces and the Central Provinces have been constantly engaged in passing measures to counteract the evils which the Act entailed and to preserve the customary rights of the ryots. In Bengal the 12 years' rule was circumvented by the zamindar's shifting the tenants by nominal ejectments and other devices. The Bengal Government have since passed a succession of measures in amendment of the Act with the object of protecting the tenant by the scheme of the "settled" ryot and by preventing his contracting himself out of the right to acquire occupancy right. Matters are still unsatisfactory and I see from the newspapers that another measure to get round the zamindar's devices is about to be introduced into the Bengal Council. In the North-West Provinces Rent Acts in amendment of the Act of 1859 were passed in 1873, 1881, 1886 and finally in 1901, all with the same purpose; before the last Act was passed, the zamindars in the North-West Provinces had circumvented the 12 years' rule by nominal ejectments and shifting as in Bengal and also by short leases, and the Act of 1901 was enacted to get round these devices and secure the ryots. In the Central Provinces the Act of 1883 attempted to meet the difficulty by a scheme of "compensation for improvements" in the belief that the pressure of self-interest would compel the parties to come to terms. The discussions in connection with this Act elicited opinions so germane to

the principles of the present Bill that I may be excused for making a few quotations: The Member in charge of the Bill declared with reference to the operation of Act X of 1855 that—

"With the inevitable tendency of written to drive out unwritten and customary law, it spread among all ranks of officers a more or less definite impression that it was not very necessary to enquire what rights tenants had before its introduction, and that they could have no rights except those which it recognized. An Act which was intended to confer rights on tenants was construed as if it had demolished rights which before its introduction they possessed."

A still more important statement was made in the course of the debates by Mr. Reynolds, one of the highest authorities then in India, on the ryot question. He signed the Select Committee's report with hesitation. He was not satisfied that the interests of the tenants were sufficiently protected. He thought the Bill disastrous "in regard to the tenants who have not yet acquired the rights of occupancy, and the tenants who may take lands hereafter . . . they are resident cultivators and whether they have held for twelve years or not, they are entitled under the common law of India to the status of occupancy ryots." This declaration is instructive with regard to the existing position in this Presidency. This scheme of compensation for improvements proved just as ineffectual as other schemes and has been replaced by another system by an Act passed in 1898. The scheme of the non-occupancy ryot and the 12 years' rule has thus proved everywhere a failure.

The truth is that there is no such thing known to the common law of India as the growth of occupancy right by mere effluxion of time. According to that common law every man who entered upon land and cultivated it was entitled to occupy it so long as he paid the proportion of the produce exacted by the State. The question of resident and non-resident ryot was in the keeping of the village communities themselves; and they determined who should participate with themselves in the cultivation of the village fields; and it did not concern the farmer of the public revenue in any way. When the village system died or decayed the resident and non-resident ryot disappeared as distinctive legal entities; the *parakudi* enduring only as an under-tenant of a ryot or as the cultivator of the homefarm lands.

To turn again to the history of this Bill,—When the Bill of 1898, the predecessor of the present Bill, which contained the 12 years' rule, came before this Council, the opinions expressed by the Honourable Members who spoke on the occasion of its introduction indicated pretty clearly that the rule was of foreign growth and not consonant with the rights generally acknowledged to be possessed by the ryot population in this Presidency. Accordingly when the Bill was referred to a Select Committee of which Mr. Crole was the president and I am the only member of it who is now in this Council, it was determined to cut the Gordian knot and free the Bill from the shackles with which it proposed to fetter the natural rights of the cultivator.

The whole Bill was revised on this principle by the Select Committee, and in course of time received the approval of the Government and finally of the Government of India. In the revision many provisions have been introduced in other directions, but the essential feature in which this Bill differs from that of 1898 is in giving effect to the principle which I have indicated. The leading part which Mr. Crole took in securing acceptance for the principle should not be forgotten.

My Lord, I do not know whether it is really necessary at this time of day to enter upon any critical examination of the status of the zamindar and the ryot seeing that

1-40 P.M.

the whole question has been so lucidly discussed and the rights inherent in the status of both so clearly laid down in recent years in well known judgments by the High Court under the able guidance of those very distinguished Judges Sir Muttuswami Aiyar and Sir Subramanya Aiyar. These judgments lay down in effect that *quod* the public cultivable land of the estate the zamindar is not a landlord in the sense of the English law of landlord and tenant nor the ryot, a tenant; but that the former is an assignee of the Government land revenue, and that the latter possesses rights of occupancy indefeasible so long as he pays the zamindar's due.

In face of the judgments to which I have referred it appears, as I have said, almost superfluous to travel over the well-trodden ground of the old enactments; but it is of vital importance to sound views of the rights which this Bill purposes to confirm that Honourable Members should have a clear apprehension of the conditions prevailing when Act VIII of 1865, which this Bill if it becomes law will displace, was passed and the rights which were at that time in the acknowledged possession of the parties.

I will therefore proceed without further apology to take a short survey of what the permanent settlement effected, of the rights which it conferred upon the zamindar and the rights which it preserved to the cultivating ryot.

Now what was the nature of the rights vested in the zamindar by the permanent settlement? We all know the confusion and misconceptions which were introduced into the controversy by the use of the term "proprietary rights", and the arguments that were set up upon false analogies drawn from the English law of property to confer upon the zamindars higher legal rights than they were entitled to.

The legal status of the zamindar under the permanent settlement cannot be put higher than that of an assignee of the public land revenue. I say the legal status because it is the only matter which concerns us in the present discussion. Attempts have been made to draw a distinction between zamindars who in 1802 were of comparatively recent origin and zamindars who were representatives of ancient families, as it is claimed had at one time larger interests in the country than mere farmers of the land revenue. Especially are these claims urged in respect of some of the great zamindars in the Northern Circars. But whatever these ancient rights may have been, they had been absolutely destroyed as matters of legal right by the Mogul and Muhammadan Governments. I have made a careful examination of the history of the 18th century, and I dare to say that there is not a single instance in which the ancestors of the present zamindars were not treated and regarded by the Muhammadan Government and its Viceroys at Hyderabad as farmers of the revenues. No doubt the Muhammadan rulers found it expedient and advantageous to employ members of the ancient Hindu families who had established themselves in the country to undertake the duties of collection and act as their receivers general, but they never accorded to them any legal rights beyond, and the whole history of the times is a history of perpetual change among the zamindars, old zamindars removed and new zamindars appointed, and again old zamindars restored; and in the distractions of the times the strongest and most acceptable survived. Such changes were strictly in accordance with the constitutional rights of the Sovereign power. In the same way the engagements between these zamindars and the State were subject to revision at every renewal of the lease. I do not mention these facts with the view of derogating in any way from the dignity which justly attaches to the present representatives of these ancient families. Their ancient lineage if they discharge their duties and responsibilities faithfully will always assure them of a full measure of the respect and consideration of the Government and among the people the social dignity which is their due.

But the sole question which at present engages our attention is the question of the legal rights which the permanent settlement conferred upon them. The "proprietary rights" which the settlement vested in the zamindar who accepted it appear then to be these. First the right to collect the Government land revenue from the ryots in consideration of his paying to the State a certain proportion of that revenue as then ascertained, which proportion was fixed as a permanent annual peshkash and declared to be unchangeable for all time. This conferred upon him also the right, without making any additional payment to the State, to extend cultivation over the waste and profit thereby, as well as to benefit by improvements consequent on agricultural development. The value of this right consisted in this that formerly the peshkash had been variable and subject to periodical settlement. Now it was to be fixed. The zamindar was continued by the settlement as an assignee or farmer of the public revenue as he had always been, only on a different basis.

Secondly the zamindar was granted a permanent tenure, instead of being an assignee or farmer for a term.

In the third place the tenure included the power to transfer or alienate at his pleasure his rights as a zamindar. Formerly as an assignee farmer or collector, he had no legal authority so to transfer his rights. This power of alienation in itself at once gave the zamindar of 1802 a most valuable property. If the new tenure had been constituted as a jagir on a fixed peshkash or quit-rent, it would have been resumable at the pleasure of the ruling power, and consequently inalienable. The right conferred on the zamindar was a saleable right.

Finally the estate was assured to the zamindar as a hereditary and heritable estate and could so descend without the assent express or implied of the Sovereign power; how that descent was regulated does not concern us here.

These as I take it are the essential features of the zamindar's "proprietary rights" within the true construction of Regulation XXV of 1802. They will all be found

expressed or implied in the Regulation itself. Section 1 which is also the preamble recites the variability of the assessment under the then subsisting practice and also that it had been "usual" as a matter of right on the part of the ruling power to "deprive the zamindars" and appoint others in their place at its pleasure; while section 8 in providing that "proprietors of land shall be at free liberty to transfer their . . . proprietary right in the whole or part of their zamindaris", adds the significant words "without the previous consent of the Government or of any other authority", thus distinctly showing that they were not previously acknowledged to possess in law the free right of alienation. The Regulation itself thus clearly indicates under what limitations the zamindar's authority was being exercised before the permanent settlement was introduced; and it is in the removal of these limitations by the Regulation that the value of the proprietary rights conferred on the zamindar primarily consist. One Regulation created the tenure, and the legal status of a zamindar is precisely the same in every part of the Presidency.

These proprietary rights were thus not proprietary rights in the sense of the English law, nor was the declaration of them meant in any way to turn the ryots into "tenants" and what they paid into "rent". The phraseology of the Regulations of 1802 was no doubt calculated to encourage the notion of the abridgement of the rights of the cultivators in favour of the zamindars, and it was to correct this notion that some years later Regulation IV of 1822 was passed, which declared that it was not intended by the Regulations of 1802 to "authorize any infringement or limitation of any established rights of any class of its subjects". It is therefore plain as Mr. Justice Innes pointed out that as Government did not intend to rob the ryot or to give the zamindar more than they had to give, the use of the words "proprietors of the soil" and "tenant" could not create a relation which did not already exist.

No one at the present day will then, I venture to assert, claim that the permanent settlement gave the zamindar larger rights than what I have attempted to describe, or that it was meant to operate in derogation of the rights of the cultivating ryots.

It thus remains to see what the rights of the ryots were at the time of the permanent settlement, and then it will be necessary to discover if they have been since curtailed.

The Regulation XXV of 1802 is only one chapter in a Code. The series of Regulations extending from XXV of 1802 to XXXI of 1802, which were all passed on the same day, relate substantially to the same subject, and must be construed together as parts of one and the same enacting measure. Those that particularly concern our present subject are XXV, XXVIII, XXIX and XXX. The Regulation XXV made it obligatory on every landholder to enter into engagements with his ryots—so termed in the section—for a rent either in money or in kind and grant them pattas defining the amount and conditions of the engagement; and if a zamindar refused or neglected to comply with the demand of a ryot for a patta he might be cast in damages at the ryot's suit in the civil court. By Regulation XXVIII, the zamindar was empowered to distrain and sell on account of arrears of rent or revenue—in this and the succeeding Regulations, the alternative words "rent" or "revenue" are used—only the crops, cattle and personal property of the defaulter but not his land, although when the arrear was not recovered within a year he might then proceed to sell the tenure of the defaulter if saleable, otherwise to eject him. He could not, it is important to note, enter upon the land himself.

The next chapter in the Code Regulation XXIX, the Karnam Regulation, had specially in view the protection of the rights of the people by requiring the zamindar to maintain in each village the ancient office of karnam as an office of record and by enforcing the obligation by very drastic remedies. The preamble recites:—"The office of karnam being still of great importance to the preservation of the rights and property of the people, it is expedient to provide for the continuance of that office on an efficient establishment". The duties of the karnam are then enumerated; he is required to keep complete registers of the lands in the village; to be present at the estimation and measurement of the crop; to keep true accounts of the gross produce and where the produce is shared between the zamindar and the cultivator to enter the quantity of grain so divided, as well as the rates of division; where lands are liable to pay money rents, to keep a register of the extent cultivated and of the rates and amount of the money rents. So also, in his register of the fees of village servants, he is to specify whether such fees are payable from the gross produce, "from the proprietor's share or from the ryot's share."

Finally Regulation XXX or the Patta Regulation passed as a "security and comfort to the cultivators" provides for the exchange of pattas and muchilkas, and contains the following important enactments:—

Section VII.—"Proprietors or farmers of land shall not levy any new assessment or tax on the ryots, under any name or under any pretence; exactions other than those consolidated in the patta, or otherwise authorized by the Government, shall, upon proof, subject the proprietor or farmer to a penalty equal to three times the amount of each exaction."

Section VIII.—"Under-farmers and cultivators of land shall be free to demand of proprietors or farmers of land pattas for the descriptions of land they may respectively occupy; and where proprietors or farmers of land may refuse or delay to execute, or cause to be executed, pattas so demanded, such proprietors or farmers of land shall, after the expiration of six months (calculating from the settlement of the permanent land revenue on their estates), be liable to prosecution in the Court; and shall, on proof of such refusal or delay, be also liable to pay such damages as the Court shall adjudge to be equal to the trouble and expense incurred by the under-farmers or cultivators, in consequence of such refusal or delay."

Section IX.—"Where disputes may arise respecting rates of assessment in money or of division in kind, the rates shall be determined according to the rates prevailing in the cultivated lands in the year preceding the assessment of the permanent jummalah on such lands; or, where those rates may not be ascertainable, according to the rates established for lands of the same description and quality as those respecting which the dispute may arise."

The prohibition in section 7 against raising any new assessment or tax on the ryots under any name or pretence involves, as Mr. Hodgson observed in 1806, the recognition of an old and a known tax which was not to be exceeded.

Then section 9 which I have read prescribes what is to be done in the case of a dispute between the zamindar and the ryot as to the assessment which the latter shall pay and lays down as distinctly as can be what the maximum demand shall be.

The zamindar's demand upon the ryot was thus clearly limited, and he had no power or authority to raise it arbitrarily. Equally clearly it was a collection of assessed Land Revenue and not a competition rent.

Contemporaneous history speaks to the same effect. In the instructions which, under the orders of Government, the Board of Revenue issued in 1799 to Collectors, explanatory of the principles of the permanent settlement which was about to be introduced, the rights of the cultivating ryots are thus referred to in paragraph 34: "Distinct from these claims are the rights and privileges of the cultivating ryots who though they have no positive property in the soil have a right of occupancy so long as they cultivate to the extent of their usual means and give to the circar or proprietor, whether in money or in kind, the accustomed portion of the produce."

Again in the settlement made prior to 1802 with the polygars of the Ceded districts, Tinnevely and Madura the Government declared that the polygars' demand on the ryots was limited to the rate of assessment then charged on the land. So in the triennial leases made in North Arcot in 1808 the renters were bound not to exact a higher rate of assessment from the cultivated land than that fixed by the survey or where there has been no survey, higher rates of waram or of tirva than that taken by the circar in fasli 1217; but they were not restricted from reducing the rates of assessment of waram or of tirva if they found it to their interests to do so. This was a matter of contract, this reduction of the legal rates, and the only matter left open to contract so far as I have been able to discover.

As the Board of Revenue in paragraph 53 of their well-known Proceedings of 2nd December 1864 said in discussing the effect of Regulation XXX:—

"The Board maintain that the whole tenor of this Regulation is consonant with the expressed intention of the framers of the permanent settlement to put a fixed limit to the demands of the zamindar on the ryots, and to preclude the zamindar from arbitrarily determining his demands, or modifying them at pleasure, except to relax them for a specific purpose which was equally to his and his successor's advantage, and to the benefit of the ryots without infringing their rights, viz., to improve his estate, or to extend cultivation, the two sources indicated by the framers of the permanent settlement for the improvement of the zamindar's income."

To impose a limitation upon the zamindar's demand was right and proper; and the State could have done nothing else with due regard to the interests of the ryots. They could never have meant to relegate them bound hand and foot to the arbitrary will of a private person vested with a power which was to be left undefined by law and unlimited by custom. The State in its Sovereign capacity no doubt exercised the right, as the preamble to Regulation XXV itself recites, to vary the assessment of the land revenue from time to time, but the action of the State, though determined by political necessities, is accommodated at any rate presumptively to the general welfare and is controlled by the obligations of good government in the interests of the people at large. Such considerations do not enter into the contemplation of a person whose interests are naturally personal to himself and who is not bound to have regard to any other. The confiscation of recognized and acknowledged rights must have been sooner or later the inevitable result of an unfettered power to deal with the ryot. Nor could the zamindar have any ground of complaint that his rights were so limited. His settlement left him one-third of the land revenue as then assessed for profit and as a margin against loss; while the peshkash payable under the compact was unalterable and not subject to enhancement, as Lord Cornwallis said in his Minute of 1790: "The rent of an estate can only be raised by inducing the ryots to cultivate the more valuable articles of produce and clear the extensive tracts of waste land which are to be found in every zamindari". Mr. Hodgson in 1808, six years after the permanent settlement, wrote to the same effect that the benefit arising from the proprietary right of the zamindar was confined "first to an extension of the amount not of the rate of the customary rent, by an increase of cultivation; secondly, to a profit in dealings in grant where the rent may be paid in kind; thirdly, to a change from an inferior to a superior kind of culture."

The Government therefore followed the only course which they could justly take in reserving to themselves by XXX of 1802 the right of interfering to regulate the ryots' payment to the zamindar and in imposing a maximum which it was not to exceed, as well as in forbidding the zamindar from levying any new assessment, a right which could be exercised by the Sovereign power alone. It will be observed from my quotation from Mr. Hodgson that the settlement was understood to give the zamindar the benefit of a rise in prices if the revenue was paid in kind or was a share of the produce.

But the cultivating ryot was secured not only against arbitrary exaction, but in his right of occupancy.

The Regulations of 1802 nowhere authorized the zamindar to enter on the possession of land as his own and to cultivate it by his own means. On the contrary, Regulation XXVIII gave him no power to sell the land for an arrear (section 3) though if at the end of the year it had not been liquidated he could sell the ryot's tenure if transferable. Under Regulation XXX he could transfer the lands to "other persons" if the ryot refused to accept the prescribed patta but by Regulation V of 1822, as we shall see, this transfer was ineffective without the leave of the Collector. The zamindar had no power to resume the lands. The ryot could also, as we have seen, demand a patta from the zamindar.

In one important respect these Regulations, though virtually providing for the maintenance of the ryot in the possession of his tenure, worked to his disadvantage in that the powers vested in the zamindars were prompt and summary, while the ryot could ordinarily obtain efficient redress only through the expensive instrumentality of a suit in the Civil Courts, which was naturally a hopeless undertaking in antagonism with a rich landholder. And the zamindars were not slow to profit by the circumstance. At any rate as early as 1812, the Court of Directors invited the attention of the Government to the manner in which the Patta Regulation XXX of 1802 had become almost a dead letter in Bengal and to the instances of similar disregard in the Madras district of Ganjam and called the attention of this Government to their duty of enforcing the Regulation which was framed for the protection of the ryots against the oppressions and exactions of the zamindars. Two years later the Court again drew attention to the matter insisting that a "strict observance of that Regulation would tend equally to the benefit of the landholders and their tenants by rendering their respective rights and obligations more certain, and by facilitating the adjustment."

"disputes concerning rent or cultivation." At the same time the Directors declared—"we by no means intend that the zamindar should be released from the provisions of the existing law as to the rates of assessment on the land but that he be equally liable as before to the penalties attendant upon an infringement of them".

During the years that had passed since 1802 the inferior Civil Courts in the mufassal had been construing Regulation XXV of 1802 as if it had been an enactment bearing on the English law of landlord and tenant, nor was it unreasonable to expect that these inferior tribunals should construe terms of English law as if they possessed the same connotation as in that law. The Court of Sadr Adalat for themselves however repudiated so narrow an interpretation; and in advising the Government in 1818 on the measures which should be taken to save the ryots from the destruction which menaced their rights, wrote thus: "the magical words, as Colonel Wilks has termed them, of the permanent sanad were being made to convey to zamindars a power which was not exercised on the part of Government itself and to overturn individual rights which existed before the commutation of the public revenue for a fixed payment in money by the zamindars". The Sadr Adalat at the same time pointed out to the Government that the highest authorities acquiesced in the opinion that a proprietary right in the soil vested in the people by whom it is ordinarily cultivated.

The rights of the cultivating ryots were thus, at that time just as in more recent times endangered by two causes, first the perversion of the language of the Regulations, and secondly by the absence of effectual means of vindicating their rights in law. The enactment of Regulations IV and V of 1822 was meant to cure these evils. The object and purport of the former Regulation I have already explained. It was, however, only declaratory in a general sense and did not define the ryot's substantive rights specifically. The latter was designed to enable the ryot to obtain speedy and effectual redress and put him on even terms with the zamindar who enjoyed the monopoly of a summary procedure. Accordingly primary cognizance of all matters of dispute between the ryot and the zamindar arising under the Regulations was transferred to the Collectors, who were also vested with the right to intervene before a zamindar could eject a ryot or sell property distrained for arrears. The Collector was to adjudicate whether the demand was justly due or the rate in the patta which a ryot refused to accept was in excess, to use the words of the enactment, of the "just rate prescribed". If the Collector decided against the zamindar on these points, the tenure could not be sold, nor the ryot ejected.

A careful consideration of the enactments which I have referred to will make it evident that the whole course of legislation was inconsistent with any theory which would regard the ryot as a tenant, or his payment to the zamindar as rent, or that there existed between them the relation of landlord and tenant as known to the English law. On the contrary it firmly sustains the view formulated in 1799 that the cultivating ryots—and no distinction is made between one class and another—have a right of occupancy so long as they cultivate to the extent of their usual means and give to the proprietor (*i.e.*, the zamindar) whether in money or in kind the accustomed portion of the produce.

The Government steadily maintained this position; and to show the consistent view which they continued to take of the ryots' rights I may refer to the correspondence which took place in 1860 on the occasion of the grant of a permanent sanad to the zamindar of Punganur, an ancient estate in North Arcot. The zamindar among other things desired that a stipulation should be inserted in the sanad empowering him "to prevent his ryots from selling or mortgaging their lands, and that the Courts may be restrained from attaching such lands in satisfaction of private debts". He also sought power to "resume the lands of ryots unable to cultivate their lands". In forwarding these requests to Government the Board of Revenue remarked that they were "wholly opposed to law and the rights of the people, and cannot consequently be entertained. As regards the last of them the zamindar, like other proprietors, must procure ejectment in the legal method." Upon this the Government in approving the issue of the sanad observed that all the zamindar's requests "as the Board correctly pointed out" are inadmissible, adding, "such restrictions as he desires on the rights of the ryots of his estate would be illegal and unjust."

In 1864 the Board of Revenue, in its well-known Proceedings of 2nd December already referred to, took occasion to review the whole subject. The main conclusions are summarized in paragraph 61 of the proceedings. They included in clear and unequivocal language a declaration of the occupancy status of every ryot holding that "no ryot can be ejected from his holding, so long as he pays or is willing to pay the established rate" as defined and limited by the Regulations. The Board maintained that the conclusions at which they arrived were clearly established upon the evidence, and were "utterly incompatible with the claims asserted by the zamindars to raise their demands at pleasure on the ryots."

These proceedings of the Board acquire a special importance from the fact that they were issued when the measure which became Act VIII of 1865 was under consideration in this Legislative Council. As it is this Act which we propose to repeal, it is desirable to know the views which the framers of the Act entertained and whether a true construction of its provisions really sustain the pretensions which have been founded upon them.

In this Presidency no distinction of occupancy and non-occupancy ryot was known; and this puzzled the Government of India when Act VIII of 1865 went up for the Governor-General's sanction. This Government then offered the following explanation in response to an inquiry from the Government of India:—

"I am directed to state that in this Presidency, from the earliest times to which our records reach, the rights of the resident ryots of each village to retain their existing holdings or to extend them to the waste lands included in the village boundary, paying the established rate as recorded in the village Niriknama, as evidenced by the immemorial and perfectly well-known custom of the village for the class of land concerned, have never been questioned."

"These resident ryots are designated mirasidars, ulkudis, kadimis, etc., in the different parts of the Presidency, and attached to their position as such, are sundry rights of common and other local privileges and immunities which have been affirmed by decrees of court."

"Associated with them are found porakudis or payakaris, as they are often called, who, in their existing holdings, possess as good rights as do the mirasidars, etc., in their lands; but who, as not being seized of original rights in the village, are not allowed to possess the special privileges of the more favoured class."

"This inferiority of position was generally compensated by holding at a somewhat lower rate of assessment, but so long as that assessment was paid, the right to retain the land and to be succeeded in its enjoyment by his heir, was never denied to the porakudi."

On this explanation the Viceroy assented to the Act. But it will be observed

2 P.M.

that even with regard to the porakudi who was cultivating independently it was recognized as matter of common knowledge that even he had a heritable right of occupancy so long as he paid the assessment. Others of these porakudis or payakaris were doubtless under-tenants of the ryots, but, where the porakudi had a separate holding, the only difference in his position was with regard to certain village privileges.

In fact in my opinion all this question of the resident and non-resident ryot which has brought about so much confusion and so many difficulties was, as I have already said, a purely communal question: it was a matter solely between the villagers themselves: and in no way affected the relation of the zamindar to the cultivating ryots.

There was clearly no intention on the part of the framers of the Act, which was no more than a processual enactment, to differentiate the cultivators into occupancy and non-occupancy ryots, or to define or limit their rights. The Act was intended to do no more than facilitate the recovery by the various classes of landholders enumerated in the Act of their just dues from their ryots and tenants; and the Act includes persons who will fall under both these classes of our Bill. If up to 1865 the ryots had certain rights, there was nothing in the Act to destroy them.

It seems scarcely necessary to go much farther into this question. Unfortunately however Act VIII of 1865 came into operation shortly after the abolition of the old Court of Sadr Adalat, which had other traditions to guide it, and the Judges of the newly-established High Court were misled into construing the inapplicable terminology of English law which the Act employed as if the terms connoted the corresponding legal conceptions of that law. The patta, a mere memorandum of the extent under cultivation in the year and of the particular crops harvested,

was treated as a lease for a year which it is not; and so on; until matters culminated in 1871 in Chokkalingam Pillai's case, in which the High Court held that, by the acceptance of a yearly patta, the presumption was that the pattadar was a yearly tenant and no more. No doubt slight evidence of his customary status might have thrown the presumption the other way. The legal effect of the case, however, was widely misapprehended, and it is with actual results we have to do in legislation; and this misapprehension had far reaching consequences. The zamindars sedulously set themselves to procure from their ryots pattas in which was entered a stereotyped clause that the zamindar was at liberty to lease the land at his pleasure. These were distributed in thousands, generally as printed forms, in the Northern Circars. Rents were forced up under the dire apprehension of eviction from ancestral homes. The zamindars rarely did actually eject; and the ryot so long as he was not evicted would sign anything. Such a "contract" was virtually valueless, having regard to the unequal relations of the parties.

2-5 P.M.

At this stage the Council adjourned for three-quarters of an hour.

The Council reassembled at 2-50 P.M.

The Hon'ble Mr. G. S. FORSTER:—The status of the occupancy ryot is incompatible with a contractual relation and the payment of a competitive rent. Act VIII of 1865 included however classes to whom such a contract was open, namely, those whom we have classed as "tenants" in the present Bill—the under-tenant of the ryot, and the tenant of the zamindar's home-farm lands. I do not think there is really now much dispute that these are the only classes who can properly be called non-occupancy cultivators. Contract was also open to the parties where, in consideration of the reclamation of waste lands, the zamindar agreed to take a favourable rate of assessment for a term; but such a contract would neither obstruct the cultivators' occupancy right, nor justify the zamindar in ultimately imposing a competitive or economic rent. The Landholders Association in a memorial which they presented on the Bill of 1898, virtually admitted the distinction. They wrote "It would simplify the difficulty to 'class the zamindari lands into two divisions, viz., patta lands and non-patta lands. 'Patta lands may be of the description of lands to which section 12 of the Rent Recovery Act VIII of 1865 is applicable. Non-patta lands may be the lands of the 'remaining description, such as waste, private or pannai or khas lands or inam lands, 'etc. The patta lands are already virtually occupancy lands throughout the Presidency. The only difference in those parts where the theory of occupancy right is 'not recognised is that such lands are not transferable."

This is a clear admission that in all the public cultivable land of the estate occupancy right accrues as a matter of fact upon entry; also that the public cultivable land is all land which is not pannai or khas land that is home-farm. By inam lands I understand the reference to have been to small inams which as they occasionally did, included the land itself as well as the revenue. The association added waste lands. This addition I cannot admit and I will now deal with that question. The zamindars make a strenuous claim that they have special rights over the waste, in other words, that they can exact for the cultivation thereof such terms as they please, or what is the same thing, impose a rent and not an assessment. No constitutional basis can be found for such an argument. The zamindar is no more in law than an assignee of the public revenue. The review which I have taken of the opinions recorded by the highest authorities down to 1865, give no colour to such a pretension; and if it did not exist during all these years nothing that has been enacted since has conferred rights which were not possessed at that time.

In the letter which I have quoted addressed by this Government to the Government of India, regarding Act VIII of 1865, the rights of the resident ryots to extend their cultivation to the waste is distinctly averred. Section 11 (iv) of the Act no doubt declares that landholders may arrange their own terms of rent. But the clause is carefully guarded by the proviso that all special rights are preserved. The special rights so preserved are the right to extend cultivation to the waste and the right recognized since the permanent settlement to pay not a rent but the assessment due thereon. The zamindars could of course and did usually arrange favourable terms for such cultivation in order to obtain the reclamation of the lands.

Whatever may have been the construction placed upon the provisions of Act VIII of 1865 some twenty years ago, it is fortunate that in later years its interpretation has been in the hands of Judges not only great and eminent lawyers but jurists possessed of a native knowledge of the common law of this country and imbued with its spirit.

I refer, I need not say, to those great Judges Sir Muttuswami Aiyar and Sir Subrahmanya Aiyar. Nothing has strengthened the hands of the Government in prosecuting this legislation so much as the expositions of the law which these Judges have from time to time given forth on the questions which are fundamental in this Bill; and if this Bill passes it is a deep debt of gratitude that the agricultural population of this Presidency will owe to the memory of Sir Muttuswami Aiyar and to the labours of Sir Subrahmanya Aiyar.

I will now read a few extracts from the judgments of the High Court, sustaining the views to which this Bill proposes to give legislative expression.

In the case at I.L.R., XVI Mad., page 271, Mr. Justice Muttuswami Aiyar and Mr. Justice Wilkinson declared:

"Neither a patta nor a muchalka granted or executed under Act VIII of 1865 'during the continuance of the holding is conclusive evidence that the holding is a 'tenancy from year to year. A patta or muchalka is ordinarily nothing more than a 'record of what the tenant has to pay for a particular year with reference to the pre-'existing relation of landlord and tenant. We must also observe that the term tenant 'is defined in Act VIII of 1865 only for the purposes of that Act and means nothing 'more than that the holding is subject to the payment of rent. It does not necessarily 'imply that the tenant was originally let into possession by the plaintiff's ancestor, 'and it may be that the payment was due in consequence of the status of the zamindar 'as the farmer of public revenue."

In Venkatanarasimha Nayudu's case, I.L.R., XX Mad., Sir Subrahmanya Aiyar and Mr. Justice Benson laid down the law thus:—

"It thus seems unquestionable that *prima facie* a zamindar and a ryot are holders 'of the *melvaram* and *kudivaram* rights, respectively. When, therefore, the former sues 'to eject the latter, it is difficult to see why the defendant in such a case should be 'treated otherwise than defendants in possession are generally treated, by being called 'upon, in the first instance, to prove that they have a right to continue in possession. 'One can see no other reason for making such a difference than that certain legislative 'enactments, especially those passed at the beginning of the century, refer to ryots as 'tenants and to the payments made by them as rents. But considering that those 'enactments were intended for particular purposes and considering that Regulation IV 'of 1822 expressly declares that the actual rights of any of the landholding classes 'were not intended to be affected by the earlier regulations, the phraseology of those 'enactments should not be taken to operate to the prejudice of persons between whom 'and zamindars the *prima facie* relation is only that between the holder of the *kudivaram* 'right and the holder of the *melvaram* right in a given piece of land as shown above. 'Consequently it is obvious that, in a suit like the present, the zamindar should start 'the case by evidence of his title to eject. In other words, he has to prove that the 'kudivaram right in the disputed land had been vested in him or his predecessors and 'that the land subsequently passed to the defendant or some person through whom he 'claims under circumstances which give plaintiff a right to eject. This is clear from 'Srinivasa Chetti v. Nanjunda Chetti. See also Appa Rao v. Subbanna and 'Venkatacharlu v. Kandappa. In the first-mentioned case Muttuswami Aiyar and 'Tarrant, J.J., said: 'But Viraman's (the then defendant's) tenancy has been found to 'be that of an ordinary pattadar, and we apprehend that such a tenancy, when there is 'no evidence of a contract as to its origin and duration, or that the *kudivaram* right 'vested in the mittadar (the then plaintiff) at any time, entitles the tenant, to the 'right of occupancy for the purpose of cultivation determinable on the conditions 'prescribed by (Madras) Act VIII of 1865.' The contention that the ryot was merely 'a tenant from year to year was distinctly raised in the above case, but was virtually, 'if not expressly, overruled. We must likewise decline to accept the similar contention 'urged here on behalf of the plaintiff. It may, perhaps, be asked what is the nature 'of the holding of persons in the position of the defendant in the lands they hold, if 'they are not tenants from year to year. There can be no hesitation in replying to 'this question that in essence there is no difference between a ryot holding lands 'in zamindari village and one holding lands in a Government village (Arbuthnot's 'Selections from the Minutes of Sir T. Munro, Vol. I, p. 254), and like the latter 'ryot the former ryot, in the absence of proof of contract or of special or local usage to 'the contrary, is entitled to occupy his lands so long as he pays what is due, and if he 'should commit any default in this or other respect, until he is evicted by the processes 'provided by law."

Finally in the Chikati zamindar's case, XXIII Mad., page 323, Sir Subrahmanya Aiyar said :—

"Nor can it be said that this is true only in regard to so much of the land in the hands of the ryots as cannot be shown to have been obtained by them from zamindars. For in the case of lands which have been relinquished by the former occupants or which have been lying waste from time immemorial, they too, when taken up by a ryot, are treated exactly on the same footing as land into the possession of which it is not shown that the ryot was let in by a zamindar, and the ryot holds possession of them for an indefinite period. This practice prevails not only in the zamindaris in the southern part of the Presidency, but also in those in the northern part where the rights of ryots are sometimes erroneously supposed to be inferior to those possessed by ryots elsewhere. As an illustration of the truth of the above statement I may refer to *Appa Rao v. Sriramulu* (1) which came up before Moore, J., and myself after the argument of this appeal. The dispute in the case under reference related to the apportionment among the zamindar of Nuzvid and certain of the ryots of the compensation money awarded for lands taken up for the East Coast Railway, part of the land being what had been relinquished by some ryots and then taken up by those who were in possession at the time of the acquisition by Government. Nor had the lands so taken up been held very long, the earliest case of such occupation being that of 1877, while the others were more recent. Now what is important for the present purpose is, not the actual decision in that case, which was to the effect that the ryots were not merely tenants from year to year in respect of the lands referred to, but the course of dealing which was shown to prevail in the zamindari, on the one hand with reference to lands relinquished but subsequently taken up and, on the other hand, with reference to the zamindar's home-farm lands. That course of dealing was explained by the two karnams who were called by the zamindar himself and who gave evidence on the point. One of them said 'some of the lands have been held for a long time and some were taken up on relinquishment by others. These accounts show relinquishments and acceptances by other ryots in detail for each fasli. Seripattas in the same form are granted in respect of land held for a long time and in respect of those taken up on relinquishment by others. If the tenants who have taken up lands after relinquishment die, pattas are granted in the names of their heirs. If such lands are transferred pattas are granted in the names of transferees. Such lands are transferred by sale and mortgage in the same way as lands which have been held from time immemorial.' The material portion of other witness's evidence on the point was as follows :—'There are lands in our village under the direct cultivation of the zamindar. The lands of the ryots concerned in these cases are seri-lands. The pattas for these two kinds of lands are different. The pattas for home-farm lands are only for one year. It is provided in those pattas that the tenants should quit the lands at the end of the year. The pattas now shown to me are for seri-lands. No such provision is inserted in these pattas. No pattas are granted for home-farm lands. Khats are taken from the ryots. The home-farm lands are leased out to the highest bidder. The rent is never varied in the case of seri-lands, except where dry is converted into wet and the tenant consents. If any pattadar dies the lands are entered in the names of his heirs. There is no transfer in respect of home-farm lands, nor are they entered in the names of heirs when a tenant dies.'

"This is a fairly correct description of what goes on in most zamindaris of this Presidency, and it shows very clearly that the prevalent permanent form of agricultural holding in zamindari tracts extends not only to lands held by ryots immemorially, but also to what they take up under zamindars, provided the lands so taken up do not form part of the home-farm lands of the zamindars. Such being the state of things can it be said that even as regards lands to which the ryot cannot show an immemorial right there is sufficient foundation from which the presumption of a holding from year to year may be raised—that there is, in fact, a general prevalence of tenancies strictly so called? On the contrary, does not a presumption of a different sort, viz., of an ordinary ryot's holding, fit in with the normal state of things as shown above? The one fact on which great stress is laid, viz., that the zamindar was the owner of the kudivaram right as also of the melvaram right, cannot be entirely dissociated from the surrounding circumstances and be made the sole basis of the presumption that the holding is of an essentially different character, viz., a tenancy from year to year. No doubt that fact would enable a zamindar, at the time he allows a ryot to take up such land, to make special arrangements in regard to the

"duration, etc., of the holding. But it does not necessarily suggest that such a course has been adopted and that the land is held differently from the bulk of the village lands. Consequently the fact in question is in itself insufficient to shift the burden of proof on to the shoulders of the ryot."

"In order to do so the zamindar must go somewhat further than merely show that the land, when it passed into the hands of the ryot, was at his disposal as relinquished or immemorial waste land. Of course, he is not called upon to prove that when the ryot took up the land an actual understanding as to the duration of the holding was come to between the parties. Much less is he bound to adopt any specific mode of proving his case. Nor is he required to adduce a prescribed quantity of evidence. To discharge the onus which is on him, all that he has to show is that the defendants' possession is inconsistent with the *prima facie* view that it is held under the usual and ordinary form of holding prevalent in the zamindaris. He may prove this by showing that the land was dealt with as his home-farm lands, or he may show that the practice in the particular estate is not what it usually is in zamindaris generally. If in either of such ways or otherwise he shows that the defendants' possession is inconsistent with the usual form of holding, then, undoubtedly, the presumption will be that the tenancy is from year to year and the defendant must rebut it if he can."

I must apologize for the length of these extracts; but they are of too much value not to be repeated.

It might be argued that with these authoritative pronouncements, nothing else was now required to confirm the ryots' rights. But a careful perusal of these judgments will disclose the great difficulties which the judges feel in meeting out justice under an Act so inartistically and inappropriately drawn up and in a phraseology so likely to mislead the unwary into the belief that though it is only a processual Act it alters substantive rights, which it was never intended to prejudice. Having no legislative declaration of what these rights are, the Judges have been obliged, in order to do justice, to proceed by the indirect methods of presumption: and this is fair neither to the Courts nor to those affected.

In the opinion of the Government it is essential that the substantive rights of ryots and zamindars should be declared positively in clear and unmistakeable terms.

And this is the main object of the present measure.

Having explained the fundamental principles upon which the Bill is based, I will now refer, more in detail, to the specific provisions of the Bill.

Chapter I contains the extent clause and the definitions.

Malabar and Nilgiri-Wynaad are excluded. There are no permanently-settled zamindaris in those districts though there are probably some inam or other tenures, which may come within the definition of "estate" as defined in the Bill; but the Government preferred not to complicate this measure with a discussion as to the relation between such tenure holders and the janmi, as the occupancy ryot in Malabar is termed. It may, however, be that the provisions of the Bill would prove advantageous to enable jannims as landlords to recover rent from their undertenants; and power is accordingly reserved to extend the measure to Malabar.

The definitions of "estate" and "landholder" seem to require no remark. A farmer and an assignee of a landholder stands in the shoes of his principal. The Bill does not propose to enable a zamindar to recover from a renter or farmer under him the amount of his lease; he must recover in the ordinary way in the Civil Court. The Government do not recognize such a relationship in connection with this Bill.

The "ryot" is among the tenants of the existing Act. For reasons which I have fully explained every cultivator of the public cultivable land of the estate is a ryot with occupancy right, whether he succeeded to the holding by inheritance or purchase, or in the case of newly opened land was admitted by the landholder.

The term "shist" has been adopted to signify what the ryot lawfully pays to the landholder for the use or occupation of the public cultivable land. Its use has been adopted precisely on the same grounds that the terms "ryot" and "landholder", the literal translation of zamindar, are employed, that they are not connotative of legal ideas foreign to the country. The Madras Government proposed originally to designate the payment by the term "land revenue", which it properly and constitutionally is and

in the old regulations the terms "rent" or "revenue" are used indifferently to indicate this very payment. But the Government of India thought confusion might be introduced since "land revenue" had come to be used in a mere special sense to signify what is paid direct to Government either by a ryot or a zamindar. In casting about for a phraseology, the Government finally chose the term in question, *shist* or *sist*; it is commonly used throughout the zamindaris by the ryots. The word "assessment" has also been suggested. The Select Committee may consider the selection of a more appropriate word if they are dissatisfied with this. It is essential only that the term be not "rent".

"Shist" is defined to include payments on account of trees, where such payments are lawfully exigible, as well as to include local cesses due by law or usage. The zamindar will have all the powers proposed by the Bill to recover such dues.

"Public cultivable land" will include virtually all the land within the boundaries of the estate save the home-farm lands of the landholder, and the communal lands, as well, of course, as any other lands excepted from the settlement or the grant under which the landholder is in possession.

"Landlord", "tenant" and "rent" are correlative terms in connection with the occupation of the zamindar's home-farm or of the ryot's lands by an undertenant. The Bill is not meant to apply to such tenures; but certain powers in the Bill are extended to landlords solely to enable them to recover arrears of their rent. If undertenants of ryots possess anywhere prescriptive rights, there is nothing in this Bill to prejudice or restrict them. Whether additional legislation is needed to define and protect such rights is another matter which need not concern us at the present time.

The definition of "improvements" is taken from the North-West Provinces Tenancy Act and appears to be complete and appropriate. It is of importance in connection with the provisions declaring the ryots' right to make improvements (clause 6) and the provision for enhancement.

The only occupant of land who is recognized under the Bill as a ryot with occupancy right is he who occupies for the purpose of agriculture; and agriculture is defined to include not only garden and timber cultivation but also pasturing or grazing. It may, I think, be necessary to define precisely the circumstances in which a person who has a right of grazing becomes a ryot. It seems clear that a zamindar may properly collect fees for the pasturing of cattle on the waste without the acquisition by the person so privileged of the status of a ryot. On the other hand, the circumstances may be such that the mere fact that the only use which the ryot may be able to obtain from the land is pasturing should not be admissible as an objection to his status. It is a point which may well receive the consideration of a Select Committee, if this Bill should be referred to a committee.

Chapter II deals with general rights and is perhaps the most important in the Bill. It attempts to declare the substantive rights, of those with whom the Bill is concerned. First on the side of the zamindar, clause 5 declares that the whole of the ryot's holding and its produce is hypothecated for the shist; that is, to repeat the words of clause 101, it gives the landholder a first charge, which, for the future by clause 102, will not be defeated by any incumbrance which was created without the landholder's written permission. Under Act VIII of 1865 the sale by a landlord of a tenant's interest does not defeat existing incumbrances. The powers which it is now proposed to confer on the landholder will give him a security for his dues of the most valuable character. At the same time this concession will do away with most of the reasons which compelled him to look about for devices and pretences to defeat the ryots' occupancy rights. The conferment of these powers is an essential feature of the Bill, and will, I hope, be accepted by the zamindars as an assurance, if any assurance is needed, that the Government have been as mindful and careful of their interests as of those of the ryots. The other advantages which the Bill accords to the landholders will be noticed in their due place.

Turning now to the substantive rights of the ryots, the Bill declares—

First, that every ryot now in possession or who shall hereafter be admitted shall be deemed to have a right of occupancy (clause 12):

Secondly, that he is entitled to improve his holding without paying an increased shist (clause 6):

Thirdly, that with the landholder's permission he may mine and quarry, the zamindar being then entitled to an adjustment of the shist (clause 11):

Fourthly, that he may use the land as he pleases, provided he does not impair its agricultural value (clause 14):

Fifthly, that, after the passing of the Act, he shall have a right to all trees which have been planted by him in his holding or have grown naturally during his occupation; in the case of trees standing on the holding before the Bill becomes law, the custom of the estate shall hold (clause 15):

Sixthly, that he may not be evicted except under the provisions which the Bill proposes should be enacted:

Seventhly, that his right of occupancy is heritable, and also, unless there is a custom of the village to the contrary, transferable.

These are the most important of the substantive rights to which, in the opinion of the Government, a ryot is undoubtedly entitled.

The same chapter (clause 10) declares the obligation resting upon the zamindar to maintain the public irrigation tanks, and upon the ryots to contribute kudimaramat or customary labour for petty repairs to such works. The declaration with reference to the zamindar's obligation is, as I mentioned in the Statement of Objects and Reasons, in accordance with the general principle enunciated by the Privy Council in the Karvetnagar case. The obligation is, I believe, admitted in a general way. It follows from his position. He ought not to have the power through design, neglect or improvidence, practically to confiscate the property of other people as he does when the land is thrown out of cultivation or crops are lost, because he has neglected the public works of irrigation, the trusteeship of which passed to him with his estate. The clause is declaratory. The procedure for enforcing the duty is contained in clauses 109—116; and I may conveniently refer to them here. These clauses, to explain them shortly, authorize the Collector, on a ryot's complaint that an irrigation work is out of repair, to hold an inquiry after due notice to the landholder; if the Collector finds that the work is in a state of material disrepair, he may require the landholder to repair and, on his default, may authorize the ryots to restore the work though not to improve it unless with the landholder's consent. But the Collector is not to give the authority to repair unless he is satisfied that the shist payable is higher than it would be if the land were not irrigated, and that it is to the mutual advantage of both parties that it should be restored. The cost of repair is to be distributed rateably among the ryots benefited, and to be recovered from them, and every contributing ryot may deduct from his shist the difference between the wet and dry rates of the land until the cost has been recouped.

No doubt from the zamindar's point of view these provisions are somewhat stringent; but some provision of the sort is obviously needed; otherwise a callous, apathetic or thriftless zamindar might ruin a whole country side.

It may be that some limits should be placed upon the Collector's authority and some latitude of discretion committed to him under superior control. If the Bill is referred to a Select Committee, this matter might well engage their attention.

Returning again to chapter II, two important clauses are clauses 8 and 9 prohibiting the assignment of village-sites, threshing floors and the like set apart for communal use. Such sites are generally among the lakhiraj lands excepted from the permanent settlement, and in the case of other assignees or grantees of the land revenue were not included in the grant. But in any case it is right that they should be placed under effective supervision in the general public interests, and such supervision can be exercised properly only by the Government. The encroachments upon communal privileges in some estates have been very serious, the parties in the wrong being sometimes the zamindar himself and sometimes the villagers, and at present there is no speedy and effectual method of bringing the trespassers to book and recovering the land for common village use. A procedure for eviction after inquiry by the Collector has been adopted from the provisions of the recent Encroachment Bill.

3-20 P.M.

Chapter III relates to tenants and landlords and empowers the latter to recover arrears of rent under the Act, if he has taken a written engagement from the tenant.

In clause 17 there is a curious misprint. Instead of sections 122 to 126 as there shown, there should be read sections 127 to 130, which contain the provisions relating to eviction of a tenant at the instance of a landlord.

Chapter IV embodies the general provisions as to the rates of shist payable by a ryot and define the circumstances and conditions under which these rates may be enhanced, reduced or commuted. They are founded originally on the Bengal Tenancy Act and follow very much the provisions of Mr. Ross' Bill introduced into this Council in 1898.

Among the alterations which the Select Committee (Mr. Crole's Committee) on that Bill proposed was the elimination of all special provisions for enhancing, abating or commuting the ryot's payment. That Committee having eliminated contract reverted very much to the provisions of the present Act VIII of 1865, making the final and decisive test in every case of dispute the established waram or rate for dividing the produce between the landholder and the ryot. A rule of this sort contained in itself an automatic measure for the just enhancement and reduction of shist with regard to prices, and also a standard for commutation, which might be applied by mutual arrangement. Doubts were, however, expressed by the Government of India whether the waram was always ascertainable and also whether it was desirable in the present day to retain the rates of the permanent settlement and the money prices fixed by the surveys made previously to 1859, which the amended Bill proposed to do as in the Act of 1865, and in these cases disentitle the zamindar from the benefit of the rise in prices which had taken place since and any future rise.

The Madras Government expressed their belief that the waram rates in this Presidency were not so lost and undiscoverable as the Government of India were inclined to think. They have, however, now adopted the suggestion of the Government of India; and the rules of the Bengal Act for enhancement, abatement and commutation with some important modifications are now substantially introduced into the Bill. But before I explain these I must call attention to clause 19 which makes the starting point, the presumption that existing rates are fair and equitable till the contrary is proved. This will, I hope, remove certain fears which I have heard expressed that the Bill aimed at a general cataclysm. On the contrary any adjustment that may take place will be gradual.

In the first place, as in the Bill of 1898, enhancement by contract is wholly eliminated. The evils of such a provision are too patent to need explanation. The parties are not on equal terms; nor is the landholder's due an economic rent, but a payment which under the old regulations was virtually subject to the control and supervision of the Revenue authorities. Enhancement under the Bill can take place only by proceedings taken before the Collector and substantially (clause 22) only on the ground of a rise in prices and any increased productive powers of the land which may have been imparted to the soil in consequence of the landholder's improvements. And what is very important, a limit is put to the enhancement by declaring that it shall never exceed the commuted value of the established waram of the village if ascertainable. The ryot was secured in this by the early regulations. I have already stated the reasons why in the case of a private landholder the ryots must be protected by the prescription of some limit or the control of some public authority.

It will be observed that, as the Bill stands, the zamindar's power to enhance is extended to all classes of ryots. I am not quite easy in my mind whether this is quite fair to the ryot who has held at a fixed money rate from the time of the permanent settlement. In Bengal and the United Provinces his rights are specially saved. In this Presidency, however, there can be but few who have so held at a fixed money-rate. Unlike Bengal where all rents were money-rents at the time of the permanent settlement, waram rents seem to have been almost universal in this Presidency at that date except in a few estates in the Northern Circars.

The succeeding clauses contain the rules for giving effect to the conditions on which enhancement is allowable. Once an enhancement is ordered by the Collector, the ryot is freed (clause 29) from further harassment for fifteen years. The zamindar is in this respect given an advantage over the Government who revise once in thirty years.

Clause 30 contains the conditions on which a ryot may obtain a reduction of his shist. I said a few minutes ago that some important modifications had been introduced into the Bengal scheme. One of these I have just explained—the prescription of a maximum commutation value;—another modification is contained in sub-clause (d) of this clause where the Bill permits of the ryot's applying for reduction on account of the undue enhancement of his shist since May 1871. That is the date of Chokalingam's case the effect of which I have already explained and the reason of the provision will be obvious. A similar provision was embodied in the Bill of 1898. These two modifications affect the leading provisions of this chapter. Clauses follow regarding commutation and alteration of shist with area; they are of the usual character I need not take up time in describing them. The zamindar is given, what in some estates will be much appreciated, the definite legal right to enter and measure the ryot's lands and have the shist altered with respect to the actual area in occupation.

Clause 37 secures to the zamindari ryot the concession now enjoyed only by the Government ryot of suspension of the collection of shist in times of famine.

As explained in the Statement of Objects and Reasons, the provisions of the Bengal Tenancy Act for safeguarding the ryot by proper receipts in a prescribed form and by permitting him to deposit his shists in cases of dispute or doubt, have been substantially adopted in clauses 39 to 47 of the Bill, every facility being afforded to the ryot by permitting payment by postal order or to the village headman unless the landholder has appointed an authorised agent in the village or within 3 miles of it. He is also permitted to deposit his shist in a convenient Revenue office. The Bengal rules on the appraisal of the crop, when shists are taken on a valuation of the standing crop, have also been reproduced in clauses 49 to 51 of the Bill.

Passing now to chapter V: this chapter continues the present system of pattas and muchalkas. But the tender of a proper patta is made a prerequisite in every case to the recovery by the zamindar of his shist under the Act. The power in Act VIII of 1865 to dispense with pattas and muchalkas has been withdrawn. The defects, so often complained of by landholders have however been removed by providing that a substantially correct patta is a proper patta, and at any rate valid to the extent it is correct. A patta may also be for a period of more than a year unless either party insists on annual exchange. It is also provided that the terms of a patta or muchalka exchanged shall remain in force until fresh pattas and muchalkas are exchanged or decreed. The landholder may also in certain circumstances file the patta in the office of the Collector who will serve it and thus effect a good tender. These provisions, it is hoped, will remove obstacles of which the zamindars have long rightly complained, in the way of their recovery of their just dues.

Chapters VI and VII provide for the recovery of shist by the distraint and sale of movable property and by attachment and sale of the ryot's holding.

The zamindar may now recover his arrears, at any rate arrears for three years, after which period they are barred by limitation, by suit before the Collector without recourse to the Civil Court. A zamindar told me the other day that this would be one of the most valuable provisions of this Bill as it would save expensive proceedings in the Civil Court. Otherwise the provisions as to the distraint and sale of movable property do not vary much from the provisions of the present Act, certain improvements as they are regarded having been imported from the United Provinces Tenancy Act with which I need not detain the Council. I may notice, however, that by clause 93, to secure further the landholder's charge, it is specifically declared that the landholder's distress shall prevail over the order of a Civil Court for attachment and sale of the ryot's movable property.

With regard to the provisions for the attachment and sale of the ryot's holding, I have already, in explaining the landholder's substantive rights, invited attention to clauses 101 and 102 giving him a first charge, indefeasible by incumbrances.

The purview and effect of chapter VIII, I have also already explained in discussing the question of the landholder's obligation to repair the public irrigation works.

It is unnecessary to refer in detail to the provisions embodied in chapters IX, X, XI and XII. They are sufficiently described in the Statement of Objects and Reasons. Clause 122 is clause 48-A of the Bill which Sir Bhashyam Aiyangar introduced in 1897 to amend Act VIII of 1865 and deals with the communication to the landholder of transfers of holdings whether effected by process of law or by voluntary alienation.

I now pass to chapter XIII, one of the most important portions of this Bill. It provides for the survey of estates, the preparation of a record of rights and the settlement in certain cases of the proper shists to be paid by the ryot to the landholder. The procedure substantially follows the Bengal Act which was adopted in the Bill of 1898 but has been simplified, and further differs in one most vital point from that Bill. It is this difference that has led to the simplification of procedure. The former Bill proposed that when all the prescribed routine had been duly gone through—the recording of rights, the preliminary inquiry, the drawing up of the preliminary record, the publication of the same, the judicial hearing of objections, and finally the publication of the final record—when all these had been completed, it was proposed that the entries in the final record should be conclusive. The present Bill however places them only on a presumptive footing. It will be open to any one to contest in the Civil Courts the correctness of an entry. This being so, the inquiry and record will no longer require to be conducted on strictly judicial lines if an entry is not to have the force of *res judicata*. The whole procedure will be on the footing of a fiscal enquiry, but a fiscal enquiry conducted on most careful lines, which will insure for the record of it evidentiary value of the highest character. The Government do not think it is needful to go farther. The procedure is consequently capable of much simplification from that laid down in the Bill of 1898. Some zamindars have told me that they welcome the provisions providing for a survey and record of rights.

It would be superfluous for me to go farther into the provisions of the chapter, which seem sufficiently clear as drafted and explained in the Statement of Objects and Reasons. I may, however, refer for a moment to clause 137 which enables the Government to make a settlement of shists when the interests of public peace and order demand such a course. Instances of this kind have happily been rare in this Presidency, but perhaps I may remind the Council of what occurred in Kistna when the single Nuzvid zamindari was split up, and six zamindars emerged, each ambitious to live up to the standard of extravagance professed by their common ancestor. It will illustrate and justify the necessity of the proposed provisions if I read from a report received from Kistna in 1894:—

“There must be a survey and record of rents in many zamindaris. A resettlement of rents is imperatively called for. Doubtless this proposal will be opposed by the zamindars but the measure seems to be necessary. This Government must not rely too far upon the exceptionally peaceful character of the Telugu ryot. In the Nuzvid zamindari in 1880, there were agrarian disturbances which verged on revolt. In the Vallur zamindari in 1883, Government had to interfere to avert similar disturbances. In 1893 the proprietor of Gangavaram mita in Gódvári was shot dead with his agent in broad daylight. The recent reports from local officers in Kistna district show that the oppressed ryots are entertaining the idea of rebellion. In these circumstances though the proposal may be unpalatable to zamindars, yet the public welfare demands the step.”

Cases of this sort afford ample justification for the immediate interference of the State and it was about this time that Mr. Wynch, I think, addressed Government with regard to the enormous and hopeless burden of indebtedness under which the Kistna ryots were crushed, suggesting drastic legislation to write off the arrears which were the result of the oppressive and illegal exactions of the zamindars. Proposals of this sort give room for grave reflection.

The next chapter, chapter XIV, deals with the record of the landholders' private or home farm lands. With regard to such lands the zamindar is both ryot and zamindar and as the ryot of the lands he can sublet them on a rent to a tenant, who will naturally possess no more rights than an ordinary tenant strictly so called. Of course a tenant may have very large rights; but these will fall to be decided by the Civil Courts in the ordinary way if there is any question as to what they are. The true ancient home farm or *Sir* or kambattam lands are or were perfectly well-known. But in recent years there have been persistent attempts to include in the *Sir* accessions from the ordinary waste of the village or by the usurpation of patta lands abandoned or sold, the object being solely to prevent persons who take up such lands from acquiring the occupancy right in the same. The object of the Government, as it has been the object of the Governments of other parts of India, is to prevent such subterfuges to neutralize the occupancy right. Evil knows no climate.

I am confident such devices will procure no sympathy from the Honourable Members of this Council.

The remaining chapters of the Bill deal virtually with the legal procedure and machinery provided to carry out the purposes of the measure. The Bill transfers from the Civil Courts to the Revenue authorities the jurisdiction necessary to give effect to the provisions of the Bill. After all the jurisdiction is of very limited scope. It embraces only matters relating to rates of shist, and the procedure for the recovery of arrears of it; all other matters will devolve upon the Civil tribunals as now. Clause 153 purports to empower the Board of Revenue to state a case for the decision or orders of the High Court just as under the Stamp Act. I may however at once state here that the clause may require reconsideration as being in the opinion of our legal advisers perhaps *ultra vires* of this Council. If it should prove essential to retain the provision, which is doubtful, it might be necessary to ask the Government of India to undertake the requisite supplementary legislation. The point is not however vital to the Bill and need not detain us.

My Lord, I have now described as best I could, without unduly trespassing on the patience of the Council, the general principles upon which this important measure is based, and I have also explained those specific provisions in the Bill which appeared to me to be the more important; but I have doubtless overlooked many which to some may seem of greater moment. With regard to these I shall be glad in due course to give Honourable Members any further explanation which I can afford before the motion is put.

I will now advert to the practical question how far these declarations are in conformity with the actual circumstances of the country. In the Southern districts there is good reason to suppose that practice has varied little from right. But it is said that a different state of things prevails in the north. But all the attention which I have been able to give to the matter does not uphold that view. Claims are loudly proclaimed; but they are not enforced or enforced only in particular estates. In fact the Northern zamindars take refuge in the plea that though they are unwilling to admit occupancy right to the extent declared by the Bill, they nevertheless in practice treat the ryots as if they did possess such rights. The basis of that practice however is in my view unquestionably the consciousness that their pretensions are contrary to the immemorial common law of the country, and that any general attempt to enforce them would excite a revolt against their authority. As Sir Subramanya Aiyar said there is no difference between the Northern and Southern zamindaris. The Maharaja of Bobbili in this Council in 1898 said he could not think of more than half a dozen instances in which a tenant had been ejected from his holding. “Even he added when the rent has been left unpaid the zamindars in the Northern districts allow their tenants to continue in their holdings. . . . Hundreds of defaulting ryots are allowed to continue in their holdings.”

At the same time I have very much sympathy with what the Maharaja said as to the paternal relation between the zamindar and his ryot, the traditional respect with which the zamindar is treated, and the genuine sympathy which he entertains for his tenant. He feels that a declaratory law would end in this that the relation between them would become “quite mechanical and impersonal.”

These however I fear are among the reasons which compel the Government to take decisive action. If all zamindars cultivated these relations, there would perhaps be little need for legislation. But circumstances are rapidly changing. The ancient zamindars are being displaced by new men who have no traditional connexion with the soil, and whose action will be guided solely by commercial or selfish motives, and who will strain the law to its utmost limits. A law is a bad law which gives opportunities for diverting its power to oppress the poor and weak. The scions too of ancient families in these days of luxury and absenteeism are estranged from their old homes, and are I fear often actuated by similar motives. Moreover, unless rights are firmly fixed and declared, the slow process of erosion imperceptibly wears them away. The zamindar is the flood stream; the ryot the river bank. Not only in justice to a weak class who are specially in need of the protection of the strong arm, but on every ground, political and economic, the Government could not sit by impassive.

Now let us hold the scales evenly, distributing the benefits which the Bill proposes to confer and remembering that the value of a thing to a person does not depend on its

intrinsic cost. On the side of the zamindar, if this Bill passes into law, he will be given a right of hypothec over the ryots' holding, a first charge indefeasible by any encumbrance; he will be given the right to enhance with reference to the rise in prices; he will be empowered to enter and measure the ryot's lands and have the shist altered accordingly; he will have the benefit of survey and a record of rights; he may sue on a patta which is substantially correct, and the patta may be for more than a year; he can sue for the whole of the recoverable arrears before the Collector without the expense of a civil suit; and last but not least he has been given a ryot who, secure in his holding, and a free man, will have every encouragement to extend and improve his cultivation and so add to the landholder's prosperity. It is a universal proverb in this country that the prosperity of the ryot is the prosperity of the raja.

On the other side, the ryot will be confirmed in his ancient rights; he will be secured in the occupancy of his holding from which he cannot be ejected so long as he pays his shist; nor can his shist be enhanced except by suit before the Collector; and he is given the right to have the irrigation of his fields secured: to have the communal lands of his village saved from wanton usurpation: the user of his lands has been defined; and his right to make improvements declared.

Looking at both sides then I think this Council will admit that the Government has discharged with equal justice its obligations to safeguard the established rights of both zamindars and ryots, in the sense of the old Regulation IV of 1822.

The intervention of the Government is thus as much to the benefit of the landholder as of the ryot. All that is done for the ryot is to protect him against the horrors of arbitrary eviction, against the oppression of rack-rents and to secure to him his right to enjoy his established share of the produce, conditions which are essential to the stability of an agricultural community and the undoubted and ancient right of the Madras ryot.

I now move, My Lord, that the Bill as introduced be read in Council.

The Hon'ble Mr. G. STOKES:—I beg to second the motion. I don't propose to take up the time of the Council with many remarks. The Honourable Member in

3-40 P.M.

charge of the Bill has dealt with the history of the whole question, its legal aspect and the detailed provisions of the Bill. It is not necessary for me to go into these matters in detail, but I think it is necessary for me to say a few words on the general principle or principles of the Bill. The Bill consists of two parts, the one processual and the other dealing with substantive rights. In regard to the processual part, the most important provisions are those relating to the fixing of rent, exchange of pattas, and recovery of rent. In regard to the fixing of rent, as has been explained, the general principle we start with is that what is right. Then it is open to either side for proper cause shown to enhance or reduce the charge. That is the main provision newly introduced in the processual part of the Bill. In regard to the exchange of pattas and muchalkas and for the recovery of rent the old provisions vastly improved are still retained. But in regard to the substantive rights, it seems to me that the position of the Bill is this; that as before the permanent Settlement, the Government ryot and the zamindari ryot were in exactly the same position, the principle which has been aimed at is, as far as possible, to preserve to the zamindari ryot that same position; that he should be practically in the same position as the Government ryot is, that his tenure should not be less advantageous, that he should not be subjected to greater disadvantages and that his tenure should be equally secure. There can be no doubt that in old times the position was that the kudivaramdar's title was indefeasible, as long as he satisfied the demands of the melvaramdar. That is, I think, the correct principle which should be adopted and to which the Bill gives expression. There are other important provisions in the Bill to which the Hon'ble Mover has referred, but into which it is not necessary for me to go in detail. A very important one is the repair of irrigation works. I consider that it must be regarded as entirely fair that where, in consequence of the existence of an irrigation work, the wet rate is imposed, if the water is not supplied, that wet rate should be taken off. That is shortly the principle which underlies the manner in which the Bill deals with the repair of irrigation works. It also provides for survey and settlement, which are, of course, matters of very great importance, and which, more than anything else, perhaps, give security of tenure and certainty of holding. There is, again, the question of jurisdiction and procedure with which the Bill deals, and which will

raise the greatest discussion in regard to it. But I think, as the Honourable Mover has done, we may appeal to the general experience not only of this Presidency but of the rest of India and even of other countries to bear out the proposition that the Civil Court is not the best institution to deal with the fixing of rents. As the Honourable Mover pointed out, the jurisdiction conferred on the Revenue authorities is very limited; it does not, by any means, touch all the rights or questions which can arise. I have no hesitation in saying that the Council will be very wise if it follows the experience of other countries and adopts the provisions of this Bill. With these few observations I have very much pleasure in seconding the motion for the introduction of this very important measure, which I have no doubt will lead to the prosperity and well-being of the zamindari ryot. I hope the Council will be able to find some methods of bringing together conflicting interests which undoubtedly must arise in regard to such a measure as this.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR:—May it please your Excellency, I beg to say a few words in connection with the motion now before the Council, but before I do so I beg to congratulate the Honourable Member in charge of the Bill on the speech which he has delivered in introducing the Bill into the Council. It is worthy of the occasion and the importance of the Bill and it is characterised, in an eminent degree, by that lucidity and grasp of details, which are the particular features of any matter that he handles. It is a matter of satisfaction not only to this Council but to the public at large that at last the Government have found it possible to draft a Bill like this and to seriously think of introducing it into the Council and passing it into law. I quite appreciate and heartily sympathise with the intentions that the Government have in introducing this Bill. I am at one with the Honourable Mover and the Honourable seconder that these intentions will be effectuated by this Bill being ultimately passed into law. Broadly speaking, it appears to me that so far as the question of substantive rights goes, the Bill is a very bold and probably a necessary departure from that which has been hitherto considered the law that appertains to relations between landlords and tenants, in that it makes an irrebuttable presumption that the right of occupancy vests in the ryot as explained in the Bill. So far as the processual law which this Bill embodies goes, the jurisdiction of the Civil Courts is entirely ousted, in respect of those matters to which the Bill relates. I may say, speaking for myself, I am in favour of the right of occupancy being allowed to the ryot irrespective of any discussion as to whether a particular zamindari in which the land is situate is one in which the custom has been one of occupancy right in the tenant or not. Perhaps the position which the Honourable Member in charge of the Bill has taken, in explaining the history of this question and in evolving out of it a position which is favourable to the conclusion that he now seeks to give effect to, is not one which is altogether undebatable. But I am not going to pursue him in the discussion, for the reason that, apart from the question of the justification of the measure now sought to be embodied in the Bill by the previous history of the case, public interests and the interests alike of the zamindar and the ryot require that, in a very large degree, the ryot should be conceded the right of occupancy. I think, My Lord, on the whole, that, although it is possible that the zamindars will be the persons that will be most keenly affected by this Bill if at all it affects them, and although they may think and feel at present that this is not a measure calculated to improve their interests, yet, as time goes on, they will come to recognise that there is no measure which is better calculated not only to promote their own prosperity but that of those with whose prosperity theirs must be blended, namely, the ryot—there is no measure better calculated to promote it than the conferring of this occupancy right on the tenant. But it appears to me that the same considerations do not apply in the cases of those who are described as landlords in clause (b) of the definition. I refer to inamdars and shrotriendars. As your Excellency will observe, "estate" means, according to clause (d), "any village or part of a village which is an inam or shrotriem." But the history of these inams and shrotriems will not justify the view that has been taken of the permanently-settled estates. The tenure under which they are held, the circumstances under which they came to be given and the objects which they were intended to achieve are all on a different footing from the permanently-settled estates; and the hardship of including them and bringing them under the definition of an estate and making the provisions that

are applicable to landlords and ryots applicable to them will be patent, if your Lordship will pause for a while and see how these shrotriems and inams are situate, as distinguished from a permanently-settled estate. In giving my support to the view that has been fully embodied in this Bill, that, in permanently-settled estates, the ryot might be given the occupancy right, the chief circumstance that I have had in view is that the zamindar must, of necessity, have a large expanse of land at his disposal and it is impossible, in the very circumstances of the case, that he could himself cultivate it and have occupancy right in himself, for all that expense, so that, if he wants the tenant or ryot not to have occupancy right in this land, it is more likely to end in oppression of a tenant than in any ultimate benefit to himself. Such considerations will not apply in the case of inamdars and shrotriendars. Your Excellency will observe that, in the case of those who hold parts of a village as inams or shrotriems—I have known in my experience that even 10 or 15 acres are held as inams or shrotriems—to say that the holders of these lands will have the occupancy right in them or that the shrotriendar will have the right to receive a rent, will probably be putting the shrotriendar in a position worse than that of the tenant himself. I do not know if that is contemplated, I am sure that this question will be threshed out in the Select Committee and I will not, therefore, pursue it. It appears to me that the cases of inams and shrotriems might well be excluded from the purview of "Estates" defined in clause 3. If once the difficulty that I have given expression to is accepted, I do not believe that the remedy by which that defect could be obviated would be difficult of adoption. Perhaps, it is desirable that we might make the case of shrotriendars and inamdars as one of landlords and be governed by the provisions relating to landlords. There may be even better provisions that may suggest themselves. I say it cannot be one of difficulty, as to what exactly the provisions are to be that are to be applied to the case of inamdars and shrotriendars. With respect to the granting of occupancy right to estate holders, I mean landholders—that is, I have in mind the permanently-settled estate holders—there are one or two difficulties which suggest themselves to me and which are of a practical and real kind. The first difficulty is that by disabling the ryot from contracting with the landlord with reference to the time during which he can occupy the land and by conferring the right of occupancy on every person who enters on the land with the permission of the landholder, it is possible that cases might be pointed out wherein hardship will be caused to the landholder. The particular instance that I beg leave to give is this, as the Bill stands at present, the ryot, by merely entering on the land with the permission of the landholder, gets occupancy right. Suppose he makes default in the payment of rent or shist? In that case, the Bill provides for the holding being sold for the purpose of discharging the shist due thereon. Now the landlord or landholder will have to let the land to somebody else who again gets the occupancy right. The consequence will be that he will have no satisfaction for the rent that became due and for the recovery of which the holding had been sold. Another difficulty that presents itself to me in considering the question, namely, one of mere entry conferring occupancy right, is this. If a ryot relinquishes the land and the land becomes a little more unserviceable than other lands on account of its having been allowed to lie waste for some time, the landholder will find it difficult to get tenants or ryots to cultivate it, except on special terms. But this permanent occupancy right that he gets by operation of the contract or force of law will tie down the landholder to realising the same rent or shist on which he was, by force of circumstances, compelled to allow this land to be given to the particular ryot for all time until it pleases that ryot to relinquish the land. That is also another difficulty which is a real one. It, therefore, appears to me that the provision with reference to the conferring of occupancy right by mere entry might require some modification, so as to obviate the difficulties that I have suggested. Short of that, it appears to me, My Lord, that is a wholesome provision that has been introduced in this Bill.

I shall now take up your Lordship's time by discussing the question of the ousting of the jurisdiction of Civil Courts. I should have very much liked that the Honourable Mover had elaborated somewhat more fully the reasons that are doubtless apparent to the Government as to how it is that there is this wholesale ousting of the jurisdiction of the Civil Courts. While I find that no particular reasons have been given in the Statement of Objects and Reasons, I find, in the speech

of the Honourable Member in charge of the Bill, that, in embodying the policy that is now embodied in this Bill, the policy of the other recent Acts in India has been followed. I may submit, My Lord, that, so far as the North-Western Provinces Act goes, section 167 of which is taken to be the model on which the provision in respect of ouster of the jurisdiction of the Civil Courts has been embodied in this Bill, that does not seem to support the position that has been taken. If your Lordship will look into that Act, your Lordship will find that the jurisdiction of the Civil Courts has not been altogether ousted. There are three groups of suits—A, B, and C. So

4 P.M.

far as A is concerned, where the subject-matter of the suit is Rs. 100 and below

Rs. 100, an Assistant Collector of the second class is allowed to try them, in the first instance and an appeal lies to the Collector and the Board of Revenue. But if the value of suits is over Rs. 100, they are in the first instance triable by an Assistant Collector of the first class and an appeal lies to the District Judge and from there to the High Court. So far as group B goes, it is not the Revenue Court that has the jurisdiction throughout the whole length of the litigation; but suits have to be instituted in the Court of the Assistant Collector of the first class and the appeal lies to the District Judge and from him to the High Court. With reference to group C, I admit that Revenue Courts alone have jurisdiction. It appears that the procedure that has been adopted in the Rent Recovery Act which is sought to be repealed is, in this matter, an eminently sound and practical one. So far as the present Rent Recovery Act goes, we find litigation is started in the Revenue Court and appeals only are allowed to the District Judge and the High Court. I must confess, My Lord, that the tendency of recent legislation in this Presidency, if not in others, has been very largely to restrict the interference of Civil Courts in matters wherein previously their jurisdiction was considered to be undoubted. The reason that has been given so far as this particular measure goes, for ousting the civil jurisdiction is stated to be that here we are concerned with fiscal matters and that, therefore, it is best that Revenue Courts and not Civil Courts must have jurisdiction. In the first place, it appears to me, My Lord, the question is to a great extent debatable as to whether giving the position to the ryot this Bill gives the matters now sought to be given to the Revenue Courts can be considered to be fiscal. It appears to me that what we are in this matter concerned with is a question of right, although money considerations are, of course, involved in them, as in anything else. Under this Bill the ryot and the landlord have become co-owners, having co-ordinate interests and, therefore, the determination of what exactly is the extent and character of these interests cannot be considered altogether a fiscal matter, although there are money considerations involved in it. Apart from that, let us see wherein the superiority of the Revenue Courts lies over Civil Courts. I am prepared to admit, My Lord, that if we have a bad law, there is no means of making the badness of the law apparent so quickly as its administration in a Civil Court; but if a bad law is allowed to be administered by a Revenue Court, it may be some time before its defects are revealed. It appears to me that the difference between the Revenue Courts and the Civil Courts cannot consist in the *personnel* of the two courts, because, so far as the administration of justice in this Presidency goes, we find that the same person, now appointed Collectors and Assistant Collectors, are appointed District Judges. Therefore, there must be something in the system itself, apart from the *personnel*, which suggests the excellence of the Civil Courts over the Revenue Courts. What does that special excellence consist in? It is the substitution, for individual discretion, of well understood legal principles. I do not know whether putting the case in that way, it will find acceptance in this Council, that the system now introduced in this Bill is not the better one. As I say, if you have a bad law to be worked, it may be that the Revenue Court, unfettered by well-recognised judicial principles, might try to moderate the rigour of the law—might try to moderate the hardships of the law, by substituting their own individual arbitrary discretion to what the strict law requires, while the judges, trained to judicial habits and knowing how to interpret the law, judges whose duty it is to administer the law and not to make it, will administer it to its logical extremity. That circumstance must make us more careful as to what the law is that is being made and not to take away the jurisdiction of the Civil Courts. Again, I may say that persons who have given their attention to the matter have been of opinion that this wholesale ousting of the jurisdiction of Civil Courts is not

an altogether desirable one. I believe it is known to your Lordship and other Members of the Council, that Sir Barnes Peacock refused to allow the ouster of civil jurisdiction. I do not know if there ever was on the Indian bench a greater jurist or a greater Judge than he. I, therefore, submit, My Lord, that no adequate reasons have been given as to why the jurisdiction of the Civil Courts should be ousted. If, on the other hand, we retain the present procedure of allowing the litigation to be started in the Revenue Court and then carried to District Courts and High Court, we have all the advantages of the Revenue Court considering the matter and we have also got the advantages of the Civil Courts giving their attention to it. Therefore, it appears to me that no reasons have been shown as to why the present procedure should be changed to one which will ultimately end in the introduction of the executive discretion for rules which are well understood and which can be well calculated upon. I do not know if this can be considered at all to make matters better than the present state of the law will have it. I, therefore, think that the policy enunciated in this Bill is a somewhat retrograde one and I hope that the Government will see its way to modify the character of the procedure, so as to bring it more into consonance with the present procedure. The Honourable Member in charge of the Bill has himself drawn attention to the possibility of the provisions in clause 153 being considered *ultra vires*. I believe that there can be no doubt as to its being *ultra vires* as it stands, especially after the decision of the Bombay High Court in *I.L.R.*, 27 *Bombay*, p. 424. If that be considered as *ultra vires*, that will only go to show that practically there will be no means of judicial courts interfering with the decision of Revenue Courts, unless it be that the Government of India is going to be moved for the purpose of introducing and retaining in this Bill some such clause as that to which section 153 relates. Your Lordship will allow that certainty and unanimity ought to be the first and pre-eminent requisites of any law that may ultimately be passed. This introduction of the jurisdiction of the Revenue Courts and the ouster of the jurisdiction of the Civil Courts will, I believe, My Lord, have the effect of doing away with that chief and important requisite in any piece of legislation. It appears to me that, so far as that is concerned, the present Bill is not superior to the present Act. I am glad that, in this Bill, certain provisions have been introduced which have the effect of obviating the hardships that have been caused by the present Act, to which alone the present Act owes largely its unpopularity. The chief defect in the present Act has been the insistence upon a patta being correct in every minute detail, before rent can be realised. The consequence of it was that if the patta was found to be irregular even in the minutest point the landlord had to lose his rent. Another defect in the existing Act was the liability of the tenant to be turned out within 10 days if, after the Revenue officer has declared what the proper patta was, he did not give to the landlord the muchalka. These two defects have been removed in the present Bill. Although I would like the meaning of the word "substantial," more definitely given, so that persons who have to work the Bill may have no difficulty, as to what the intention of the legislature was, yet that is a matter which will, no doubt, be set out more clearly and made plainer in the Select Committee. I beg to support the motion now before the Council, because, on the whole, I sympathise with the objects of the Bill. I hope the Government will find its way not to insist upon a thorough ouster of the jurisdiction of Civil Courts.

The Hon'ble P. S. SIVASWAMI AIYAR:—May it please your Excellency, I beg to express my thanks to the Honourable Mover of the Bill for his very elaborate exposition of the history of the law upon the subject of this Bill. The deficiencies of the law relating to landlords and tenants have been long recognised, and it is well known that there are absolutely no provisions in the existing enactment defining the substantive rights of landlords and tenants. There is only one section of the present Act, namely, section 11, which deals with the question of the terms of rent as between landlords and tenants. Barring that single provision, the existing Act makes no attempt at all to settle the mutual rights of landlords and tenants. In so far as this Bill is an attempt to declare the substantive rights of landlords and tenants, it is a highly welcome measure. Several provisions of the Bill appear to be of a highly beneficial character. But the Bill is so long and complicated and the notice that we have had is so short that we have not been able to bestow that amount of attention which the importance of the subject deserves. It is not, therefore, possible for me to offer any criticism on the provisions of the Bill, except as to a few salient features of

it. So far as the substantive rights of landlords and tenants are concerned, the provision for the recognition of occupancy right, the safeguards provided against the enhancement of rent, the provision for the commutation of rent in kind into rent in money appear to me, on the whole, beneficial. Many of these provisions may require a certain amount of modification for the purpose of obviating hardship or injustice. I do not commit myself to an unqualified approval of the language of the provisions of the Bill; but if the modifications which are necessary are made, I have no doubt that these provisions will be of a very salutary and beneficial character and will contribute very largely to the prosperity of the ryots. On the other hand, the provisions for the recognition of a lien in favour of the landlord for the rent due would be an advantage to the landlord and enable him to recover the arrears of rent with ease. These are the most important provisions of the Bill. Among the most objectionable features of the Bill is the one which provides for the transfer of the jurisdiction of Civil Courts to the Revenue Courts. In a matter like this, where the question is one of the appropriate machinery for the purpose of administering the law, if we have been getting on with a particular description of machinery and if it has worked well, it seems to me, My Lord, that there is no reason for changing the machinery merely for the purpose of bringing it into conformity with the machinery to be found in other parts of India. This is not a case in which there is any purpose to be served by standardising the Courts to administer the law. I have not heard of any complaints against the existing Courts. There has been no occasion to find fault with the existing Courts, either Revenue or Civil, before which disputes between landlords and tenants have been brought by the parties concerned, and if they have worked well, it is a very good reason for continuing the existing machinery and for merely altering or declaring the substantive law without interfering with the machinery. As pointed out by the Hon'ble Mr. Govindaraghava Aiyar, the existing machinery is of a two-fold character. We have the remedy of litigation before the Civil Courts and we have also the summary remedy before the Revenue Courts. If the landlord or tenant desires to have the summary remedy, he goes to the Revenue Court in the first instance, and has the right of appeal to the District Judge who is himself an officer with revenue experience. From the District Judge an appeal lies to the High Court. That machinery has worked well and I have no doubt it will be equal to the task which the new Bill is likely to impose upon the Courts administering its provisions. The Bill has been framed, it is said, on the experience of other provinces and other countries. I am not aware of any province excepting the Punjab, where the principle of exclusion of Revenue Courts is carried out so rigorously as in this Bill. In the North-West Provinces Tenancy Act it was pointed out by the Hon'ble Mr. Govindaraghava Aiyar, that the jurisdiction of the Civil Courts is not completely ousted. There are three groups of suits as pointed out by him. With regard to group A, in suits of less than Rs. 100 in value and to group C, the Collector exercises appellate jurisdiction. In suits of larger value in group A and in group B, the appeal lies to the Civil Court. From the appellate decree of the Collector an appeal lies to the District Judge in certain cases. That rather suggests that litigation of a petty or inferior kind should be taken up before the Revenue Courts and litigation of a heavier character, which involves a more valuable subject-matter, ought to be taken before the Civil Courts, if not in the first instance, at any rate as a Court of Appeal. The Bengal Tenancy Act, on the other hand, does not exclude the jurisdiction of the Civil Courts. The history of the Bengal Tenancy Act is instructive on this point. In 1859 the jurisdiction of the Civil Court was completely excluded; but, within ten years after that date, by Act VIII of 1869, the jurisdiction in these matters was again transferred to the Civil Courts; under the existing Act VIII of 1885, the jurisdiction over matters arising between landlords and tenants was again vested in the Civil Courts, while in one or two matters, the Revenue Courts have got jurisdiction, as for instance, the preparation of a record of rights. Even with regard to the preparation of a record of rights, in certain cases, parties are allowed to contest the decision of the Revenue Officers by an appeal to the Civil Courts. That being the history of the changes of the processual law in Bengal, I fail to see why we should go to the Punjab and why we should follow the model of the Punjab instead of the model of Bengal. It may be that, in some matters as in the mode in which occupancy rights are exercised, the Bengal Tenancy Act has been found to require amendment. But I have not heard that, so far as the question of courts is concerned, the people in Bengal or the authorities in Bengal were in any way dissatisfied with the way in which the provisions of the Tenancy Act were

worked. Then, again, an appeal was made to other countries. I do not know to what other countries reference is made. But I may just refer to the case of Ireland to which reference was made by a gentleman with whom I was talking on the subject some days ago. I believe there is an amount of misapprehension with regard to the state of things in Ireland. There are two main Acts, dealing with the subject of landlords and tenants. The earlier Act is Act 33 and 34 of Victoria, Chapter 46--Ireland Landlords and Tenants Act. Under that Act, all litigation begins, in the first instance, in what is known as the Civil Bill Court. That corresponds to the County Court of England. It is presided over by a Barrister. From the Civil Bill Court, an appeal lay, under this Act 33 and 34 Victoria, to two Judges of the Superior Court of Common law, who were selected by the Court of Land Cases Reserved. This Appellate Court, consisting of two judges of the Superior Court of Common law, may, whenever it thinks fit, state a case for the Courts of Land Cases Reserved. This Court of Land Cases Reserved consists of the Lord Chancellor, the Master of the Rolls and the Lord Justice of Appeal, the Vice-Chancellor and the Judges of the Common law Court and any five of the Judges have power to hear and determine matters brought before them. The latter Act which was passed in 1881, the Ireland Landlord Law—48 and 49 Victoria, Chapter 39--altered the jurisdiction in some respects. Even under the latter Act the Court of First Instance is the Civil Bill Court already referred to. Appeals from the Civil Bill Court lie to a Special Land Commission. This Land Commission consists of three officers, of whom one is a practising Barrister of ten years' standing, and on appointment to the Land Commission, he becomes immediately a Judge of the Supreme Court of Judicature. Then the two assessors are persons appointed by Government. The fact that one of the Judges is a Barrister who must have had ten years' standing and who becomes immediately a Judge of the Supreme

4-20 P.M.

Court of Judicature, is a guarantee of valuable judicial talent, so that the analogy of Ireland seems to me, My Lord, to offer no support for the exclusion of the jurisdiction of Civil Courts. If the analogy of Ireland does not furnish any justification and if the analogy of the Bengal Tenancy Act is a warning against the transfer of the jurisdiction of the Civil Courts and if the North-West Provinces Act does not go the length to which this Bill has gone, I do not see any reason why we should look upon the Punjab Tenancy Act as the one upon which this measure is to be modelled. As to the reason for preferring the Revenue Courts, it has been said by an apologist of the Revenue Courts, that these questions are best solved by experts who may be able to arrive at sound conclusions, without being able to give reasons for the conclusion. That, however, is not a reason which ought to find favour with this Council, for ousting the jurisdiction of Civil Courts and transferring it entirely to Revenue Courts. A Revenue Officer does not devote his whole time to judicial work, which is only a part of his numerous functions; whereas a Civil Court is presided over by persons whose whole time is devoted to the investigation of cases and the decision of the rights of the parties and *prima facie* the Civil Courts must necessarily be more competent to deal with matters of this sort than the Revenue Courts. I fail to see in what respect a Revenue Officer is likely to be more competent to deal with these matters. If regard is had to the opportunities which Judges have for judicial training, if regard is had to the opportunities of acquiring habits of investigation and decision and of appreciation of evidence, if regard is had to the fact that Revenue Officers can only devote a small part of their time to judicial work and to the fact that Revenue Officers are often obliged to leave their head-quarters to go about from place to place, the argument seems to me to be entirely in favour of retaining the jurisdiction of the Civil Courts and against the Revenue Courts being invested with it. It has been said that the Revenue Courts are generally admitted to be the best authorities for the settlement of rights. I do not know by whom admitted or where. I dare say it is admitted by the Revenue authorities themselves. I have not heard that Civil Courts are incompetent to deal with these questions. Is there anything so special in the character of these questions that the Civil Court which is accustomed to deal with questions of every sort is not competent to deal with questions affecting the relations between landlords and tenants. Here, My Lord, is a question of policy which may be well borne in mind. If it is a question affecting the interests of the Government and affecting its revenue, I can understand, as a matter of policy, the Government refusing to submit the matter to the jurisdiction of Civil Courts and preferring to submit it only to the decision of its own officers. But my friend the

Hon'ble Mr. Govindaraghava Aiyar said that this was, to some extent, a fiscal matter, but I do not agree with him. Merely because it involves a monetary claim, it does not become a fiscal matter. It is only where Government revenue is concerned, that it could be said to wear a fiscal aspect.

The Hon'ble L. A. GOVINDARAGHAVA AIYAR :—I said that it did not involve any question of a fiscal character. I agree with you.

The Hon'ble P. S. SIVASWAMI AIYAR :—My Lord, if there was really any question of fiscal consideration and if it in any way affected the revenue of Government, I can understand provision being made that questions of this sort should not be submitted to the jurisdiction of the Civil Courts, just as in the Land Encroachment Act that we passed, provision was made for excluding the jurisdiction of Civil Courts. Where it is merely a question of settling the private rights of parties as between a subject and a subject and not as between Government and a subject, there is no reason at all for requiring the submission of the disputes to Revenue Officers. In questions of this sort, I venture to submit that the Government would be acting in a most statesmanlike way by consulting the wishes of the people in whose interests the legislation is undertaken. If zamindars are consulted on the point or if the ryots are consulted, I feel confident that they would all prefer the Civil Courts to the Revenue Courts. If neither the zamindars nor the ryots will prefer Revenue Courts to Civil Courts, one fails to see why the Government should be anxious to entrust these matters to the jurisdiction of Revenue Courts in preference to Civil Courts. In all these cases, any legislation that the Government is pleased to undertake ought to be in accord with the wishes of the people. It may be said that the people do not know their own interests and the Government knows the interests of the people, and therefore notwithstanding the fact that the people, for whose benefit the legislation is undertaken, may desire to go before a particular Court still the Government must choose some other Court for them. That, My Lord, is an argument which ought not to be employed, except on extreme occasions. To suppose that neither zamindars nor ryots understand their interests in a matter of this sort and that the Government has to decide for them which Court is better for them to submit the decision of their disputes to, in the matter of rents, is an extreme exercise of the principle of paternal legislation. Then again there is one other aspect of the question which cannot be altogether ignored. Already the dependence of the land-owning class upon Revenue Officials is well-known and any measure which is calculated to increase the dependence of the land-owning class upon Revenue Officials is, I think, to be deprecated. The provision against which we are contending is if retained likely to increase their dependence to an unwholesome extent, so as to deprive the landlords of all spirit of independence and self-respect. I would also appeal to your Lordship's Government to preserve an attitude of openness of mind on this matter, as upon others. The Bill is published and time is given to the people to express their opinions on it; and I request your Lordship that any representations that may be made by the people may be fully considered and that any conclusions which the Government may arrive at may be arrived at after full consideration of the representations that may be made. My Lord, it would be a matter to be deprecated if this Council were to be regarded merely as a machinery for registering foregone conclusions. That may be unavoidable, when Government is obliged to take up a definite attitude, with regard to its policy, but where the matter is one which concerns private individuals alone, I trust, My Lord, that the Government will always maintain an attitude of openness of mind to the last and that it will endeavour to consult the wishes of those for whose benefit any measure of legislation is undertaken. As regards other matters dealt with by the Bill, I do not propose to take up the time of the Council with any observations. But I have only to state that we have not had sufficient time to study the Bill in all its details and it is not possible for us to offer any valuable criticism on the detailed provisions of the Bill. With these remarks, I beg to support the motion.

The Hon'ble K. VASUDEVA AIYANGAR :—My Lord, in the first place I beg to associate myself with the previous speakers and express my grateful feelings to the Hon'ble Mr. Forbes for the highly interesting and lucid exposition of the principles of the Bill.

There is no enactment which has been considered to be so imperfect and the provisions of which have been interpreted so widely by the Courts as the Rent Recovery Act of 1865. To frame a law embodying the several rights of the parties concerned

has been engaging the anxious attention of the Government for the last so many years and it is a relief to see that the Bill has been placed on the Legislative anvil at last. The third piece of legislation which has for its object the preservation of the landed aristocracy of Southern India would, I believe, to quote your Excellency's own words, improve the general health of the patient who has been cured of a dangerous illness and preserved from falling into a relapse. In doing so the Bill would also go to confirm the ryots in the privileges possessed by them as the ancient cultivators of the soil. Just as in the ryotwari tracts the security, protection and prosperity of the ryots within the zamindaris should equally be the concern of the Government and the Government, having reserved to themselves the right to pass laws for the safeguarding of the rights of the ryots even when the permanent sanad was granted to the zamindars, are in duty bound to undertake this legislation. Having the Bill before us, it is a matter for the Council to consider if the respective rights of the parties have been properly defined therein and whether it will lead to smooth working and restore the harmonious relations of the parties.

It has been contended on the part of the zamindars that the proprietary right in all lands within the estates was vested in them by section II of Regulation XXV of 1802 and the transfer of that right to the tenants would be clearly in contravention of the principles of that grant. On the other side it has been urged that the Government in granting to ancient as well as newly created zamindars the sanad-i-milkiat-istimrar conferred on them no extraordinary rights except such as the Government itself previously exercised, viz., the right of collecting equitable assessment on the lands and that the ryots did not lose their rights in the soil such as heritability, fixity of tenure, alienability and other inherent rights of an owner of the soil. To reconcile these opposite views the Bill carefully avoids entering into the question of the "ownership" and proprietary rights over the soil and proceeds to protect the rights of the landholder and the ryot, the one from being defrauded of his just share of the produce of the land by the ryots and the other from being rackrented by the landholder.

The Bill makes away with the distinction between ancient hereditary cultivators of the soil or their assignees and those who take up waste lands for cultivation purposes at present. To confer on new cultivators whose permanent stay in the village is not certain the same rights as are exercised by the older ryots would lead to difficulties. This would operate against the right of the older ryots to bring the wastes under cultivation. A person may take up lands simply for selling them away after a year or two. It is not clear why the 12 years' rule that prevails in Bengal has been abandoned here. It was introduced in Bengal in 1858 and even after more than a quarter of a century finds its place in the Bengal Tenancy Act and is not even now considered to be unworkable. It is said that this was taken objection to by some of the Non-official Members when a Bill was introduced on the last occasion. As far as I understand the only thing that was said against it was that the landholders might make it unworkable by their action. I may submit that even now the provisions of the Bill may enable a landholder to do the same thing as he is the person that is empowered under clause 12 to confer occupancy rights. Long occupation for 12 years should be a sufficient indication of the ryot's inclination to settle permanently in the village. But the Bill confers occupancy rights on strangers as soon as he begins to cultivate the land. It may be said that he should be admitted to the possession only by the landholder, but it is impossible for a landholder possessing a large estate to be looking after his villages frequently and if a misbehaving karnam connives it would be very easy for the trespasser to successfully dupe the landholder. The latter will find it very difficult to prove that the land was occupied without his knowledge and permission. His difficulties are increased by the provisions of section 60 which obliges him to go to the Divisional officer for the settlement of shist of the land occupied without permission and for ejecting the trespasser. Their rights over waste lands have been further curtailed. Though the Bill allows the landholder to lease out his home farm and private lands he does not seem to have power to lease out even temporarily waste lands. He can either confer occupancy rights or do nothing. Here also no broad principles are laid down to enable the landholder to do so on just and proper lines without leading to the infringement of the rights of the resident ryots. There are large extents of waste lands in the

zamindari tracts which will be available for pasturage only during certain periods of the year and it is not known why the landholder should not be given facilities to arrange his own terms with the tenants. In paragraph 27 of the instructions issued to the Collectors by the Board of Revenue in 1799 as regards the permanent settlements of the zamindaris, it is said that the uncultivated, arable, waste lands should be given in perpetuity to the landholders with such encouragement to them to improve their estate to the utmost of their means. While so, it may not be proper to impose restrictions on his free choice in dealing with these waste lands. The present Act allows the parties to come to an agreement and such contracts are enforceable. But the Bill does not seem to recognize this principle. I am not convinced why it should be presumed that between the landholder and the ryot it is the latter that is at a disadvantage. The ryot in these enlightened days of British Government is not such a helpless creature to be tyrannized over by the zamindar as he is supposed to be, but he is quite capable of asserting his rights. Freedom of contract is one of the very necessary ingredients of property. The Bengal law allows transactions between the parties entered into by contract. Under these circumstances, the best thing would be to continue the power vested in the landholder by section 4, clause 1, of the existing Act and to allow him to make any arrangement he likes as regards the waste lands. It will be proper to have one line of policy for all tracts—whether zamindari or ryotwari.

The Bill provides for the enhancements of shist on account of the rise in the prices of the staple food-crops. This is a departure from the existing state of affairs, and I am afraid this would go to disturb the present equilibrium. When the Government said at the time of the permanent settlement that the limitations of public demand upon the land was obviously the most important and the valuable right that could be conferred on the body of people who were in any respect connected with the cultivation of the land they had in view the interests of the landholders as well as those of the ryots. The peshkash was fixed for ever and as the landholders are not required to pay to the Government any additional sum owing to the increase in the prices of food-grains it may not be just to make the ryots pay more for natural causes even once in fifteen years. The existence of this practice in the ryotwari tracts is no reason why it should be pursued in zamindari tracts as the conditions are quite different. In the former the additional revenue is spent to meet the exigencies of the public, while in the latter it only goes to the purse of a private person. The same may be said of the provision to enable a ryot to have his shist reduced if there should be fall in the prices of food crops. The harassments which the landholders and the ryots would be subjected to once in fifteen years when the assessment has to be varied to suit the fluctuations of prices and the temptations which this would subject the ryots to rise on each and every occasion against the landholders ought to be a sufficient reason against the introduction of this system.

Payment of shist in kind is popular in some localities especially where there are small inamdars. They quietly divide their produce at the harvest season without resorting to the Revenue officers and without going through the elaborate procedure prescribed in the Act for the recovery of arrears. So the commutation of this into money rent may not be considered as an unmixed blessing, but it may be allowed in cases where the landholder and the ryot ask for that. Otherwise one party will take undue advantage of the provisions of the Bill and try to harass the other party. When two persons are parties to a contract it is just that it is broken with their joint consent.

The Bill requires that all enhancements of shist should be made only after instituting suits before the Revenue officer and only for reasons mentioned in clause 22. In my parts assessment is levied according to the nature of the crops raised year after year. I am sure it will not be the intention of the framers of the Bill to interfere with the usage of the country and I beg to submit the point may be made clearer. I am not speaking of improvements to be made hereafter where it may not be reasonable to tax those improvements, unless the landholder has contributed his share; but in cases where it is not known who constructed the well or who made the improvements, and where, however, rent is collected according to the nature of the crops, the existing practice, I beg to submit, need not be disturbed.

The provision as regards the protection of the communal lands is, I believe, in furtherance of the policy of the Government to keep under its control the supervision of these lands. It may be again respectfully submitted that the matter may be left to the landholders and the village ryots who are chiefly interested in their conservancy. Even if it should be considered that the village communities in the ryotwari tracts have lost their rights, the landholders at least who acquired all rights which the Government were supposed to possess at the time of the permanent settlement ought to be allowed to regulate their use. Of course the aggrieved party will adjust his right in courts of law. On more than one occasion when this question was mooted the Government have resolved not to levy any claim on this class of lands. Moreover many of the estates are not surveyed and even the limits are not marked out. In these cases it would lead to the infringement of private rights and to interminable litigation to determine what are communal lands. I know that the ryots in the zamindari tracts occupy a lot of waste lands and under the plea that they are required for grazing purposes absolutely refuse to pay any rent for them to the zamindars.

Much has been said on the question of the taking out of the Civil Courts all jurisdiction over rent suits and connected questions. The consensus of opinion is that the existing state of affairs should continue and it will be a mistake to take it away from the Civil Courts and transfer it to the Revenue Courts. According to the provisions of the Bill, there is a right of appeal to the Board in certain cases and in other cases the District Collectors and even the Revenue Divisional Collectors are constituted as the final authorities. In some cases, no doubt, such as the disposal of shist deposit, the tender of patta, cancellation of the sale of the ryots' holdings, restoration or sale of distrained property and putting the purchaser in possession of property, the Collector's order may be final. But in other more important matters the party should have the right of appeal to the District Court and eventually to the High Court. People have the highest respect and confidence in these Judicial tribunals and I may submit to your Excellency that the country would consider it a great misfortune if they are to be deprived of the protection afforded to them by the establishment of these courts. The popularity of the Judicial system was noticed even soon after its introduction in the early part of the last century by that great statesman Sir Thomas Munro who said that these "Courts were giving to the natives a greater degree of protection and security in their persons and property than they had enjoyed before." In the Bengal Act the whole jurisdiction in rent suits and connected matters is vested in the Civil Courts and even this Government are reported to have adhered to the desirability of continuing this practice on more than one occasion.

Going to the other provisions of the Bill there is a provision to compel the landholder to keep the irrigation works in proper order and also enable the ryots to make repairs and be compensated for improvements. This is no doubt a very good thing.

Power is taken by the Government to authorize a special Revenue officer to settle shists as regards the whole estate (clause 137) and then to reduce shists on the ground that it may be sometimes necessary to have recourse to this power during times of disturbances brought about by widespread rackrenting. I must submit that this has created some alarm in the minds of landholders in that it will put a premium on the raking up of questions which have been set at rest and lead to the unnecessary harassment of the landholders.

The shist has been made the first charge on the ryot's holding, but this is qualified by the provision that the claims of the Government should have greater preference. I don't know why in zamindari tracts the Government should have greater claims over the ryot's holdings than are possessed by other private persons especially to the extent of obliging the landlord to lose his rent on the land.

In making a record of the landholder's private lands clause 146 takes notice of only such lands as have been cultivated by the landholders for twelve years continuously. The lands which have been purchased from the ryots for arrears of shist, the waste lands which have been used by him as pasturage for his own cattle, lands which lapse to the landholder and those which he has acquired for his own

purposes should also be declared to be his own private property. Other wholesome provisions such as the enforceability of a patta even though it is substantially correct, notice of the transfer and division of holdings by the ryots to the landholder, the suspension of the collection of shist during famine times, have been introduced and it remains to the Select Committee to exercise due care and precaution in re-drafting the Bill and give to the public a law which would allow the parties to work with the minimum amount of friction, as the interests of a vast number of cultivators and proprietors are involved in this question, where the points to be determined are so very conflicting.

The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR:—Your Excellency, the reform of the rent law and legislative determination and adjustment of the relations

4-50 P.M.

between the landlord and the tenant have been under the consideration of the Government for a long time. The Act VIII of 1865 which purports to regulate these important matters is nothing more than a processual enactment and has been found to be materially defective in more than one important particular. Its failure to place the rights of the ryots and zamindars on a well understood basis, its insistence on the compulsory exchange of pattas and muchalkas as a condition precedent to the recovery of rent, its omission to secure the rent as a first charge on the land, these amongst others have contributed much in recent years to promote disputes between landlords and tenants and embitter their relations. The Act itself is so loosely and carelessly drawn up that the late Mr. Justice Holloway once declared judicially that he did not in the least understand its provisions. That there is necessity for further legislation in this direction has been affirmed by all the Revenue and Judicial officers of this Presidency who have had occasion to work the Act. The first attempt at reform was made by the late Hon'ble Mr. D. F. Carmichael in 1884. Again in 1887 a draft Bill was circulated among the leading officials and zamindars with the result that it was pronounced by the Board of Revenue in 1892 as being unsuited to the requirements of this Presidency, being wholly based on the Bengal Tenancy Act, as failing to hold the scales evenly between landlords and tenants by placing the zamindari tenants in a better position than Government ryots in cases where irrigation works are not kept in order, and as being calculated to set class against class, to stir up animosities and foster litigation. In 1896 a redraft of the Madras Tenancy Bill was prepared and circulated for opinion. This redraft underwent a further process of refining and ultimately emerged as Mr. Ross's draft Tenancy Bill. When the Government referred this draft Bill to the Board of Revenue for the favour of "very early" remarks, the latter remarked "to enable the Board to do this, the opinions of Collectors, Divisional officers and other experienced officials would require to be placed before it. And even more indispensable than these would be the views of those who are affected by the proposed legislation. The Board would suggest that the Bill should be widely circulated in original, as well as in translation, by zamindari Deputy Tahsildars and others, among landlords and tenants with the intimation that petitions and other representations on the subject will receive consideration. The changes proposed in the Bill are far-reaching, and it is hardly possible even for the best informed Revenue officials to foresee with certainty how they will work without the assistance last indicated. They are of an intensively grave character in more than one particular. The danger of embittering relations which it is the object of the Government to improve, and of inducing a flood of ruinous litigation cannot be lightly contemplated. These and similar considerations appear to the Board to call for the exhibition of the most extreme caution on the part of Legislature." This draft shared the same fate as its predecessors, though it advanced to the state of being subjected to an elaborate discussion in the Legislative Council. Then came the Land Bill of 1900 which was also shelved, owing, as I understand, to the diversity of opinions presented to the Government from many quarters, official and non-official. These abortive attempts at legislation prove the extreme difficulty and delicacy of the task on which we are embarking, and caution us against any revolutionary measures dictated by fantastic ideas of justice and fiscal theories in advance of the sentiments of the people, and inconsistent with their traditional customs and practices. The Bill which is now before us is more or less modelled on the lines of its predecessors and seems to share to a large extent the defects which led to their condemnation and abandonment.

Fixity of tenure, freedom of sale and fairness of rent—these are the three fundamental ideas that stand prominently before us in this Bill. They are evidently intended to safeguard the interests of the cultivators of the soil and protect them from the inroads of the zamindar. The Bill proposes to give to the ryot fixity of tenure by recognizing his occupancy right, freedom of sale of his tenure, by recognizing its transferability by private sale, gift or otherwise, and to secure him fair rent under the rules prescribed. These objects are indeed benevolent and all right-minded men cannot but sympathise with them. I do not think that these objects are in any way incompatible with a just regard to the interests of the zamindar. But how does the Government propose to attain these objects? There is an assumption pervading the Bill all through that the interests of the zamindars and those of the tenants are antagonistic, that the zamindar is ever bent upon encroaching upon the rights of tenants and that unless the rights of the tenants are buttressed by all the safeguards which the legislature can devise they will be annihilated by the insatiable ambition and cruel exactions of the zamindar. It is very much to be regretted that this feeling of distrust is unjustly entertained towards the zamindars as a class, leading to the gradual curtailment of their rights and privileges. So far as my experience goes the ryot looks upon the zamindar as his patron and entertains a kind of traditional respect and reverence towards him, while the zamindar in his turn reciprocates this feeling by thousand and one acts of sympathy and goodwill which contribute to the prosperity and contentment of the tenant though the outside world may not have occasions to know them. I am sorry to observe that most of the provisions of this Bill are calculated to mar this harmony of feeling between the zamindar and the tenants and create a spirit of estrangement and distrust between them.

The right of occupancy.—The declaration that stands at the forefront of this Bill, namely, that every cultivator who is admitted by the landholder to the cultivation of estate land (not being private domain or home-farm land) has, as a matter of personal heritable status, the right of occupancy, is too sweeping and almost amounts to a confiscation of the rights which have been solemnly conferred on the zamindars at the time of permanent settlement which they have enjoyed without interruption since then. The Legislature undoubtedly possesses the power of enacting laws for the protection and welfare of the ryots, but this does not imply that it should deprive the landholders of their rights vested in them by Regulation XXV of 1802. The Regulation described the zamindars as the “proprietors of land” and their right “proprietary right of land” or “proprietary right of the soil.” Whatever may be the interpretation which the opponents of permanent settlement may be disposed to put on these expressions, there can be no manner of doubt that they were meant by those who originally used these terms as something more than a mere right to receive rent and let the land. In the great rent case where status of the zamindars under the regulations was discussed by the Full Bench of the High Court of Calcutta, Sir Barnes Peacock, one of the highest judicial authorities in the land, held that under the permanent settlement, the zamindar became the proprietor of the soil, while the status of the ryot since that settlement has depended upon contract. This view of the proprietor's rights was also maintained by so great an authority as Lord Lyndhurst in the well-known case of *Freeman v. Fairlie* (1 Moore's Indian Appeals, page 348) in which it was held, though incidentally, that the zamindars had an absolute dominion and ownership of the soil subject only to tribute fixed and permanent. I know that this view has almost become discredited on the alleged grounds that the land tenure in India materially differs from that of England, that the zamindars are merely farmers of revenue and that they are not by the customary law of this country entitled as such to the proprietary right in the soil; and I shall not press it further in this discussion, though I am personally convinced of the truth and justice of the contention about the zamindars' absolute ownership in the soil. I shall address myself to another aspect of the question which equally militates against the theory of occupancy right put forward in this Bill. In 1832, Lord William Bentinck remarked:—“It should always be borne in mind that though there may be cultivators who have proprietary right or rights of occupancy, it does not follow that all the cultivators have such rights. The greatest care should be taken to avoid confounding the mere agricultural labourer (or individual who, having settled in the village as a stranger many years ago, has ever since continued to cultivate at the discretion of the zamindar) with the hereditary ryot whose ancestors perhaps first broke up the

soil and paid the revenue or rent on the land direct to the servants of the State.” I regret to observe that sufficient care has not been taken in this Bill to avoid the confusion between the agricultural labourer and the hereditary ryot. This distinction is fundamental and appears in the land system of every province of India. The common law of this country recognises, under the different names of *Khudkash* and *Pyekhash*, *Thani* and *Pahi*, *Kadim* and *Pajakart*, *Mirasidar* and *Olcoody* and *Paracoody*, etc., three classes of cultivators, claiming an interest in the soil of the village, with different rights and privileges, namely, the original settlers and their descendants; the immigrants who had permanently settled in the village; and lastly the mere sojourners or those who, without living in the village, cultivate lands of the village. These distinctions have also been recognised in the legislative enactments in other provinces of India relating to tenancy. I see no justification for their being so summarily dispensed with in this Presidency.

It has been recognised for a long time that it was a part of the solemn contract entered into between the Government and the zamindars at the time of the permanent settlement that the latter should not only be exempted from payment of revenue for lands which were waste at the time of permanent settlement but which might be subsequently taken into cultivation but should also be given full and absolute discretionary powers as to the mode of dealing with such lands. The exclusive advantages resulting from the improvements of all such lands were again guaranteed to the proprietors by clause (iv), section 11 of Act VIII of 1865, which distinctly laid down, “that in the case of immemorial waste lands and of lands left unoccupied either through default or voluntary resignation, it shall be lawful for landholders to arrange their own terms of rent, provided that nothing herein contained shall be held to affect any special rights which by law or usage having the force of law are held by any class or person in such waste or unoccupied lands.” The Select Committee that sat to consider the Rent Recovery Bill of 1865 observed that, while it was essential to protect the rights of old tenants, it will injure the due rights of the landholder and oppose the advancement of the country to declare that he cannot let out unoccupied land to the best advantage. In accordance with this undisputed and recognised title to the free and unfettered disposal of waste lands, the zamindars have from time to time leased out these lands to cultivators arranging their own terms as to period of occupation and rent. The tenants thus admitted, whose number in the zamindari tracts is by no means small, have always been regarded as tenants-at-will. Hence we have throughout the zamindaris two classes of tenants, the occupancy tenants and the tenants-at-will, the former having the right to hold their lands so long as they pay the rent fixed by authority, either statutory or customary, and to pass them on to their descendants on the same terms, and the latter holding generally from year to year and having their rents determined by agreements between themselves and their landholders. Now this Bill seeks to abolish this distinction and confer the right of occupancy and the rights incidental thereto, on all tenants alike. This is a gross piece of injustice to the zamindars and subversive of his palpable legal rights. The Hon'ble Mr. Justice Shephard, the late officiating Chief Justice of Madras, in commenting on the Tenancy Bill of 1893 forwarded to him for opinion remarked:—“Without any existing statute upon which to work, it is proposed to bring into existence new rules of substantive law to abrogate contracts which have been made upon the footing of the case-law promulgated in the last thirty years, and to confound the two classes of occupants who in justice to the ancient ryot on the one hand and to the zamindar on the other, ought to be distinguished.” The two classes of ryots referred to by the learned Chief Justice are the ryots whose rights in the zamindari may have existed before the zamindari was created, and the ryots who have been subsequently admitted as tenants. In the one case the ryot holds the land independently of the zamindar; in the other he holds it under a contract with the zamindar. In the zeal for establishing an ideal tenure of lands, can contractual rights and obligations be superseded? As His Lordship further remarked:—“In a given zamindari there may be ryots who, though they may have held for several years, are not, and have never expected to be more than lessees, and in no way derived their titles from antecedent hereditary ryots; they may be holders of land which, between 1865 and 1871, or even prior thereto, was held tenants-at-will. On the other hand, there may be ryots who, while in fact the legal successors of ancient ryots, have been induced in recent years to accept a position of tenants-at-will.” While the latter class of tenants may and perhaps does require legislation to save them, can it with any justice be maintained that the former also ought by a stroke of the legislature pen to be invested with rights in the soil? The late

officiating Chief Justice suggested a judicial enquiry in areas to be specified by the Governor in Council where it is believed there has been an encroachment on the rights of hereditary ryots in order to ascertain with regard to existing occupants whether their title rests exclusively on contract or can be traced to predecessors who held as hereditary ryots before 1871, in view to cancel in the latter case any contract to the contrary. It is only just and equitable that an enquiry of the kind proposed should precede any general declaration of occupancy rights. If this cannot be done, the existing state of things should be left untouched, leaving each disputed case of occupancy right to be determined on its own merits in a Court of Law. Even the decisions in 20 Madras and 23 Madras cited in the statement of objects and reasons appended to the draft Bill under discussion do not warrant the general declaration of occupancy right proposed therein. They only lay down the proposition that every ryot may be presumed to be entitled to the right of occupancy in his holding, in the absence of proof of contract or of special or local usages to the contrary and do not declare any absolute rule applicable to all classes of ryots. All that the requirements of justice and long established usage demand of legislature at the present time is a declaration of the proprietary right of the hereditary ryot and a provision throwing on the zamindar the burden of proving that the holding of any tenant owes its origin or its incidents to contract or custom.

There is another important consideration to which I wish to draw the attention of the Council in this connection. It is well known that the country round Madras known as the jaghir was, prior to its settlement in 1802, distinctively mirasi in regard to its land tenure. The villages in the jaghir were corporate bodies with an internal constitution and with the land the property of the corporation. The lands were sub-divided into shares which were saleable and possessed all the value of real property. In each village there were besides the corporate members or mirasidars, cultivators resident in the village known as Ulkudis (உலகூடிகள்) holding as tenants of the corporation. Again there was a third class known as Porakudis cultivating from year to year without any privileges whatever. The distinction between the mirasidar and the tenant consisted in the fact that the latter could not sell his rights of occupancy nor enjoy any of the various immunities and advantages belonging to the former as a member of the corporation. Mirasidars were regarded as absolute proprietors of land, waste as well as cultivated, in the English sense of the term, and continued as such for a long time. When jaghir lands were parcelled out into estates of convenient size and were sold as muttas or perpetually settled revenue farms to the highest bidder, most of the muttas were purchased by mirasidars. Now the question is whether the mirasidars who became zamindars under the Regulation XXV of 1802 have forfeited the rights which they enjoyed prior to permanent settlement. It cannot be contended that the permanent settlement, which purports to confer new rights and privileges on individuals who became zamindars, has taken away the pre-existing right of the mirasidars by reason of their having become zamindars. Even the presumption of occupancy right in favour of the ryot cannot therefore be raised in case of the tenants of mirasi villages, the proprietors of which were the sole mirasidars of such villages either by inheritance or purchase.

Incidents of occupancy right.—I now propose to discuss the rights and privileges which are sought to be conferred on the ryots by this Bill as incidental to the right of occupancy which are as follows :—

- (1) the right of alienation,
- (2) the right to trees standing on the holding,
- (3) the right to make improvements on the land,
- (4) the right to a patta or written agreement as a pre-requisite to the recovery of shist,
- (5) the right to oppose the enhancement and the right to claim reduction and commutation of shist,
- (6) the right to demand receipt for the shist paid,
- (7) the right to the exclusive possession of the crop where shist is taken by the division of produce,
- (8) the right to the possession of distrained produce,
- (9) the right to the demand of repairs to irrigation works, and
- lastly (10) the right to demand survey, record of rights and settlement of shist.

(1) *The right of alienation.*—Taking the first mentioned right which is sought to be conferred under clause 16 of the Bill, I observe that the right of the transfer is restricted by local custom of the village. This is as it should be, for, as the Famine Commission remarked :—“ Though on the whole we regard the general concession of the power of sale of these rights to be expedient, and ultimately almost unavoidable, the immediate course to be followed by the Government must be no doubt to a great extent governed by local custom; where the custom has grown up and the tenants are in the habit of selling or mortgaging their rights in land, it should certainly be recognised by the law, and where it has not, it may be questioned whether the law should move in advance of the wishes and feelings of the people.” This limitation, however, does not sufficiently protect the ryot against the evil consequences of what the report of Famine Commission of 1877 characterises as the “ fatal gift of transferable right in the soil.” There can be no doubt that if the occupancy right becomes a marketable property, the ryot will be tempted to borrow on the strength of it and will so be led into debt with the result that it will ultimately pass into the hands of money-lenders. I think it necessary that some provision should be made to guard against this admitted evil.

(2) *The right to trees.*—The right to trees which the Bill proposes to confer on the ryot is too general and is not quite in harmony with the practice that has been long in vogue in several parts of this country. In most of the sea coast villages from the time a ryot plants trees, land revenue ceases and tree-tax commences. There are innumerable instances where the ryots grow fruit trees and topes on their patta lands. The terms on which the ryots are allowed to plant trees are liberal in consideration of the tree-tax to be imposed. From the time the ryot plants trees on his patta lands the land revenue ceases and he is allowed to enjoy the land free of any assessment till the trees begin to yield produce. When the trees yield produce, then only he begins to pay the tree-tax. The land revenue which he used to pay according to the crops raised is converted into tree-tax. The ryots get kudivaram right in all the trees planted and reared by him as well as the occupancy right in the lands on which they stand except in the trees like palmyra to whose growth he has not contributed in any way. These belong exclusively to the zamindar and the ryot has no manner of right in them. This practice has also been recognised by Law Courts. This will show that there is a well-understood and long-established usage under which to certain kinds of trees, whether assigned to another or not, and irrespective of the circumstance that they have grown after the ryot has entered upon the land, the ryot has no right whatever. I submit, therefore, that the right to the trees should always be made dependent on any contract or special or local custom. This will be in accordance with the decision in 26 Madras, page 282 (*Narayana Iyengar v. Orr*).

(3) *The right to make improvements.*—This right interferes with the immemorial customary right of the zamindar to levy assessment according to the nature of the crops. Crops like tobacco, plantain, chilly, though raised under wells constructed by the ryots, on account of the high market value of the produce, used to yield larger revenue than the cultivation of the other crops. The ryots have never found it to be a hardship till now. The revenue in such cases is equitable and self-adjusting. By making the right to make improvements absolute on the ryot, the landholder will be deprived of his right to the higher rate of rent chargeable on crops of higher value to which he was hitherto entitled according to the custom and usage. I would, therefore, submit that the qualification “ notwithstanding any usage to the contrary ” in clause 6 should be replaced by the qualification “ in the absence of any usage having the force of law to the contrary.” In regard to the improvements generally the proprietor must be given the power of vetoing the construction of anything in a holding which would diminish its productiveness and letting value.

The construction of tanks, water channels and other works for the supply, storage or distribution of water for the purpose of agriculture, etc., by the ryot without the consent or permission of the proprietor may lead to great injury and loss to the property, to the diminution of its letting value and productiveness. Unlimited freedom on the part of the ryot in the construction of tanks and channels would interfere with the supply of water to and the distribution of water from the existing works; this freedom is liable to abuse by the ryot to the injury of the proprietor in three ways :—

- (a) The ryot may obstruct the water-supply to the existing irrigation works and convert the punjah lands higher up the water-spread into nanjah by levelling aridging up the land, and thus evade the payment of enhanced revenue.

(b) The ryot, with the help of moisture and dampness due to the adjacency of wet lands, may with a little supply of extra water stored by constructing a tank over his punjah lands, under the provision of the Bill, be enabled to convert punjah lands into nanjah lands and evade the payment of wet assessment.

(c) The ryot may construct his own tank on his punjah by which he might altogether dispense with the supply from the proprietor's irrigation works constructed at great cost and thus claim exemption from nanjah revenue for the lands which have all along been under nanjah ayakat.

The distribution of water for purposes of irrigation should rest with the proprietor only. Otherwise it would result in diversion of water to the injury of other irrigation lands. By this provision a ryot whose holding is higher up and nearer to an irrigation channel will be enabled to construct his supply channel in such a way as to interfere with the supply of the fields lower down which are equally entitled to the supply of water from the same channel. In times of scarcity of water this provision would enable the ryot to deepen the channel within his holding in such a way as to cause percolation to the injury of other nanjah lands and thus divert the legitimate supply to other holdings entitled to equal distribution.

(4) *The right to the patta.*—The compulsory exchange of patta and muchalka every year has been found to cause unnecessary hardship and expense to the landlords without any corresponding advantage to the tenants; it has been the source of innumerable vexatious suits causing enormous trouble and expense to the parties and waste of time of courts. Under the Bengal Tenancy Act neither the previous exchange of pattas and muchalkas nor the previous tender of patta is a condition precedent for the recovery of rent; even the Madras Government has practically dispensed with them with regard to their own ryots.

The sooner the inordinate importance attached to the exchange of patta and muchalka is done away with the better. Pattas and muchalkas do not generally create fresh legal obligations. They are in most cases documents affirming a pre-existing contract, with annually repeating terms concerning a tenancy. There have been a number of estates in the Presidency where the system of exchange of patta and muchalka was introduced only quite recently. In such places for generations the collection had been going on without the formality of exchange. The present Rent Recovery Act VIII of 1865 contains a provision in section 7 by which the exchange might be dispensed with with the consent of both the landholder and the ryot and this provision is dispensed with in the present Bill. When a contract is complete and when the occupancy of the tenant is in consequence of a pre-existing contract and its terms are admitted, to make the recovery of rent depend compulsorily upon the exchange is needless and vexatious. Pattas will vary but little from year to year and a provision that a patta once accepted should hold good between the same parties till there is a change in the terms of the contract would save much trouble and annoyance. The Hon'ble Mr. Justice Shephard in his able minute on the Tenancy Bill already referred to remarks:—“While I think that a mistake has been made in adopting much from the Bengal Act, I also think it is unfortunate that some of the provisions of the Madras Act have been allowed to stand, and that in some respects the Bengal Act has not been more closely followed. I refer particularly to the provisions regarding the exchange of pattas and muchalkas. The suits relating thereto have always seemed to me exceedingly unsatisfactory. There is no finality about the decision when it is obtained, because it relates to one fasli only, and years may elapse before the decision of the High Court is given.”

This valuable opinion the result, doubtless, of vast judicial experience, will, I hope, carry much weight in this matter and influence the legislative body to dispense with the necessity for exchanging pattas and muchalkas every year, except in cases where certain material terms are sought to be altered. This will save the zamindar from the difficult and tedious task of tendering thousands of pattas each year on unwilling tenants who refuse to accept them, simply to avoid distraint of their property and to delay payment of rent for a long time, though the terms inserted in them are the same as those the propriety of which they were admitting for a number of years before. An attempt is no doubt made in clause 56 to do away with the system of yearly tender of pattas and muchalkas by providing that they may be exchanged for a period of one year or more, but owing to the proviso in the last part of the clause that no landholder shall be bound to tender and no ryot to accept a patta for a period of more than one year, it is not likely that the attempt will be successful.

(5) *Enhancement, commutation and reduction of shist.*—According to the provisions of the Bill, the landholder is required to file a suit against the tenant before the Collector in each instance of enhancement. This means enormous litigation. It is desirable to have a settled and definite scale regarding the enhancement and to provide for a revision of the assessment of rent once in thirty years as in Government villages where fixed money rent prevails. It should be optional with the landholder to institute a suit for enhancement before the Collector, or to make an enhancement himself, according to definite rules as in the case of revenue settlement in the ryotwari tracts. Periodical revision of assessment is just and equitable inasmuch as prices and facilities of communication vary. I may point out that the Bengal Tenancy Act section 29 provides for the enhancement by contract under certain limitation.

The clause 28 of the Bill reserves to the Collector the power to order progressive enhancement when the enforcement of the enhancement decree in its full extent will be attended with hardship to the ryot. I fail to understand the expression “hardship to the tenant” here, in the face of several provisions made in the Bill in sub-clauses (1), (2), (3), (4) of clause 24 to safeguard the interests of the ryot. Let us take a probable case. A new tank has been constructed by a landlord. The fresh facilities for irrigation lead to the conversion of all the dry lands by its side into wet lands. The ryots effect the conversion. This may entail outlays of money which they may have to borrow. But the increased yield and the value of the produce enable them to pay off the debt within a stipulated time. When once they have paid their debts the entire share of their produce is their's. Under these circumstances why should the landlord be deprived of any portion of the enhancement for any year or years by the gradual scale which is provided for the Collector's consideration under this clause? In the absence of any necessity for it, it goes without saying that the scale ought to be dispensed with altogether. The Bill contemplates the law that is to prevail between landlord and tenant without prejudice to either. This consideration of a hard case in respect to the tenant will certainly make bad law for the landlord. Prior to the enactment of Madras Act VIII of 1865 cases calling for the gradual scale of enhancement were not known. If they had existed, certainly, section 11 of the Act would have provided for them. The absence of any provision to this effect in that enactment and history of enhancement of rent under the first proviso to clause (iv) of section 11 of Madras Act VIII of 1865 as portrayed in the rulings on the subject in the Law Reports, and as otherwise known from actual experience by landlords, does not point to any cases in which gradual scale like this was found necessary in the period that has intervened between the passing of the above Act in 1865 and the date of the present Bill. So when no special cases have been brought to its notice, the legislature will be simply providing for a hypothetical case of little or no practical value by vesting in the Collector a discretion which may be exercised to the prejudice of the landholder.

It is not quite apparent why the enhancement should only be in the rates of two-thirds of the rise in prices as provided in clause 23, sub-clause (b). If the previous rent was a fair one at the time it was fixed (as must be presumed), all reasonable allowances were made and there is no reason for making a further reduction.

It will be admitted on all sides that the claim to enhancement will be indisputable in the following cases:—

(1) When the Government makes on the zamindar a demand for water-rate for water taken by the ryots from Government canals and works.

(2) When improvements are made by the zamindar by which irrigation facilities are secured to the ryots.

In the first case the additional rent the ryot has to pay will be in a definite proportion to the total Government demand. And in the second case a decision as to the rate of enhancement has to be arrived at by an umpire. In these two cases for obvious reasons settlement cannot be put off, and enhancement must be resorted to as occasion arises. But in regard to other two grounds of enhancement, such as rise in prices and increase in the productive powers of the soil by fluvial action, I would submit that all claims to enhancement ought to be considered once in fifteen years by a special officer deputed to decide such claims. Otherwise there will be room for

constant and endless litigation. Likewise claims to reduction of shist which are based on the grounds that the soil of the holding has become permanently deteriorated and that the prices of staple food crops have fallen may for like reasons be left to the decision of special officer once in fifteen years.

In regard to the reduction of rent, I would adopt the suggestion made by the late Diwan Bahadur Srinivasa Raghava Aiyangar, page 244 of his famous memorandum. He says:—

“As regards the rents, though these have been pushed up in the Northern Circars so as to absorb nearly the whole of the increase in the value of the ryot's share of the produce that has resulted from the general progress of the country in recent years, still a sudden reduction of them would cause a hardship to the zamindars. Existing rents must, therefore, be recognised and efforts of legislation directed towards securing to the ryot the enjoyment of any increase in the value of his produce which may accrue to him in the future.”

One of the grounds of reduction provided in clause 30 is that the shist has been unduly raised after 1st May 1871 and before the commencement of this Act. It is certain that periodical settlements must have been made by the zamindars as occasions arose, since and before 1871, with their tenants for payment of rent for the lands in their possession; and the rate now prevailing has been in most cases subjected to arbitration before the summary Court and eventually the District and High Courts too on appeal. Here the tenants and the zamindars must have been given ample opportunities to have their say regarding the rate of rent; and a definite conclusion arrived at about the present rate. Such being the case it is not clear why the existing state of affairs which has been brought about after a protracted litigation be disturbed now, and the landlords and the tenants be asked to rake up their old sores and go to litigation again on a once settled question, which would involve them in a hopeless ruin. It is not charitable that they should be asked to go for evidence, both oral and recorded that existed prior to May 1871, i.e., 34 years from this date, seeing that it is very likely that these records might have all been destroyed as no longer required after a decision of the case by competent Court.

The Legislature seems to be under the impression that since the well known decision in the Chokkalingam Pillai's case in 1871, there has been undue enhancement of land revenue by zamindars. There are two reasons against this assumption. In the first place there are sufficient safeguards provided in clause (iv) of section 11 of Act VIII of 1865 against unauthorised enhancement of land revenue except in due course of law. Secondly, the rates of rent and the paying capacity of the tenant adjust themselves. There have been instances of reduction of the usual rate of shist to meet the paying capacity of the tenant. Most of the enhancements since 1871 were due to the rise in prices, the increased competition for land and other legitimate causes. Any arbitrary reduction on the ground that there have been undue enhancements since 1871 will inflict hardship not only on the hereditary landholders but also on those who purchased estates at high prices on the basis of their existing rental values.

The claim for reduction on the ground of complete failure of irrigation resources on which the land is dependent should on no account be allowed, seeing that the ryot has the right to claim repairs to irrigation works at any time he likes. It is laid down in clause 26 (a) that any cause which is temporary or casual should not be taken into account in cases of enhancement. A similar restriction should, I think, be placed in regard to reduction also. As the failure of irrigation source is only a temporary cause that could be rectified by the ryot at any time on an application to the Collector under chapter VIII, I see no reason why reduction should be allowed on this ground. In this connection I beg to point out that nowhere in the Bill has it been expressly stated whether, in the event of the irrigation works being subsequently restored, it is necessary for the landholder to bring a suit for enhancement of rent or whether he can at once revert to the rate of rent previously in force.

In regard to the provisions for the commutation of shist, I beg leave to enter my emphatic protest against them in the interests both of the landholder and of the ryot. The provision “either the proprietor or the ryot may apply to the Collector to

have the shist commuted to a money-rent” will lead to compulsory commutation of waram into money payment at the instance of the ryot. The commutation should always be made with the consent of both parties; otherwise either the tenant or the landlord might work to the prejudice of the other through the Collector. It should be noted that the payment of the rent in kind is not without its great advantages. In zamindaris, where the crops are shared, grain is largely stored, and generally payments are made to servants in kind; and this mode of payment has been found to be convenient and advantageous from long experience. Grain seeds are generally advanced from the zamindar's granaries to the tenants during the cultivating seasons and they are returned in kind at the harvesting season. Any change therefore in the system would work prejudicially to the interests of both. By the compulsory commutation of rent, this system of disbursement will be revolutionised to the great disadvantage of zamindars. Besides these zamindaris are like so many granaries, which have a beneficial influence in times of scarcity and distress. In the long run the ryots themselves would find that the sharing system is better than the cash system. Under the former system he would be required to pay the rent only when there are crops and when there are no crops, he will have nothing to pay. This system would give an automatic relief for the ryots in case of failure of crops. When the rent is commuted, it would be according to the law of average over good and bad seasons and the commuted money payment shall have to be made good in times of distress and famine. Seeing that the system of payment in kind is in consonance with immemorial custom and that it acts automatically as a sliding scale of charge giving protection to the tenants in times of distress, and seeing that under it the cultivator is not driven to the money-lender for cash, I would strongly urge that the commutation provisions of the Bill should be altogether done away with.

(6) *The right to demand receipts.*—In regard to the right of the ryot to demand receipt for shist paid, I beg to give my hearty support to the provisions of the Bill pertaining thereto.

(7) *Exclusive possession of crop where shist is taken by division of produce.*—With the commencement of the harvest commence the difficulties of the landlord in safeguarding his share, specially in those cases where there has been misunderstanding between the landholder and the ryot. If the ryot is left in sole charge of the produce fortified by such provision as is contemplated in the words “without any interference on the part of the landlord” in clause 49 of the Bill, his ways and means of circumventing the landholder or his agent would be many. These need not be described in detail here. Landholders and the officers of the Revenue department to whom they have often complained in the matter know them well throughout the Presidency wherever the waram or sharing system prevails.

Although provision has been made in sub-clause (4) of clause 49 to protect the interests of the landholder, and although it is declared therein that in cases of clandestine removal of crop by the tenant before division, the produce may be deemed to have been as full as the fullest crop of the same description of land in the neighbourhood, it will not be possible to ascertain what such fullest crop is when the ryots of the village combine against the landlord, which is not an unusual circumstance.

(8) *Exclusive possession of distrained crops.*—Allowing the defaulter to reap and store the distrained produce as provided in clause 68 is objectionable. It will lead to endless disputes between him and the distrainer who is required to be in charge of the distrained produce under sub-clause 3 of clause 68 and is subject to liability for loss of or injury to it under clause 73. In large estates there may be many cases of distraint of produce simultaneously; and it will be difficult, nay, impossible to watch the work of each separate defaulter in reaping and storing the produce. Though the defaulter may not safely be entrusted with the exclusive possession of distrained crop, he may be permitted to water and preserve the crops under distraint.

While fully realising the value of the right of private distraint accorded in the Bill, I think it desirable that the landholders be accorded also the right of distraint through the Court in special cases. This procedure is adopted in Bengal (Bengal Tenancy Act, section 121) and there seems no valid reason why the same privilege should not be accorded to proprietors in this Presidency. There are many cases in which the right of private distraint will be useless or its exercise dangerous. When

a whole village combines to be obstructive or when the police are unfriendly to the landholder, he will shrink from using the weapon which the law has placed in his hands. He will then be compelled to have recourse to the Court, to file a suit, and recover his dues by attachment and sale in execution of the decree. This alternative will on the one hand press heavily on the landholder by involving him in great delay in the recovery of his dues; while on the other hand it will press heavily on the tenant by enormously increasing the costs and interest.

(9) *The right to demand repairs.*—The provisions as to repairs in sections 109 to 116 of the Bill are highly prejudicial to the landholder. The tenant may make his application direct to the Collector and need not previously apply, or even give notice, to the landholder. The slightest want of repair would apparently justify the tenant's application, and it is not even necessary to prove that the necessary supply of water is not forthcoming. During the rainy season the bund of every tank is more or less damaged, and small quantities of sand or mud are brought into its bed by the supply channels. The tenants under every tank will therefore be in a position to apply for the Collector's order for repair; and the landlord's net income may prove insufficient for the repair of all the tanks in his estate. The tenant should be called on to show that his usual cultivation has been prevented or impeded by the landlord's neglect, before being armed with compulsory powers. Government may, perhaps, realise the difficulties of the position of the zamindar by considering its own case. If zamindari tenants are armed with this power and the result is as intended that all zamindari tanks are put in repair, Government will not be able to resist the appeals of its own tenants to put Government tanks in repair. It is not too much to say that the staff of the Public Works Department will have to be doubled or trebled to enable the work to be carried promptly and effectively. I would suggest therefore that in the matter of these repairs the financial position of the estate is taken into consideration and that the zamindar is not compelled in any case to spend on the repairs of irrigation works more than 5 per cent. of his average gross rental, so that he may not be driven to the usurers to satisfy the demands of the ryots or the decrees of the Collector.

(10) *Survey and record of rights.*—In connection with chapter XIII which provides for the making of a survey and record of rights, etc., I beg to observe that the provision in clause 136 for a settlement of shist in certain cases is not required and uncalled for. The existing rights and rates of rent ought to be ascertained and recorded against each land or holding. If the rights and rates of rent are not ascertainable with regard to any piece of land or holding, the officer preparing the record must so state against such holding, and leave the question to be decided peacefully between the parties or to the adjudication by Courts. There seems to be no necessity for hurried interference of Special Officers in the matter of settlements of shist.

As to the provision in sub-clause 1 (c) of clause 136 for the settlement of a fair and equitable shist when it is admittedly payable, but a dispute arises as to the amount or rate, it must be made subject to the limitation as to the waram rate recognised in clause (iii) of section 11 of the Rent Recovery Act. The question of a fair and equitable rent should in no case be raised, when there is an accepted waram rate to fall back upon.

In regard to the expense of proceedings under this chapter, I should like a provision to be introduced for permitting the recovery of the same from the landholder or ryots by instalments. When survey is undertaken by the Government at its own instance, it is hard that proprietors should be required to pay for it. Madras Act IV of 1897 lays down that the expenses of survey undertaken otherwise than on the application of the proprietor should be borne by Government. I hope a similar provision will find a place in the Bill.

His Excellency the PRESIDENT:—I think I will ask the Honourable Member to resume his speech to-morrow and meanwhile I adjourn the Council till 12 o'clock to-morrow morning.

5-30 P.M.

H. D. TAYLOR,
Ag. Secretary to Government, Legislative Dept.

ANNEXURE.

MEMORANDUM TO ACCOMPANY THE FINANCIAL STATEMENT OF THE GOVERNMENT OF MADRAS FOR THE YEAR 1905-1906.

The transactions with which this statement deals are those which, under the Provincial settlement, have been placed under the control of this Government. Appendix A exhibits the actuals under Provincial funds for 1903-1904, the budget and revised estimates for 1904-1905 and the budget estimates for 1905-1906.

Unless otherwise stated amounts are expressed throughout this statement in lakhs of rupees.

I.—Accounts, 1903-1904.

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. 238, Financial, dated the 18th March 1905, which have been placed on the Editors' table.

II.—Revised Estimate, 1904-1905.

The year 1904-1905 opened with a balance of 95.12 against 96.87 anticipated at the time the budget was framed. The receipts which were originally placed at 363.65 are expected to show a decrease of 1.43, while it is anticipated that the expenditure which stood in the budget at 380.17 will show an increase of .89. The deficit for the year, which was estimated in the budget at 16.52, will thus be increased to 18.84 and the closing balance of the year, which will also be the opening balance of 1905-1906, will be 76.28.

The variations between the budget and revised estimates are dealt with under the several heads of section III of this statement. The principal of these are noticed below.

Revenue.—The decrease in the receipts has occurred chiefly under LAND REVENUE, in the Provincial share of which, excluding contributions from Imperial funds, a fall of 13.67 is expected. On the other hand, additional contributions to the extent of 7.10 have been made from Imperial funds, of which 6.26 represent a grant to the Madras Harbour Trust Board.

A decrease of .83 is also expected under XVII. POLICE consequent on the abolition of the greater portion of the punitive police forces in the Tinnevely and Madura districts.

Against these decreases must be set off expected increases under other heads of revenue, chiefly under STAMPS (1.35) and EXCISE (2.75).

Expenditure.—Increases are anticipated under MEDICAL (1.58), SUPERANNUATION ALLOWANCES AND PENSIONS (.66), STATIONERY AND PRINTING (1.30), MINOR WORKS AND NAVIGATION—CIVIL (1.40) and MISCELLANEOUS (1.39), the last being due to grants to municipalities to the extent of 1.64 in aid of their balances. Under CIVIL WORKS there will be in the Civil department an excess of 8.72, of which 6.26 is on account of the grant to the Harbour Trust Board referred to above and the balance chiefly on account of grants to municipalities for works. On the other hand, lapses are likely to occur under LAND REVENUE (4.49), JAILS (.86) and EDUCATION (1.51). In the Public Works department, the budget under MINOR WORKS AND NAVIGATION is likely to be exceeded by 4.93, while the budget under CIVIL WORKS will probably show a lapse of 12.63. The greater portion of this lapse is, however, nominal as the budget included special grants of 6 and 3 placed by the Government of India under this head for the sake of convenience. These grants have been reappropriated to other heads of expenditure.

III.—Budget Estimate, 1905-1906.

The year 1905-1906 is expected to open with a balance of 76.28. The receipts are estimated at 407.62 and the charges at 437.89, leaving a closing balance of 46.01 as shown in the following statement :—

		Revised, 1904-1905.	Budget, 1905-1906.
Opening balance		95.12	76.28
Revenue		362.22	407.62
Expenditure		381.06	437.89
Deficit (—) or Surplus (+)		18.84	30.27
Closing balance		76.28	46.01

REFUNDS AND DRAWBACKS *—1.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Land Revenue	.22	.18	.24	1.22	.14	.30
Stamps	.55	.55	.46		.88	.72
Excise	.05	.04	.05		.04	.08
Assessed taxes	.05	.05	.04		.10	.09
Forest	.05	.04	.05		.10	.12
Registration	.04	.03	.04		.02	.02
Total	.96	.89	.88	1.22	1.28	1.33

* Drawbacks occur only under Customs and are wholly Imperial.

These charges are of a fluctuating nature and are not liable to any departmental control.

I.—LAND REVENUE—3.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
<i>Shared.</i>						
Revenue—						
Ordinary revenue	604.20	539.15	594.33	577.12	582.56	557.69
Sale of Government estates	..	..	..	..	..	.03
Sale-proceeds of waste lands and redemption of land-tax	.05	.10	..	.18	.42	.81
Miscellaneous	.94	.92	.51	1.28	1.01	.83
Total	605.19	540.17	594.84	578.58	583.99	559.36
Provincial share (one-fourth)	151.30	135.04	148.71	144.64	146.00	139.84
Adjustments	96.75	66.76	59.66	95.14	42.81	61.25
Total	248.05	201.80	208.37	239.78	188.81	201.09
<i>Provincial.</i>						
Expenditure—						
Charges of District Administration	43.31	42.81	42.20	42.07	41.55	41.91
Survey and Settlement	9.83	8.80	12.66	8.87	7.89	7.05
Land Records and Agriculture	6.33	4.83	5.55	4.29	3.88	3.85
Inam Commissioner	1.03	1.03	1.55	.63	.28	.06
Total	60.40	57.47	61.96	55.66	53.60	52.87

Revenue—LAND REVENUE PROPER.—At the time of the framing of the estimates for 1904-1905 it was expected that the receipts for 1903-1904 would have amounted to 582 against a budget estimate of 574.19 as a result of improved collections following on a favourable season and of the introduction of settlement or resettlement rates in parts of the Malabar, Kistna and South Canara districts; but these anticipations were not fulfilled in their entirety owing mainly to the postponement of the introduction of resettlement rates in the Guntur portion of the Kistna district. The budget estimate for 1904-1905 which was based, for the greater part, on the revised estimate for 1903-1904 will not be realized as the failure of the north-east monsoon has necessitated remissions and suspensions and has resulted in a fall in the collections of the later months of the year.

In the budget estimate for 1905-1906 provision has been made for the introduction of resettlement rates in portions of the Salem, Kurnool, Tinnevely, Nellore and Guntur districts, and an increase is anticipated under second-crop assessment and water-rate on dry lands. The balance outstanding at the commencement of the year will also be larger in consequence of postponed collections of the previous year.

ADJUSTMENTS.—The tabular statement following exhibits the items comprised in the total under this head since 1903-1904 :—

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts, 1903-1904.
<i>Imperial to Provincial.</i>				
1. Fixed adjustment under the Provincial settlement	59.66	59.66	59.66	16.46
2. Initial assignment to Provincial on account of the new settlement (20.00 for survey and settlement and 30.00 for general purposes)	..	..	..	50.00
3. Contribution on account of the grant to Madras Harbour Trust	7.00	6.26	..	..
4. Contribution on account of proceeds of sale of stationery sold to municipalities, etc.	.09	.09	..	..
5. Contribution on account of the transfer to the Government of Madras of the buildings in the Body-guard lines at Madras	..	..	..	.01
6. Contribution on account of income-tax collections in the Civil and Military Station, Bangalore	..	..	..	.17
7. Compensation for loss of the Provincial share of the net receipts of the Mayavaram-Muttupet Railway	..	..	..	.53
8. Recurring contribution for increased expenditure under 22. EDUCATION	..	..	..	8.00
9. Additional assignment to Provincial Revenues for other expenditure	..	..	..	3.50
10. Contribution for expenditure under 43. MINOR WORKS AND NAVIGATION	..	..	..	10.25
11. Contribution for Provincial share of loss of income-tax revenue	..	..	..	3.30
12. Contribution on account of special works of public utility	..	..	..	3.00
13. Contribution on account of erroneous debit in 1902-1903 of the cost of disinfectants obtained through the India Office for the Medical Store Depot	..	..	..	.27
14. Contribution for selection and distribution of cotton seed	..	.05	..	..
15. Assignments to Provincial—For Police reorganization	10.00	..	..	..
16. " " For Primary education	6.00	..	..	..
17. " " For Grants-in-aid of District boards	14.00	..	..	..
18. " " For University and Collegiate education	..	.70	..	..
Total addition to Provincial	96.75	66.76	59.66	95.49
<i>MISCELLANEOUS TRANSFERS—(Provincial to Imperial).</i>				
1. On account of the transfer of the charges for freight, etc., to the head SALT PURCHASE AND FREIGHT from SALARIES, ESTABLISHMENTS AND CONTINGENCIES	..	..	..	.13
2. On account of the transfer of the charges for public observatories and rain-gauges to India	..	..	..	.23
Total deduction from Provincial	..	..	..	.36
Net transfers to Provincial	96.75	66.76	59.66	95.13

As explained in the memorandum for 1904-1905, the figure for 1903-1904 comprised (i) an additional assignment of 10.25 from Imperial to Provincial funds for expenditure on minor irrigation works, (ii) a lump assignment of 30 granted by the Government of India with the object of starting the Local Government in the new

settlement with a substantial balance, (iii) a further assignment of 20 intended to cover special expenditure during the next few years on "Survey and Settlement" for which the Provincial settlement did not make provision, and (iv) a special assignment of 3 for expenditure on useful minor works.

Of the variations from the fixed assignment of 59.66 under the present settlement, the sums of 6.26 in the revised estimate for 1904-1905 and of 7 in the budget estimate for 1905-1906 represent the instalments payable in those years of the grant of 20 which the Government of India have decided to make towards the scheme for the improvement of the Madras harbour. These payments appear as a credit to Provincial under this head and as a disbursement under 45. CIVIL WORKS—CIVIL OFFICERS. The sum of .09 in 1904-05 represents compensation to Provincial funds for the loss of revenue accruing from stationery sold to local bodies which has been credited hitherto to Provincial but will for the future be taken to Imperial. The assignment of .05 represents a contribution from the Government of India towards the measures undertaken for the improvement and extension of cotton cultivation in this Presidency. The sum of .70 has been granted from Imperial for the benefit of University and Collegiate education.

In the budget estimate for 1905-06 the following assignments to Provincial funds have been made by the Government of India:—(i) for Police reorganization 10.00, (ii) for primary education 6.00, (iii) for grants-in-aid of district boards 14.00. Corresponding provisions have been made on the expenditure side under the heads 20. POLICE, 22. EDUCATION and CONTRIBUTIONS FROM PROVINCIAL TO LOCAL, respectively.

Expenditure.—The saving in the revised estimate for 1904-1905, as compared with the budget estimate for 1904-1905, occurs under all the minor heads comprised in this major head except the minor head CHARGES OF DISTRICT ADMINISTRATION.

A fall under SURVEY AND SETTLEMENT has been caused principally by the transfer to other heads of allotments from the lump provision of 1.37 entered in the budget estimate under that head. Other savings have arisen by the non-utilisation of the provision for five Land Record Superintendents, by the impracticability of entertaining the whole of the sanctioned establishment for ferro-prussiate work in the Central Survey office as the men have had to be trained gradually, by the fact that two survey parties which were expected to work on the survey of Government villages have been actually employed for a considerable portion of the year on the survey of the Vizianagram zamindari and Pithapuram estate, by larger recoveries on account of charges incurred in 1903-1904 on the surveys of private estates, and by the lapse of the budget provision for a Special Settlement officer for Nellore. These decreases have been counterbalanced partly by increased expenditure in connection with the employment of an additional Sub-Assistant in the Central Survey office for work in connection with the ferro-prussiate section, and of a larger number of officers for cadastral survey work, and by increased expenditure on account of boundary pillars and hired labour required for the demarcation and survey of the Government cultivable waste lands in the Nellore, Ganjam, Tinnevely and Cuddapah districts.

A saving in the budget grant under the head LAND RECORDS AND AGRICULTURE has been caused by the fact that the Land Records staff has been entertained in certain districts at a later date than was anticipated.

A decrease under INAM COMMISSIONER has arisen from the rectification of an error in classification, the allotment for advances for meeting the cost of labour and stones required for survey and demarcation having been transferred from this service head to the debt head "Revenue Survey advances."

Under CHARGES OF DISTRICT ADMINISTRATION expenditure on the acquisition of lands on the Nilgiris, and the adjustment of bills in connection with the localization and demarcation of wet lands in inam and proprietary villages commanded by the Ganjam minor rivers system have contributed to raise the expenditure.

The increase in the budget estimate for 1905-1906 over the revised estimate for 1904-1905 occurs in all the minor heads except the minor head INAM COMMISSIONER.

Under CHARGES OF DISTRICT ADMINISTRATION provisions have been entered for the whole year, instead of for a portion only, for the new Guntur district. Allotments have also been made for the small tract to be transferred from the Central Provinces, for the continuance of the employment of an officer of the Sub-Collectorate grade as additional District Magistrate in the Madura district, for an additional Local fund assistant audit clerk in those Collectorates in which audit work is heavy, the cost being recoverable ultimately from Local funds, and for a temporary Revenue staff required for enquiries in connection with the Ganjam resurvey.

Under SURVEY AND SETTLEMENT additional provisions have been made (a) for improving the prospects of the staff of gazetted officers in the Survey department, (b) for the ferro-prussiate tracing and printing sections in the Survey office establishment, (c) for cadastral survey work, and (d) for temporary establishments in connection with the printing of settlement registers.

Under LAND RECORDS AND AGRICULTURE the increase is chiefly due to enhanced provisions on account of Land Record Superintendents, Tahsildars and Inspectors, the maintenance of survey of municipal towns and the checking of field sketches.

Additional establishments in the Central office and an increased provision for the establishments of temporary Deputy Collectors employed on enfranchisement work account for the rise under INAM COMMISSIONER.

IV.—STAMPS—6.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue	43.85	43.85	42.50	63.43	61.86	65.17
Expenditure	1.80	1.80	1.65	2.67	2.45	2.56

In the budget and the revised estimates for 1904-1905 and in the budget estimate for 1905-1906 the Provincial shares of the total revenue and expenditure under the major head are one-half under the terms of the existing Provincial Settlement, whereas the figures in the remaining columns of the foregoing statement represent three-fourths of the total.

Revenue.—The increase occurs almost entirely under "sale of general stamps" and "sale of court-fee stamps".

Expenditure.—The enhanced revenue anticipated from the "sale of general stamps" has contributed to raise the expenditure on account of discount on the sale of these stamps. There is also an increase in the expenditure on "stamp paper supplied from central stores".

V.—EXCISE—7.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue	45.75	46.87	44.12	44.26	39.04	35.77
Expenditure	2.53	2.49	2.54	2.49	2.43	2.50

Revenue.—The excise revenue shows a steady increase, the actuals of 1903-1904 having been the highest on record. The receipts in 1904-1905 are expected to be even higher owing to the increase in the consumption of country spirits and in vend rents both in the case of country spirits and of toddy. The revised estimate would

have been placed higher but for the fact that the rate of increase exhibited in the receipts of the earlier months has not been maintained during the later months of the year, probably as a result of the failure of the north-east monsoon. The toddy revenue from tree-tax has also fallen by nearly three lakhs.

In the budget estimate for 1905-1906 the decrease as compared with the revised estimate for 1904-1905 reflects the current unfavourable season. The decrease is anticipated mainly under "country spirits" and "toddy revenue".

Expenditure.—Five per cent. of the charges of the combined department of Salt, Excise and Customs, exclusive of the charges relating to (i) "Salt Purchase and Freight" and (ii) "Excise Licensees' Works" is debited to the head 9. Customs and two-fifths of the remainder are debited to 7. Excise, the Provincial share under which is one-fourth. The charges under the major head 7. Excise therefore depend on those under the head 5. SALT.

The decrease in the revised estimate for 1904-1905 is due to (1) the staff of Sub-Inspectors of the Salt, Abkari and Customs department having been below sanctioned strength; (2) the non-employment of Assistant Inspectors sanctioned for supervising the operations of the Oriental Salt Company at Karasa and Covelong; (3) the early closure of manufacture in certain salt factories; and (4) savings under the head "Rewards" consequent upon instructions issued by the Board of Revenue.

The small increase in the budget estimate for 1905-1906 over the revised estimate for 1904-1905 is consequent on a larger provision for uniform and clothing for petty officers and peons of the Salt, Abkari and Customs department.

VIII.—ASSESSED TAXES—10.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue (Income-tax)	6-50	6-30	6-25	12-02	14-80	14-24
Expenditure (Collection of Income-tax)	08	07	07	15	16	15

Under the terms of the present Provincial Settlement the Provincial share of the receipts and charges under this head is one-fourth as against the share of one-half in the preceding settlement. The figures of revenue given in the statement above have also been affected by the raising of the taxable minimum of income from Rs. 500 to Rs. 1,000 per annum with effect from the 1st April 1903.

Revenue.—The increases anticipated in the revised estimate for 1904-1905 and in the budget estimate for 1905-1906 are attributed to more careful work on the part of assessing officers.

Expenditure.—The budget estimate for 1905-1906 provides for the temporary employment of a Deputy Collector in the Madura district for income-tax work.

IX.—FOREST—11.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue	7-10	7-06	6-75	13-29	13-07	12-71
Expenditure	5-51	4-87	5-13	8-75	9-18	8-55

Under the present Provincial Settlement the Provincial share of the revenue and expenditure is one-fourth as against the share of one-half in the settlement which terminated on the 31st March 1904.

Receipts.—The budget estimate for 1904-1905 will, it is anticipated, be exceeded under the head "timber and other produce removed from the forests by consumers or purchasers," this increase being counterbalanced partly by a fall under the head "timber and other produce removed from the forests by Government agency." Under the former head larger revenues are expected from trees and from firewood in darkhast land in South Arcot, from the sale of fuel coupes in Kistna under a system of located fellings, from improved supervision in Bellary with the object of preventing the illicit removal of firewood largely prevalent in that district, from more favourable rates realized for the standing growth of casuarinas in the coast range of Nellore and from the felling of bamboos generally. The fall under the second head arises from the competition of Government timber with the produce from private (mitta) forests in Salem, from the absence of demand for certain classes of timber, from the suspension of thinning operations in the Nilambur plantations owing to a fall in the market price of small saplings, from the inability to transport to sale depôts in Nellore as large a quantity of wood as was originally contemplated, from diminished sales of firewood in the depôts at Hosur and Tiruppattur owing to the prevalence of plague, and from the abandonment in the Nilgiris of departmental felling which is found to be unremunerative.

The budget estimate for 1905-1906 anticipates larger receipts under the head "timber and other produce removed from the forests by Government agency" as a result of the development of departmental exploitation and of the special arrangements made for the departmental extraction of firewood. The estimates have been fixed with due regard to the failure of the north-east monsoon which will affect receipts from grazing permits and otherwise influence the demand from the general public.

Expenditure.—The lapse on the budget estimate of expenditure for 1904-1905 arises from the non-utilization of the provision under "conservancy and works." This has been counterbalanced partly by increased expenditure consequent on the creation of the new district of Guntur, the recruitment of an additional Forest officer from England and the absence of fewer officers on long leave.

The enhanced provision in the budget estimate for 1905-1906 as compared with the revised estimate for 1904-1905 is mainly due to larger provision for the purchase and maintenance of live stock, and for outlay on communications and buildings and on the demarcation, improvement and extension of forests. The budget includes allotments for two additional major charges consequent on the splitting up of the Kurnool and Salem districts, for an Inspector of Government elephants, for additional rangers, for a training school for deputy rangers and foresters, for the purchase of a steam launch for the Gódavari river and for the increased expenditure consequent on the transfer of a small tract of 588 square miles from the Central Provinces.

X.—REGISTRATION—12.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue	15-80	16-00	15-60	7-69	7-19	7-25
Expenditure	9-46	9-30	9-20	4-53	4-36	4-38

The revenue and expenditure under this head which were shared equally between Imperial and Provincial in the settlement that terminated on the 31st March 1904 are now wholly Provincial.

Revenue.—The revised estimate for 1904–1905 counts upon increased receipts under “fees for registering documents”, which is ascribable to the unfavourable character of the season. This improvement is partly counterbalanced by a fall under “fees for searches.”

The receipts depend to a large extent on the state of the agricultural season and the estimate for 1905–1906 has, in the absence of other data, been based, as far as possible, on the revised estimate for 1904–1905.

Expenditure.—The excess in the revised estimate for 1904–1905 occurs under “travelling allowance” and “contingencies.” The increase in the former head is due to more frequent touring on the part of officers of the department. Under the latter head enhanced expenditure has been incurred on section-writing and copying fees owing to a large increase in the number of registrations and in the recopying of old volumes.

The budget estimate for 1905–1906 provides for the opening of new offices and for additions to the clerical establishments in registration offices in order to meet the increase of work consequent on the ruling of the High Court which requires the production of encumbrance certificates in all cases of court sales of immovable property.

XII.—INTEREST—13.

	Budget estimate, 1905–1906.	Revised estimate, 1904–1905.	Budget estimate, 1904–1905.	Accounts.		
				1903–1904.	1902–1903.	1901–1902.
Revenue	2.38	2.27	2.35	2.50	2.27	2.36
Expenditure	2.12	1.82	1.95	1.82	1.82	1.80

The revenue under this head represents the interest received by the Local Government on loans and advances made from the Provincial advance and loan account to cultivators, land-holders and notabilities and to mufassal municipalities and local boards. On the other hand, the interest at $3\frac{1}{2}$ per cent. which the Local Government pay the Government of India on sums from time to time placed at their disposal for making these advances and loans is shown as expenditure under this head; this interest being calculated on the mean between the outstanding balance of the Provincial advance and loan account at the beginning and the outstanding balance at the end of each year. The Provincial advance and loan account itself is not included in the terms of the Provincial settlement, the sums placed at the disposal of the local Government for loans and advances being in addition to the settlement assignments and being fixed annually by the Government of India on a consideration of their available resources and of the demands thereon.

GENERAL ADMINISTRATION—18.

	Budget estimate, 1905–1906.	Revised estimate, 1904–1905.	Budget estimate, 1904–1905.	Accounts.		
				1903–1904.	1902–1903.	1901–1902.
Expenditure	10.53	10.59	10.24	10.92	12.94	10.28

The excess in the revised estimate over the budget estimate for 1904–1905 has been caused by (a) the grant of privilege leave to various officers, (b) the deputation of officers on special duty in the Government Secretariat in connection with the

Madras City Municipal Bill, the redistribution of district and divisional charges and the investigation of certain points of plague administration, and (c) an increase in the travelling allowances and contingent charges of the Board of Revenue consequent on more frequent touring on the part of the Members of the Board.

The budget estimate for 1905–1906 is based on the revised estimate for 1904–1905 after eliminating abnormal items and includes an allotment for an officer on special duty in the Government Secretariat in connection with legislative measures.

XVI-A.—LAW AND JUSTICE—COURTS OF LAW—19-A.

	Budget estimate, 1905–1906.	Revised estimate, 1904–1905.	Budget estimate, 1904–1905.	Accounts.		
				1903–1904.	1902–1903.	1901–1902.
Revenue	8.25	8.25	7.77	8.23	7.55	7.55
Expenditure	49.99	49.50	49.60	48.73	47.71	47.73

Revenue.—The actuals of 1903–1904 were affected by a change in procedure in that year under which fines payable to municipalities and private bodies were credited under this head in the first instance and made over to those bodies after the close of the year, the payments being treated as refunds on the expenditure side of the head. These payments have however, with effect from 1904–1905, been taken by deduction from receipts. The revised estimate contains a special receipt of .23 on account of the sale-proceeds of an escheated estate in the South Canara district. There has also been an increase under “translation and printing fees” and “magisterial fines.”

The budget estimate for 1905–1906 counts upon an increase under the two latter items.

Expenditure.—The fall in the revised estimate for 1904–1905 is due mainly to a saving on the budget grant for printing and translation executed on behalf of suitors and to the non-utilization of the provision made under this head on account of the scheme for the redistribution of the Górávari and Kistna districts as that portion of the scheme which affects the Judicial branch of the administration has not been sanctioned.

The budget estimate for 1905–1906 contemplates increased expenditure on account of fees to pleaders in civil cases. Special provisions have been made for a District and Sessions Judge for the Guntúr district and his establishment, for the retention of the temporary Sub-Court at Tanjore, for the continuance of the temporary additional Munsif's Court at Nellore and for the employment of an officer on special duty for consolidating the rules and orders issued by the High Court. The amounts transferred from the major head 3. LAND REVENUE in consequence of the higher estimate under that head contribute to raise the expenditure under this head also.

XVI-B.—LAW AND JUSTICE—JAILS—19-B.

	Budget estimate, 1905–1906.	Revised estimate, 1904–1905.	Budget estimate, 1904–1905.	Accounts.		
				1903–1904.	1902–1903.	1901–1902.
Revenue	5.27	5.05	5.45	4.66	5.29	5.71
Expenditure	12.66	12.15	13.01	12.17	12.79	13.76

Revenue.—The low figure in 1903-1904 was ascribed to several causes, chief amongst these being a paucity of orders received from public consuming departments and a reduction in the number of convicts employed on manufactures consequent on the employment of a large number on building operations in jails. These causes have affected to some extent the operations of 1904-1905. The fall in the revised estimate is counterbalanced partly by a special receipt on account of the employment of convicts in the Government Press, Madras, during the strike.

The budget estimate for 1905-1906 contemplates an improvement in the results of manufacturing operations in jails.

Expenditure.—In 1903-1904 the charges fell owing to a reduction in the number of prisoners as a result of the coronation releases, to a fall in the price of food grains and to the restriction on manufacturing operations.

The lapse in the revised estimate is due to the non-utilisation of the provision for raising the status of certain district jails to central jails and to savings in the budget grants for "dietary charges" and "manufactures".

The budget estimate for 1905-1906 includes an allotment for raising the status of the Bellary jail. As compared with the revised estimate, increased provisions have been made under "dietary charges" and under "manufactures".

XVII.—POLICE—20.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Actuals.		
				1903-1904.	1902-1903.	1901-1902.
Revenue	4.95	5.07	5.90	6.20	5.64	5.76
Expenditure	61.42	50.75	50.53	49.95	48.78	47.81

Revenue.—Advance recoveries in previous years on account of the special police forces employed in the Tinnevely and Madura districts, the major portion of which has been abolished, have resulted in smaller recoveries in 1904-1905. This fall in the revised estimate for 1904-1905 has been counterbalanced partly by an increase under "recoveries on account of arms and accoutrements" as a result of the return to the arsenal of a larger number of rifles than was originally expected.

The decrease in the budget estimate for 1905-1906 is due to the abolition of a large portion of the punitive police forces in Madura and Tinnevely.

Expenditure.—It is expected that the budget estimate for 1904-1905 will be exceeded owing to the additions to the police force necessitated by the spread of plague in the Presidency. There has also been an increase in the expenditure under travelling allowances. The disbandment of the greater portion of the punitive police forces in Tinnevely and of some portions of the force in Madura and diminished expenditure on petty works of construction have, on the other hand, produced savings.

The assignment of 10 made by the Government of India for police reorganization is placed under this head of expenditure in the budget estimate for 1905-1906, which also contains an increased allotment for police employed on plague duty and provides for the conversion into a temporary police force of a portion of the punitive police force in the Tinnevely district. The savings for which credit was taken in the budget estimate for 1904-1905 on account of the absence of officers on leave having proved too high have been reduced in the budget estimate for 1905-1906.

XIX.—EDUCATION—22.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue	2.32	2.33	2.25	2.30	2.12	2.14
Expenditure	29.78	22.49	24.00	21.32	22.75	18.27

Revenue.—The improvement in the revised estimate for 1904-1905 is mainly due to larger realizations from fees in arts colleges and training schools partly counterbalanced by a fall in the Law College receipts.

The budget estimate for 1905-1906 is based on the revised estimate for 1904-1905.

Expenditure.—The budget estimate for 1904-1905 provided (i) for the reorganization of the Provincial Educational service, (ii) for the entertainment of three additional Assistant Inspectors of Schools, (iii) for the revision of the scale of Sub-Assistant Inspectors of Schools, (iv) for the improvement of existing Government girls' schools in the three circles of the Presidency, and (v) for the appointment of a Lady Superintendent for the primary department of the practising school attached to the Teachers' College at Saidapet. Of these new schemes effect has been given to (i) the reorganization of the Provincial Educational service, (ii) additional Assistant Inspectors, and (v) the appointment of Lady Superintendent at the Teachers' College. It has been possible to introduce (iii) the revision of the scale of Sub-Assistant Inspectors only partially, while as regards (iv) the scheme for improving existing Government girls' schools, the reorganization of the schools in the Southern Circle has not yet been finally sanctioned. As a result the allotments entered in the budget estimate for these two purposes have been considerably reduced. There have also been unfilled vacancies in the post of Professor of Civil Engineering in the College of Engineering and in that of Vice-Principal in the College of Agriculture; further savings have accrued from the appointment of an officer on the minimum salary of the grade as Professor of Biology in the Presidency College and from the absence on leave of the Professor of History in the Presidency College, of the Principal of the College of Engineering, of the Deputy Director of Public Instruction and of Mr. Chatterton, the officer on special duty in connection with the development of technical education. The provisions under "grants-in-aid", "training schools for masters" and "scholarships" could not be utilized entirely.

The budget estimate for 1905-1906 contains the lump allotment of 6 assigned by the Government of India for primary education and, besides providing for the schemes of reorganization contemplated in the budget estimate for 1904-1905, includes provision for the reorganization of Government training schools.

XX.—MEDICAL—24.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue	1.21	1.25	1.14	1.13	1.10	1.20
Expenditure	16.87	15.96	14.38	14.01	13.88	13.02

Revenue.—The budget estimate for 1904-1905 included as a new item the contributions from municipalities of their share of the expenditure on the buildings connected with the Vaccine section of the King Institute of Preventive Medicine,

which has been inaugurated at Guindy, and of the working expenses of that section of the institute. As explained in the memorandum for 1904-1905, it has been decided to recover from local bodies the actual cost of the buildings and apparatus when completed and fitted up, in two annual instalments, the amount due by each body being calculated with reference to its receipts for the year preceding that in which the buildings are completed, no charge being made to local bodies on account of interest on the capital cost. The remaining charges of the vaccine section of the institute, viz., the cost of staff and of calves and repairs to buildings, will be recovered in proportion to the quantity of lymph supplied to each local body, the proportionate cost of the quantity of lymph supplied to Government officers and to consumers outside the Presidency being excluded from the total expenditure when calculating the distributable cost. The recoveries from municipalities on this account appear under this head, while recoveries from district boards are shown under "CONTRIBUTIONS FROM LOCAL TO PROVINCIAL".

The total expenditure on buildings and apparatus up to January 1904 was 79 and provision was made in the budget estimate for 1904-1905 for the recovery from local bodies of one-half of this amount, — 30 from district boards and 09 from municipal councils. Similar provisions have been repeated in the budget estimate for 1905-1906. The recoveries on account of the outlay on buildings and apparatus incurred since January 1904 will be made in 1906-1907.

The realizations from fees in the Medical College and schools and receipts in hospitals have been higher than was anticipated in the budget estimate for 1904-1905, whilst there has been a fall in the receipts in Lunatic Asylums.

The budget estimate for 1905-1906 is based on the revised estimate for 1904-1905 but does not provide for so large an increase under "medical school and college fees" and "hospital receipts". It takes credit for a new item of fees from minor sanitary engineering classes recently started for Sanitary Inspectors in the King Institute of Preventive Medicine.

Expenditure.—The increase in the revised estimate for 1904-1905 is due mainly to a provision of 47 for an enhancement of the salaries of officers of the Indian Medical Service in accordance with a scheme sanctioned by the Secretary of State. The revised estimate also includes the charges on account of the travelling allowance and the contingent expenditure of Deputy Inspectors of Vaccination which are borne by Provincial funds in the first instance and eventually recovered from district boards. The pay of these officers has been taken as a charge against Provincial funds with effect from the 1st April 1904, but no provision was made in the budget estimate on account of their travelling allowances and contingencies. Enhanced expenditure has also been caused by the grant of privilege leave to the Surgeon-General, by the employment on special duty of an assistant surgeon to assist Major Elliot in his investigations into the nature and action of snake venom, by the charges of the Vaccine section of the King Institute of Preventive Medicine having exceeded anticipations, and by the fact that the budget estimate made too high a provision under savings in the salaries of medical officers. There has been a decrease in the cost of reserve medical subordinates.

The budget estimate for 1905-1906, which is based on the revised estimate for 1904-1905, provides, in addition, for (a) two military assistant surgeons with staff allowance in the place of civil apothecaries for the Government General Hospital, (b) a military assistant surgeon in the place of a civil hospital assistant for the Government Voluntary Venereal Hospital, (c) three military assistant surgeons with staff allowance in the place of civil apothecaries for Gúdalúr, Kodaikámal and Kotagiri, (d) enhanced contributions to municipal hospitals and dispensaries in consequence of increased pay to civil apothecaries who have been promoted to the rank of civil assistant surgeon and of septennial increments to civil apothecaries, (e) the opening of a new dispensary at Narayanapatnam in the Vizagapatam Agency, (f) the payment by Government of a moiety of the cost of a scheme for the investigation of malaria in the city and suburbs of Madras, (g) heavier expenditure on account of special medicines and instruments required in the Government General and Maternity hospitals, (h) increased expenditure on account of plague-preventive measures, (i) a

contribution to the civil hospital, Vizagapatam, on account of the opportunity afforded for clinical training to students in the Vizagapatam Medical school, (j) an increase from 20 to 25 *per cent.* in the reserve of civil hospital assistants, and (k) expenditure from Provincial funds on account of the Tanjore Medical school transferred to Government management.

XXI.—SCIENTIFIC AND OTHER MINOR DEPARTMENTS—26.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue	4.91	4.90	4.90	7.56	6.09	5.57
Expenditure	9.35	7.85	7.84	8.10	8.02	6.89

The receipts of 1903-1904 comprised the purchase money paid to Government by the Indian Aluminium Company.

Revenue.—Although the figures of the budget estimate and of the revised estimate for 1904-1905 show no variations there are several differences between the estimates in the minor heads comprised in this major head. The realizations from "examination fees" will, it is anticipated, exceed the budget estimate owing to increased receipts from fees for the lower secondary and the primary examinations, and it is expected that the revenue from fees for emigration to British Colonies will also be higher. On the other hand, the receipts realized by the carpentry, carpet-weaving and weaving sections in the School of Arts will not reach the budget anticipation in consequence of their working on a restricted scale and the receipts in botanical and other public gardens are also expected to fall.

The only noteworthy features in the budget estimate for 1905-1906 are (a) an increase under "cinchona plantations" in consequence of the larger sales of quinine which are anticipated and (b) a decrease as compared with the budget estimate for 1904-1905 in the realizations of the departments of the School of Arts mentioned above, although it is expected that these receipts will exceed the revised estimate for that year.

Expenditure.—A special grant of 34, for which the budget under this head did not make provision, was sanctioned during the course of the year for the purchase of coins and prehistoric collections for the Government Central Museum. A grant of 10 was also made towards the improvement of the zoological collection in the People's Park at Madras, this amount being found from the special assignment of 3 included by the Government of India under the head 45. CIVIL WORKS—PUBLIC WORKS DEPARTMENT. Other excesses over the budget grant have resulted from more extensive travelling on the part of the Superintendent of Archaeological Survey and from larger purchases of bark for the manufacture of quinine in the factories of the Government cinchona plantations. The payment of rewards to examiners and the cost of conducting Government examinations have risen in consequence of the larger number of candidates for the lower secondary examination. The absence on privilege leave of the Curator of the Government Gardens, Ootacamund, and too large a credit for savings in consequence of the grant of leave to the Superintendent of the Government Museum have also led to increases over the budget grant. On the other hand, the provision for the Agricultural Chemist has lapsed as the post has not yet been filled up; the expenditure in the School of Arts has been smaller on account of restrictions on the working of the carpentry and weaving sections; the expenditure on experimental cultivation will not, it is expected, reach the budget figure and savings have accrued in consequence of acting incumbents holding the posts of Government Epigraphist and of Superintendent of the King Institute of Preventive Medicine, the expenditure in connection with the serum and bacteriological sections in the latter institution being booked under this head. The maintenance charges of these sections of the institute have also been lower than anticipated.

The budget estimate for 1905-1906 provides for the establishment and maintenance of additional farms in connection with experimental cultivation, for bringing a larger area under cultivation in the farm established at Samalkot, for the maintenance of experimental pumping stations, for extended pumping experiments, and for further experiments in the selection, storage and distribution of cotton seed. Allotments have also been made for additional establishments in the Civil Veterinary department, in the Veterinary College and in the office of the Government Botanist. Increased provision has been entered for scholarships to students in the Veterinary College and for chemicals for the Government Botanist. Provision has been made for the post of Agricultural Chemist for six months and the allotment for the Registrar of Co-operative Credit Societies represents charges for twelve months instead of for eight months as in the revised estimate for 1904-1905. Following the revised estimate, increased allotments have been entered for the purchase of bark for quinine manufacture, for expenditure in connection with Government examinations and for the travelling allowance of the Superintendent, Archaeological Survey.

XXII.—SUPERANNUATION, RETIRED AND COMPASSIONATE ALLOWANCES—29.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue	43	46	72	69	62	66
Expenditure	19.94	19.46	18.80	18.44	17.72	17.59

Revenue.—The fall in the revised estimate for 1904-1905 and in the budget estimate for 1905-1906 is due chiefly to the fact that the pensionary contributions payable by district boards on behalf of their employes are now adjusted under the head CONTRIBUTION FROM LOCAL TO PROVINCIAL.

Expenditure.—The increase in the revised estimate for 1904-1905 occurs mainly under "superannuation and retired allowances". The saving for which the budget took credit on account of lapses by death and transfers to other provinces has proved too high.

The budget for 1905-1906 provides for the usual growth of the pension list.

XXIII.—STATIONERY AND PRINTING—30.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue	91	86	93	1.05	.91	.89
Expenditure	11.81	11.97	10.67	11.64	10.47	9.28

Revenue.—The actuals of 1903-1904 contain an extraordinary receipt on account of special printing work done for the High Court and the Court of Wards.

Enhanced receipts are expected from the sale of gazetteers and Government publications, but on the other hand the receipts from sales of stationery to municipalities and private bodies are, as explained under the head "I. LAND REVENUE—ADJUSTMENTS," now credited to Imperial.

Expenditure.—The budget estimate for 1904-1905 will be exceeded under the heads "printing at private presses" as a large amount of work was carried out by private presses in the early part of the year in consequence of the strike at the Government Press. There has also been greater expenditure in the printing of Settlement registers and an increase in the size of the Police Gazette. The increasing supply of stationery and typewriting machines, following on the growth of work in Government offices generally, and the provision of a Government press for the new district of Guntur have also contributed to raise the expenditure under this head.

For 1905-1906 enhanced allotments have been made to meet the cost of new materials and stock for the Secretariat and Collectorate presses and for overtime allowances in the Government Press, Madras. It is also expected that the printing of Settlement registers will proceed more rapidly.

XXV.—MISCELLANEOUS—32.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue	2.46	2.48	2.35	2.20	2.55	2.21
Expenditure	2.42	3.46	2.07	3.97	2.46	1.90

Revenue.—The revised estimate for 1904-1905 provides for larger receipts than were anticipated when the budget estimate was framed under "unclaimed deposits", "contributions from mufassal municipalities on account of the controlling establishments at the Presidency" and "pearl-fishery receipts". A large increase under the last mentioned head is due to the prosperous condition of the chank-fishing operations, and also to the collections of fees on account of the hire of pearl-fishery vessels for which no credit was taken in the budget. The revised estimate includes a special receipt of .04 representing the sale-proceeds of the old taluk office and sub-jail building at Tindivanam in the South Arcot district. Against these increases a fall is anticipated in the fees for stamping weights and measures.

The budget estimate for 1905-1906 is based on the revised estimate for 1904-1905, taking credit for slightly larger receipts under "fees for stamping weights and measures", while under "contributions" and "pearl-fishery receipts", smaller recoveries are anticipated.

Expenditure.—The high figures for 1903-1904 and in the revised estimate for 1904-1905 are accounted for by contributions to the extent of 2.21 in the first year and of 1.64 in the second year in aid of municipalities whose balances have been depleted by expenditure on plague-preventive measures. All such contributions were, prior to the 1st April 1903, shown under the head "45. CIVIL WORKS". The revised estimate also provides for an increase under "irrecoverable temporary loans written off" as a result of the large amounts expected to be written off in the Kurnool district, and under "miscellaneous and unforeseen charges" due mainly to the payments of rewards for good services rendered by public servants in the Kistna floods of 1903. On the other hand, there have been savings on the budget grants for "stamping weights and measures", "pearl-fishery charges", and "special commissions of enquiry".

In the budget estimate for 1905-1906 an allotment has been made to meet the charges for conveyance to the Pasteur Institute at Kasauli of indigent persons bitten by rabid dogs. Owing to the abolition of the Government Workhouse at Madras with effect from the 1st January 1905 and the decision to send vagrants to Bombay, there is a saving in the charges on account of European vagrancy, the only provision necessary on this account being the amount required to meet the expenses for transport.

FAMINE RELIEF—33.

						Budget estimate for 1905-1906.
						LAKHS.
Expenditure—						
Civil Officers	..	..	..	..	..	5.00
Public Works Officers	..	..	..	..	..	10.00
Total						15.00

Owing to the failure of the north-east monsoon, it has been considered advisable to provide a sum of 15 in the budget estimate for 1905-1906 in case relief measures are found to be necessary.

XXX.—MINOR WORKS AND NAVIGATION—43.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue—						
Civil Officers	·07	·10	·06	·08	·06	·13
Public Works Officers	1·58	1·58	1·30	1·48	1·48	1·50
Total ..	1·65	1·68	1·36	1·56	1·54	1·63
Expenditure—						
Maintenance and upkeep of Minor Irrigation Works—						
Civil Officers	6·00	6·40	5·00	5·02	5·05	4·25
Public Works Officers	38·00	41·73	36·80	40·70	41·05	31·29
Total ..	44·00	48·13	41·80	45·72	46·10	35·54

Revenue.— No remarks.

Expenditure—Civil officers.—The revised estimate for 1904-1905 includes additional allotments granted during the course of the year for the repair of minor irrigation works mainly in the South Arcot and Cuddapah districts. The major portion of these allotments has been met from the special assignment of six lakhs placed by the Government of India in the budget under the head "45. CIVIL WORKS—PUBLIC WORKS DEPARTMENT". In the budget estimate for 1905-1906 provision has been made for repairs to the Cauvery channels in the Trichinopoly district.

Public Works officers.—In addition to the budget grant of 36.80 for 1904-1905 allotments aggregating 4.88 have been sanctioned during the year for important and urgent irrigation works, chief amongst these being the restoration of the Palar anicut, the Hajipuram, Ponnalur and Yerur tank projects, the Kalingaroyen channel and works connected with the conservancy of river beds and embankments. The major portion of these allotments was met from the special assignment of six lakhs.

XXXII.—CIVIL WORKS—45.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue—						
Civil Officers	·12	·11	·09	·11	·11	·10
Public Works Officers	1·75	1·70	1·80	1·66	1·67	1·76
Total ..	1·87	1·81	1·89	1·77	1·78	1·86
Expenditure—						
Civil Officers	10·68	9·40	·68	1·84	·58	2·88
Public Works Officers	39·39	32·41	45·04	80·79	31·42	26·91
Total ..	50·07	41·81	45·72	32·63	32·00	29·79

Revenue.—The figures call for no remarks.

Expenditure—Civil Officers.—The revised estimate for 1904-1905 includes a sum of 6.26 representing a portion of the contribution of 20 from Imperial funds to the cost of the proposed improvements to the Madras harbour. As already explained under I. LAND REVENUE—Adjustments, this grant is credited to Provincial funds through the LAND REVENUE head and disbursed through this head. The revised estimate further includes grants aggregating 1.57 to municipalities for the construction and repairs of hospitals, and an allotment of .25 for the completion and equipment of the Victoria Technical Institute buildings. These grants were met from the special assignment of 3 placed by the Government of India in the budget estimate under the minor head "Public Works Officers" of this major head (*vide* items 3 to 8 in the first statement below).

The budget estimate for 1905-1906 provides for a further instalment of 7 of the Imperial contribution to the harbour improvements at Madras and for a grant from Provincial funds of 3 to the Madras Corporation for sanitary improvements.

Public Works Officers.—The budget estimate for 1904-1905 included the special assignments of 3 and 6 which, though placed by the Government of India under this minor head, were intended to be made available for expenditure under any other Provincial head of account. The distribution of these special assignments is shown in the following statement :—

I.

DISTRIBUTION OF THE SPECIAL ASSIGNMENT OF 3 LAKHS.

Serial number.	Head of account.	Particulars of the work for which allotment was made.	Amount allotted.
1	26. SCIENTIFIC, ETC., DEPARTMENTS.	Improvement of the People's Park, Madras	Rs. 10,000
2	22. EDUCATION	Improvement of the art loan collection in the office of the Director of Public Instruction	10,000
3	45. CIVIL WORKS—CIVIL	Victoria Technical Institute buildings	25,000
4	"	Municipal hospital, Coimbatore	60,000
5	"	Do. Bellary	50,000
6	"	Do. Nandyal	6,500
7	"	Do. Nellore	20,000
8	"	Women and Children's hospital, Dindigul.	21,000
9	45. CIVIL WORKS—PUBLIC WORKS DEPARTMENT.	Lawrence Asylum buildings, Lovedale	21,338
10	"	Villupuram Girls' school	11,000
11	"	Kumbakonam, Bhimavaram and Narsapatam Girls' schools	10,948
12	"	Stonehousepet Girls' school	10,000
13	"	Tiruvannamalai do.	5,830
14	"	Vinukonda do.	3,000
15	"	Narsapur do.	4,250
16	"	Hospet do.	2,500
17	"	Ongole do.	10,000
		Balance reserved for other girls' schools.	18,634
		Total	3,00,000

II.

DISTRIBUTION OF THE SPECIAL ASSIGNMENT OF 6 LAKHS.

Serial number.	Head of account.	Particulars of the work for which allotment was made.	Amount allotted.
1	26. SCIENTIFIC, ETC., DEPARTMENTS.	Purchase of Mr. Bruce Foote's prehistoric collections	Rs. 33,500
2	30-C. STATIONERY AND PRINTING.	District Press, Guntur	8,600
3	"	Government Press, Madras	40,400
4	43. MINOR WORKS AND NAVIGATION—PUBLIC WORKS DEPARTMENT.	Minor irrigation works	1,08,028
5	"	Restoration of the Palar anicut	1,00,000
6	43. MINOR WORKS AND NAVIGATION—CIVIL.	Investigation of the Kistnagiri reservoir project	1,200
7	"	Repairs to minor irrigation works in Cuddapah district	61,000
8	"	Repairs to minor irrigation works in South Arcot district	50,000
9	45. CIVIL WORKS—PUBLIC WORKS DEPARTMENT.	Hajipuram, Ponnalur and Yerur tank projects	50,000
10	"	Veterinary College buildings	90,837
11	"	Purchase of the Drill hall buildings at Chepauk belonging to the Madras Volunteer Guards	28,935
		Acquisition of land for the offices of the Sanitary Commissioner and the Sanitary Engineer and for other public offices in Madras	27,500
		Total	8,00,000

The expenditure from Provincial funds on coast-lights up to the 31st March 1904, which aggregated 2.77, has been refunded from the loan granted by Imperial to the Coast-lights fund instituted on the passing of India Act IX of 1904, and the credit has been shown under this head by deduction from the expenditure for 1904-1905. The non-utilization of a large portion of the grant of 1.20 which was provided in the budget for the Ootacamund municipality for drainage works, and the postponement of the execution of Police and Jail works have also contributed to the decrease shown in the revised estimate. The grants made to municipalities in aid of water-supply and drainage works during 1904-1905 have been—

Municipality.	Object.	Amount.
		LAKHS.
Guntur	Water-supply	21
Dindigul	Do.	06
Vellore	Do.	1.49
Coonoor	Do.	08
Ootacamund	Drainage and sanitation.	40
Negapatam	Experimental pump	05
	Total	2.29

The budget estimate for 1905-1906 makes allotments of 32 for public works to be executed departmentally and of 1.66 for works to be executed by Civil officers acting as Public Works disbursers. A provision of 5.73 has also been made for grants in aid of water-supply and drainage works in municipalities to be carried out through the agency of the Public Works department.

CONTRIBUTIONS.

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts.		
				1903-1904.	1902-1903.	1901-1902.
Revenue—						
Contributions from Local Funds—						
Ordinary	3.96	3.93	3.05	2.73	2.72	2.72
Expenditure—						
Contributions to Local Funds—						
Ordinary	20.04	7.26	7.18	8.76	7.41	3.01

294

FINANCIAL STATEMENT.

The details are given in the following statement :—

	Budget estimate, 1905-1906.	Revised estimate, 1904-1905.	Budget estimate, 1904-1905.	Accounts, 1903-1904.
RECEIPTS.				
CONTRIBUTIONS FROM LOCAL TO PROVINCIAL FUNDS.				
<i>From Local Funds (Act V of 1884).</i>				
1. Pay, etc., of Local Fund Audit establishments	51,100	39,250	35,930	32,349
2. Taluk Local Fund gumastahs in Gôdâvari, Tanjore and Tinnevely	6,800		5,540	5,017
3. Education	..	29,000	..	1,079
4. Proportionate cost of the Medical College	..		..	6,422
5. Proportionate cost of Sanitary inspection and Vaccine agencies	..	11,550	..	25,275
6. Reserve Medical staff	12,000		19,000	19,137
7. Vaccine section of the King Institute of Preventive Medicine — Buildings and apparatus	30,100	30,130	30,130	..
8. Vaccine section of the King Institute—Working expenses ..	26,700	16,770	27,000	..
9. Controlling and Account establishments in the Local and Municipal department of the Secretariat	52,000	58,800	84,090	79,980
10. Controlling and Account establishments in the Accountant- General's office	24,400	20,600	6,870	5,959
11. Printing work at Government Presses	6,500	6,000	6,870	5,959
12. Public Works	50,000	50,000	52,790	23,814
13. Block survey and classification of inam villages under Local Fund Boards	..	3,600	..	31,318
14. Contributions from persons employed in the District, etc., Boards	30,000	35,000	..	..
15. Contingencies and Travelling allowances of Deputy Inspec- tors of Vaccination employed in Local Fund areas	50,000	50,000	..	..
16. Repayment of contribution to cover deficit	..	..	..	6
<i>Add or deduct for rounding ..</i>	3,49,600 400	..	2,61,370 370	..
Total ..	3,50,000	3,51,000	2,61,000	2,30,347
<i>From Special Funds.</i>				
Ryotwari Village Service Funds	43,370	40,670	41,321	42,380
Proprietary Estates Village Service Fund	2,670	1,150	2,830	539
Irrigation Cess Fund	140	180	153	96
<i>Deduct for rounding ..</i>	46,180 180	..	44,304 304	..
Total ..	46,000	42,000	44,000	43,015
Grand Total ..	3,98,000	3,93,000	3,05,000	2,73,362
EXPENDITURE.				
CONTRIBUTIONS FROM PROVINCIAL TO LOCAL FUNDS.				
<i>To Local Funds (Act V of 1884).</i>				
1. Public Works	1,43,000	1,63,700	1,77,730	3,02,839
2. Education (Grants-in-aid)	..	3,43,600	1,56,400	3,69,104
3. (Subsidy to Local Boards)	3,43,000		2,39,600	
4. Medical purposes (hospitals and dispensaries, and one-eighth pay of medical subordinates)	55,000	55,000	56,830	59,424
5. Sanitation and general purposes	50,000	1,51,100	74,800	1,31,070
6. Native choultries	13,200	13,200	13,200	13,152
7. Grant-in-aid to District Boards	14,00,000	..	..	..
8. Refunds	..	..	..	187
<i>Add or deduct for rounding ..</i>	20,04,200 300	7,26,000	7,17,620 380	..
Total ..	20,04,000	7,26,000	7,18,000	8,75,776

Revenue.—As explained in the memorandum for 1904-1905, local bodies were relieved, with effect from the 1st April 1904, of the contributions previously levied from them on account of the education of medical subordinates and on account of sanitary inspection and vaccine agencies. The contributions from district boards for these two items were shown under this head, the contributions from municipalities being credited under the head "XX. MEDICAL". The revised estimate for 1904-1905 includes recoveries on account of the expenditure incurred in 1903-1904.

The budget estimate for 1904-1905 did not take into account the recoveries from district boards on account of the travelling allowances and contingent expenditure of Deputy Inspectors of Vaccination which are debited to Provincial in the first instance and recovered from district boards through this head. The recoveries on account of the reserve medical staff have not come up to expectation and those on account of the working expenses of the Vaccine section of the King Institute of Preventive Medicine have also been lower than anticipated.

The budget estimate for 1905-1906 repeats the recoveries for the previous year on account of the King Institute and provides for enhanced recoveries on account of the Local Fund audit establishments in Collectors' offices. The increase under "Public Works" is due to a contribution expected from the Trichinopoly district board for work connected with the extension of the bridge over the Kodumurti river.

The transfer to this head from the head "XXII. SUPERANNUATION" of the receipts on account of pensionary contribution recoverable from district boards on behalf of their employes accounts for '35 in the revised estimate for 1904-1905 and for '30 in the budget estimate for 1905-1906.

Expenditure.—The high figure in 1903-1904 arose from the special grants made in that year to district boards in aid of their balances, for village water-supply improvement and well-sinking, for feeder roads and for roads leading to railways.

The allotment in the budget estimate for 1904-1905 under "public works" for the construction of a metalled road from Masulipatam to the Manganapudi salt factory has not been fully utilized.

As regards the lapse under "education", a provision of 2-396 was made in the budget for subsidising district boards so as to enable them to pay their grants in full. In framing the revised estimate, however, the Director of Public Instruction thought that 1-868 would be sufficient for the purpose, and this figure has been retained but it now appears that the whole of the budget provision will be utilized.

From the provision under "sanitation and general purposes" funds have been transferred to the major head "32. MISCELLANEOUS" to meet grants to municipalities.

The revised estimate for 1904-1905 includes grants to the extent of '92 to district boards sanctioned in view of the unsatisfactory state of their finances.

The budget estimate for 1905-1906 includes the special assignment of 14 from the Government of India for grants-in-aid of district boards, but is otherwise based on the revised estimate for 1904-1905 after the elimination of abnormal items.

INCORPORATED LOCAL AND SPECIAL FUNDS.

Appendix B shows in abstract the accounts and estimates under Incorporated Local and Special funds. The Special funds comprise the Village Service and the Irrigation Cess funds. The administration reports published annually give in detail the working of the several local boards, their revenue and expenditure.

FORT ST. GEORGE,
25th March 1905.

J. THOMSON.

APPENDIX

PROVINCIAL ACCOUNTS AND

Heads of Revenue.	Budget Estimate, 1905-1906.	Revised Estimate, 1904-1905.	Budget Estimate, 1904-1905.	Accounts, 1903-1904.
LAKHS.	LAKHS.	LAKHS.	LAKHS.	LAKHS.
PRINCIPAL HEADS OF REVENUE.				
I.—Land Revenue—				
Collections	151.30	135.04	148.71	144.64
Adjustments	96.75	66.76	59.68	95.14
III.—Salt				.94
IV.—Stamps	43.85	43.85	42.50	63.43
V.—Excise	45.75	46.87	44.12	44.26
VII.—Customs				.83
VIII.—Assessed Taxes	6.50	6.30	6.25	12.02
IX.—Forest	7.10	7.06	6.75	13.29
X.—Registration	15.80	16.00	15.60	7.69
Total ..	367.05	321.88	323.69	382.26
XII.—Interest	2.88	2.27	2.35	2.50
RECEIPTS BY CIVIL DEPARTMENTS.				
XVI.—Law and Justice—				
A—Courts of Law	8.25	8.25	7.77	8.23
B—Jails	5.27	5.05	5.45	4.66
XVII.—Police—				
Police	1.66	5.07	5.90	6.20
Cattle Pounds	3.29			
XIX.—Education	2.32	2.33	2.25	2.30
XX.—Medical	1.21	1.25	1.14	1.13
XXI.—Scientific and other Minor Departments	4.91	4.90	4.90	7.56
Total ..	26.91	26.85	27.41	30.08
MISCELLANEOUS.				
XXII.—Receipts in aid of Superannuation, etc.	.43	.46	.72	.69
XXIII.—Stationery and Printing	.91	.86	.93	1.05
XXV.—Miscellaneous	2.46	2.48	2.35	2.20
Total ..	3.80	3.80	4.00	3.94
IRRIGATION.				
XXX.—Minor Works and Navigation—				
In charge of Civil Officers	.07	.10	.06	.08
" Public Works Officers	1.58	1.58	1.30	1.48
Total ..	1.65	1.68	1.36	1.56
BUILDINGS AND ROADS.				
XXXII.—Civil Works—				
In charge of Civil Officers	.12	.11	.09	.11
" Public Works Officers	1.75	1.70	1.80	1.66
Total ..	1.87	1.81	1.89	1.77
CONTRIBUTIONS FROM LOCAL FUNDS				
Total Revenue and Receipts	3.96	3.93	3.05	2.73
Opening Balance	407.62	362.22	363.65	424.84
Grand Total	76.28	95.12	96.87	42.71
Grand Total ..	483.90	457.34	460.52	467.55

DIX A.

ESTIMATES—MADRAS.

Heads of Expenditure.	Budget Estimate, 1905-1906.	Revised Estimate, 1904-1905.	Budget Estimate, 1904-1905.	Accounts, 1903-1904.
LAKHS.	LAKHS.	LAKHS.	LAKHS.	LAKHS.
DIRECT DEMANDS ON THE REVENUE.				
1.—Refunds and Drawbacks	.96	.89	.88	1.22
CHARGES IN RESPECT OF COLLECTIONS.				
3.—Land Revenue	60.60	57.47	61.96	55.66
5.—Salt				4.01
6.—Stamps	1.80	1.80	1.65	2.67
7.—Excise	2.53	2.49	2.54	2.49
9.—Customs				2.74
10.—Assessed Taxes	.08	.07	.07	.15
11.—Forest	5.51	4.87	5.13	8.75
12.—Registration	9.46	9.30	9.20	4.53
Total ..	79.98	76.00	80.55	81.00
INTEREST.				
13.—Interest on Ordinary Debt	2.12	1.82	1.95	1.82
POST OFFICE, TELEGRAPH AND MINT.				
15.—Post Office				1.07
SALARIES AND EXPENSES OF CIVIL DEPARTMENTS.				
18.—General Administration	10.53	10.59	10.24	10.92
19.—Law and Justice—				
A—Courts of Law	49.99	49.50	49.60	48.73
B—Jails	12.66	12.15	13.01	12.17
20.—Police—				
Police	58.79	50.75	60.53	49.95
Cattle Pounds	2.63			
21.—Marine	.16	.16	.16	.16
22.—Education	29.78	22.49	24.00	21.32
24.—Medical	16.87	15.96	14.38	14.01
25.—Political	.79	.81	.79	.80
26.—Scientific and other Minor Departments	9.35	7.85	7.84	8.10
Total ..	191.55	170.26	170.55	166.16
MISCELLANEOUS CIVIL CHARGES.				
29.—Superannuation Allowances and Pension	19.94	19.46	18.80	18.44
30.—Stationery and Printing	11.81	11.97	10.67	11.64
32.—Miscellaneous	2.42	3.46	2.07	3.97
33.—Famine Relief	15.00			
Total ..	49.17	34.89	31.54	34.05
RAILWAY REVENUE ACCOUNTS.				
41.—Miscellaneous Railway Expenditure				
IRRIGATION.				
43.—Minor Works and Navigation—				
In charge of Civil Officers	6.00	6.40	5.00	5.02
" of Public Works Officers	38.00	41.73	36.80	40.70
Total ..	44.00	48.13	41.80	45.72
BUILDINGS AND ROADS.				
45.—Civil Works—				
In charge of Civil Officers	10.68	9.40	.68	1.84
" of Public Works Officers	39.59	32.41	45.04	30.79
Total ..	50.07	41.81	45.72	32.63
Contributions to Local Funds	20.04	7.26	7.18	8.76
Total Expenditure ..	437.89	381.06	380.17	372.43
Closing Balance	46.01	76.28	80.35	95.12
Grand Total ..	483.90	457.34	460.52	467.55
Surplus				52.41
Deficit	30.27	18.84	16.52	

APPENDIX B.

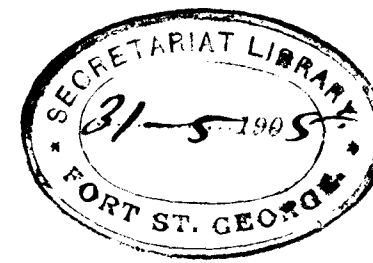
INCORPORATED LOCAL AND SPECIAL FUND ACCOUNTS AND ESTIMATES.

Heads of Revenue.	Budget estimate, 1905-1906.		Revised estimate, 1904-1905.		Accounts, 1903-1904.		Budget estimate, 1905-1906.		Revised estimate, 1904-1905.		Budget estimate, 1904-1906.		Accounts, 1903-1904.		Budget estimate, 1904-1906.		Accounts, 1903-1904.	
	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.
L. Land Revenue.	1-47	26-56	28-03	24-22	1-26	24-36	26-12	24-22	1-49	26-22	27-71	1-05	26-22	27-71	1-05	26-22	27-71	1-05
VI. Provincial rates.	65-05	26-37	91-42	82-21	63-11	25-85	88-96	82-21	63-40	27-05	90-45	63-33	63-33	53-33	63-33	53-33	53-33	53-33
XIII. Interest ..	71	..	71	65	44	..	44	65	59	..	59	..	..	..	..	..	..	..
XVI.A. Law and Justice—Courts of Law.	25	..	25	24	23	..	23	24	32	..	32	3-64	3-64	3-27	3-27	3-27	3-27	3-27
XIX. Education ..	3-06	..	3-06	2-88	2-86	..	2-85	2-88	2-77	..	2-77	13-35	13-35	13-35	13-35	13-35	13-35	13-35
XX. Medical ..	73	..	73	67	77	..	77	67	70	..	70	4-6	4-6	4-2	4-2	4-2	4-2	4-2
XXII. Superannuation.	01	..	01	01	01	..	01	01	01	..	01	3-60	3-60	3-05	3-05	3-05	3-05	3-05
XXV. Miscellaneous.	6-18	..	6-18	6-09	6-09	..	6-09	6-09	6-13	..	6-13	3-50	3-50	2-80	2-80	2-80	2-80	2-80
XXVI. State Railways Gross receipts.	6-00	..	6-00	5-33	5-00	..	5-00	5-33	4-11	..	4-11	6-16	6-16	5-13	5-13	5-13	5-13	5-13
XXVII. Civil Works.. By P.W.D..	13-78	..	13-78	13-99	12-33	..	12-33	13-99	13-04	..	13-04	3-37	3-37	3-15	3-15	3-15	3-15	3-15
Contributions ..	20-04	..	20-04	7-26	7-18	..	7-18	7-26	8-76	0-5	8-81	2-00	2-00	1-00	1-00	1-00	1-00	1-00
Total Revenue ..	117-37	52-93	170-30	144-65	98-93	50-71	149-64	144-65	101-44	53-32	154-76	66-16	66-16	53-13	53-13	53-13	53-13	53-13
Debt deposits ..	..	..	..	..	..	..	..	..	1-25	..	1-25	3-50	3-50	3-51	3-51	3-51	3-51	3-51
Surplus or deficit ..	..	..	8-38	14-03	..	..	19-23	14-03	06	1-17	1-23	123-40	123-40	178-68	178-68	159-58	159-58	159-58
Opening balance { Service..	..	..	33-49	43-43	..	..	47-80	43-43	34-53	11-40	45-93	25-11	25-11	33-49	33-49	33-49	33-49	33-49
balance { Debt ..	..	..	..	..	..	..	..	..	56	..	56	..	..	..	..	..	..	..
Total ..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..

APPENDIX C.

PROVINCIAL LOANS AND ADVANCES.

	Budget, 1905-1906.		Revised, 1904-1905.		Accounts.		Budget, 1904-1905.		Accounts.		Budget, 1904-1905.		Accounts.		Budget, 1904-1905.		Accounts.	
	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.	Local Funds Act V of 1884.	Special Funds.
Class I—Advances to Cultivators ..	Balance ..	35-11	36-14	36-62	38-10	37-94	38-43	38-79	42-81	47-61	38-10	37-94	38-43	38-79	42-81	47-61	38-10	37-94
Advances ..	3-60	3-60	3-60	4-00	2-51	4-31	3-81	4-15	3-42	3-26	2-51	4-31	3-81	4-15	3-42	3-26	2-51	4-31
Recoveries ..	4-23	4-23	4-48	3-67	4-47	4-15	4-30	4-51	7-44	8-06	4-47	4-15	4-30	4-51	7-44	8-06	4-47	4-15
Class II—Loans to Land-holders and Notabilities.	Balance ..	34-48	35-11	35-95	36-14	36-14	36-94	38-43	38-79	42-81	36-14	36-14	36-94	38-43	38-79	42-81	36-14	36-14
Advances ..	29	29	44	56	35	35	56	56	56	56	35	35	56	56	56	56	35	35
Recoveries ..	15	15	15	19	09	24	11	11	01	04	09	24	11	11	01	04	09	24
Class III—Loans to Land-holders and Notabilities.	Balance ..	14	29	37	44	44	37	37	44	44	44	44	37	37	44	44	44	44
Advances ..	16-99	16-99	14-76	15-03	13-76	13-27	12-28	12-61	12-67	13-05	13-76	13-27	12-28	12-61	12-67	13-05	13-76	13-27
Recoveries ..	7-93	7-93	3-25	5-61	1-79	1-13	1-57	2-27	5-2	5-8	1-79	1-13	1-57	2-27	5-2	5-8	1-79	1-13
Class IV (a)—Loans to Mufassal Municipalities.	Balance ..	23-95	16-99	19-85	14-76	13-76	13-27	12-28	12-61	12-67	14-76	13-76	13-27	12-28	12-61	12-67	14-76	13-76
Advances ..	10	10	20	20	30	40	50	50	50	50	30	40	50	50	50	50	30	40
Recoveries ..	10-30	10-30	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
Class IV (b)—Loans to District Boards	Balance ..	10-30	10	210	20	20	210	210	210	210	20	20	20	210	210	210	20	20
Advances ..	52-49	52-49	51-54	52-41	52-51	51-72	51-21	51-40	55-54	60-83	52-51	51-72	51-21	51-40	55-54	60-83	52-51	51-72
Recoveries ..	21-83	21-83	6-70	11-61	4-30	5-68	5-48	4-92	3-94	3-26	6-70	5-68	5-48	4-92	3-94	3-26	6-70	5-68
Total, Provincial Loans and Advances.	68-87	68-87	52-49	59-27	51-54	52-51	51-72	51-21	51-40	55-54	51-54	52-51	51-72	51-21	51-40	55-54	51-54	52-51



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 Vic., cap. 67, and 55 and 56 Vic., cap. 14.

The Council met at the Council Chamber, Fort St. George, at noon on Friday the 7th day of April 1905.

P R E S E N T :

His Excellency Baron AMPHILL, G.C.S.I., G.C.I.E., Governor of Madras—
Presiding.
The Hon'ble Sir JAMES THOMSON, K.C.S.I.
The Hon'ble Mr. G. STOKES, C.S.I.
The Hon'ble Diwan Bahadur R. V. SRINIVASA AIYAR Avargal.
The Hon'ble Mr. A. G. BOURNE, D.Sc., F.R.S.
The Hon'ble M. KRISHNAN NAYAR Avargal.
The Hon'ble Mr. H. BRADLEY.
The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR Avargal, Zamindar of Chunampet.
The Hon'ble Mr. A. E. CASTLESTUART STUART.
The Hon'ble V. C. DESIKA CHARIYAR Avargal.
The Hon'ble Mr. J. E. P. WALLIS (Advocate-General).
The Hon'ble Mr. J. TWIGG.
The Hon'ble Mr. G. S. FORBES, C.S.I.
The Hon'ble Mr. A. J. YORKE.
The Hon'ble Mr. M. HAMMICK, C.I.E.
The Hon'ble K. VASUDEVA AIYANGAR Avargal.
The Hon'ble Mr. W. B. DEWINTON, C.I.E.
The Hon'ble Mr. C. J. WEIR.

THE MADRAS ESTATES LAND BILL, 1905.

His Excellency the PRESIDENT :—The Hon'ble Mr. Muttukumaraswami Mudaliyar will now resume his speech.

The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR :—

Communal lands.—Having dwelt at some length on the provisions of the Bill relating to the right of occupancy and its incidents, I now proceed to submit briefly a few observations on certain other provisions which materially deviate from the existing law and are calculated to vitally affect the position of zamindars. I beg to point out that the power reserved to Government under clause 8 of the Bill to protect communal lands from encroachments should be exercised only in regard to threshing floors, cattle-stands and other lands set apart for the common use of the villagers, and treated as such from the time of the permanent settlement. In regard to those which came into existence since the time of the permanent settlement and over which the villagers have acquired rights by prescription or grant, the proper course is to leave the parties to have their usual remedies in the ordinary courts of law.

Village-sites can in no sense be treated as lands set apart for communal purposes, there being no community of interest in them among the villagers as in the case of cattle-stands and threshing floors, etc. The zamindars have perpetually added to them to meet the demands of the ever-increasing population and all along exercised exclusive control over them. I see no reason why zamindars' rights over village-sites should be interfered with as proposed in this Bill.

Zamindars' private lands.—The rules laid down by the Bill for the record and protection of zamindars' private lands are not sufficiently clear and protective.

to the extreme danger of summary methods of justice. In order that justice may be done, they remark:—"Truth must be elucidated; and the elucidation of truth especially in this country and for reasons which we need not here dwell upon in detail requires time and patience. Any attempt to abridge judicial inquiry by arbitrary and abnormal presumptions in favour of either party, which by precluding the production of evidence may enable Judges to arrive at rapid conclusions, is, to our minds, retrogressive and unsafe. The history of the judicial administration of this country for the last half a century is a continuous record of the abandonment of a system of procedure under which rights were hastily and perfunctorily adjudicated upon, the person defeated and dissatisfied being left to a regular suit to right if wronged by an irregular proceeding which too often saddled him with the burden of proof that should have been laid on the shoulders of his adversary and thus unfairly diminished his chance of ultimate success. We entirely agree in the wisdom which has abolished this system, we will not say of administering justice but of choking off litigation, and we cannot recommend the adoption of any summary procedure for rent suits which would involve even a partial renewal of it."

Contract.—The Bill declares in chapter XVI that certain contracts between the landholder and the ryot are invalid on the ground that the zamindari ryots are as a body unable to protect themselves against stipulations to the obvious prejudice of their rights. The assumption that a zamindari ryot is no better than a child or an imbecile is ludicrously wrong now-a-days when the misdirected intelligence of the ryots has discovered thousand and one ways of putting the proprietors to trouble and when as an experienced lawyer once said the tenants know law by heart and are only too well aware of how it enables them to take advantage of the landlord. Sir Henry Stokes, a late and highly respected Member of the Executive Council of Madras, is said to have left on record a note to the following effect:—"In the southern districts the hands of landholders require to be strengthened, and it is they who need protection and not the ryots." In my opinion the Legislature should not disturb the freedom of the parties to enter into voluntary contracts. It is a matter of fact to be determined in each case whether undue influence has been used. The Indian Contract Act in its present amended form sufficiently provides for invalidating agreements brought about by the use of undue influence and to a great extent renders the exercise of such influence almost impossible.

Limitation.—Under clause 167 of chapter XVII. the disabilities of minority and lunacy are declared as inapplicable to rent suits. But there are suits analogous to rent suits, I mean suits in which ryots are defendants, such as bond suits, suits for damages and the like, and if the ordinary law of limitation applies to this class of suits allowing time for disability, I do not see why rent suits should be placed in a different category. There may be cases in which the ryots and the manager of the minor landholder's estate may collude; and surely the former ought to be held as much liable as the latter. The minor might lose heavily for no fault of his. It is for such exceptional cases that sections 7, 8 and 9 of the Indian Limitation Act of 1877 have provided. Wherever these exceptional cases occur the above sections have to come in. This being the distinct object of the Legislature, there seems no reason why it should not be given effect to in this Bill.

Conclusion.—I have now travelled over all the most important provisions of the Bill and pointed out what I consider to be their objectionable features and indicated the lines on which they may be remedied. The time allowed to the Members to digest the various complicated provisions of the Bill and submit their views on them is indeed very short. The materials vouchsafed to them for forming their judgment are extremely scanty. I have nevertheless done my utmost to present the views of those who are most affected by the measure to the best of my lights. I trust and hope they will receive what consideration they deserve at the hands of my Honourable Colleagues. The only provisions of the Bill which are an improvement on the existing state of things are those which provide for the rent being made the first charge on the land, for the validity of the patta to the extent it is found correct, and for the abolition of the penalty of ejection in cases where a ryot has failed to accept a duly amended patta, the first two securing to the landlord his just dues and the last exempting the ryot from an extremely penal provision, altogether uncalled for in these

times and opposed to principles of modern legislation. Except in regard to these provisions for which the Government is entitled to the thanks of the landholders as well as of the ryots, the Bill is altogether revolutionary and unwarranted by the requirements of the situation. Not a voice has been heard all these years calling for such a radical change in the relations between the proprietor and the ryot as is contemplated in this Bill. It has been a received maxim of legislation that no change in law should be made unless there is an absolute and well-ascertained necessity for it, expressed by the general sense of the people, by deeply-felt wants, by some administrative difficulty, or by some exigencies in the social economy of the country. No such conditions have been made out to exist in the present case. If the Government had any doubt on these points, it might have instituted an organised enquiry by taking independent evidence of competent and experienced persons on the subject. No such thing has been done so far as I am aware. Execution has preceded enquiry, a foregone conclusion has taken the place of unbiassed investigation. The result of this extraordinary procedure is that we have before us a Bill which is calculated to shake the basis of established rights, to unsettle the relations between the proprietor and the ryot, to bring discord where there is harmony and to sow the seeds of ill-will and antagonism where there are now good will and peace. The effect of the various provisions of the Bill will be that the zamindars of the Presidency, who stood by the Government in shadow and sunshine and in all the political vicissitudes through which this country has passed during the last one hundred years and more, will be converted into mere pensioners and rent chargers upon what they now regard as their own estates. What else could they be when they are deprived of even the small latitude they have hitherto enjoyed under the existing Act and asked to go before Collectors even in trivial matters affecting the ordinary routine and every-day details of zamindari administration? The Legislature has no doubt the perfect right to reduce them to this condition, but then it is bound not to commit itself to such a revolutionary line of conduct unless it is shown that it is for the public good. But is it for the public good that the ancient landholders of this Presidency should be reduced to this humiliating condition of mere rent-collectors? Is it consistent with the policy of preserving and of strengthening the landed aristocracy of Southern India embodied in the recent Court of Wards Act and the Impartible Estates Act? In winding up the debate in connection with the latter Act, your Excellency, in a spirit of true statesmanship, remarked:—"It is, in my opinion, a matter of highest political expediency that the landed aristocracy of this country should be preserved and made a source of strength both to the Government and to the people. Why should I say both to the Government and the people? For the interests of both are identical and the same. I will rather say that it is for the good of the country that I consider it necessary to preserve the landed aristocracy. This has not always been the policy of the Madras Government, but I hope it will remain now so, for a long time to come." I hope and trust that these words of wisdom will stand before us in all our discussions and enable us to judge and decide every provision of this Bill in the light of the high and noble principle they enunciate.

His Excellency the PRESIDENT:—I trust that the Honourable Member who has just spoken will not think me lacking in courtesy if I refrain from following him into the detailed and elaborate discussion of the provisions of the Bill which he has undertaken at this early stage. His representations will meet with full consideration and reply later on, but meanwhile I can only express my regret and disappointment that the representative of the zamindar interest in this Council is unable to accord more appreciation to the general principles of the Bill than the Hon'ble Mr. Muttukumaraswami Mudaliyar has been able to do. I trust that as the discussion proceeds he will be able to associate himself with the other Honourable Non-official Members who have already spoken and whose approval of the main principles of the Bill has

12-20 P.M.

afforded me no less cordial satisfaction than did the able and temperate manner

in which they expressed their opinions as regards matters of disagreement.

If I intervene at the present stage of the discussion it is more from a sense of duty and courtesy towards the Council than from a hope of contributing usefully to the debate.

The Honourable Member in charge of the Bill in the able, lucid and comprehensive speech which has met with several well-deserved and graceful compliments has

clearly explained the attitude of the Government and I do not desire to take up the time of the Council by repeating anything that he has said. I shall therefore confine myself to a few remarks from my personal point of view and refer briefly to the past history of the legislation, for the Honourable Mover dealt more with the history of the principles which we wish to enunciate. I am no more inclined to dwell on the past than was the Honourable Mover for it is a perplexing record of indecision and disagreement and the lengthy records of the discussions which have taken place in Government circles are filled with minutes of dissent and notes of strong disagreement both on matters of principle and of detail.

The predecessor of this Bill, which was known as the Madras Tenancy Bill, was dropped in 1898 in circumstances which are sufficiently well known and which, I trust, will not be repeated. In 1902 we determined to start afresh and to face the problem once more. Since then we have been discussing the question among ourselves and with the Government of India, and we have attained for the first time practical unanimity of opinion. I trust that this unanimity will eventually and as regards essential matters extend to the Honourable Non-official Members who have now been invited for the first time to participate in the discussion and to assist us to arrive at a final settlement. If I may allude for a moment to my own position in the matter, I should like to say that I consider myself pledged, so far as it lies within my power to carry out my desires and intentions, to see this Bill passed into law before I leave India. I had hoped to have brought it before the Council at least a year ago, but circumstances over which I had no control, but of which I cannot reasonably complain as they conduced to a better consideration of the measure, rendered this impossible. While I was at Simla last year I was able to hasten the consideration of the Bill by the Government of India and I had the advantage of discussing it personally with Sir Denzil Ibbetson than whom nobody has ever brought a keener intellect, a greater experience, or a fuller sympathy to bear on the present problems of the Indian administration. I am greatly indebted to him for having given priority to the consideration of this Bill in spite of numerous important questions which claimed his attention. I owe it to Sir Denzil Ibbetson that it has been possible to introduce the Bill before it is too late for me to hope to see it through personally. As I have said just now, we have attained unanimity among ourselves and agreement with the Government of India which is a very considerable advance on the position of uncertainty and hesitation which has existed for more than twenty years past, and I hope that no difficulties will arise to prevent the passing of the Bill before the end of the year. Although we intend to propose that a Select Committee should be appointed to consider the Bill, we have no intention of suggesting unless Honourable Members wish it otherwise that the Committee should meet before the month of November when we return to Madras. There will thus be six clear months in which Honourable Members will be able to study the Bill and the press and public will be able to develop criticisms and suggestions, and since the necessity for a legislation has been fully recognised for a long time past and there is no reason to anticipate opposition to the main principles of the Bill, I trust this period of incubation will be amply sufficient.

The Hon'ble Mr. Sivaswami Aiyar exhorted us to preserve an open mind and not to treat this Council as a machine for registering foregone conclusions. I trust that the delay which I propose is a sufficient earnest of our intention to hear and consider representations from every quarter and on every point in the Bill. We shall also consult those for whose benefit the legislation is undertaken, but I must point out that in a matter of this kind the ryot is hardly able to judge for himself and must rely on Government to protect his interests.

The introduction of this Bill is the last stage in the trilogy of legislation which, as I endeavoured to show on a previous occasion in this Council, forms a consistent and coherent policy on the part of Government in regard to the zamindari tracts of this Presidency. The series of legislation began by the Court of Wards Bill and went on to the Impartible Estates Bill, but the present Bill is by far the most important of the three measures, as it affects the landlords and tenants in equal degree and seeks to hold the scales even between them. I do not think that I shall be exaggerating or overstating the case if I say that the work on which we are embarked is the greatest and most important which has ever been undertaken in this Council. The

existing law is the Madras Rent Recovery Act of 1865 which consolidated and repealed the processual Regulations of 1802 and 1822. The Madras Rent Recovery Act is in itself but a processual Act and contains only a single section of substantive law confined to the settlement of disputes as to rates of rent. It has been amended twice, though only in a slight degree, by Act II of 1871 and Act III of 1890, so that what we are undertaking now is an enactment declaring for the first time the substantive rights of landlord and tenant. Twenty-three years have elapsed since the first attempt in this direction was made in the shape of a short Bill drafted in 1882 by Sir Philip Hutehins for securing occupancy rights to zamindari ryots. This Bill was discussed and dropped, and in 1884 a short Bill known as Carmichael's Bill met with no better success, but a committee to whom it was referred produced three years later an entirely new Bill modelled on the Bengal Tenancy Act of 1885. Six years of complicated discussions followed and eventually Lord Wenlock's Government submitted the Bill in a very much altered condition to the Government of India in 1893. The Government of India raised very strong objections to the Bill and the discussion was prolonged until 1898, when a Bill radically altered in principle and detail was introduced into this Council and the unfortunate and well-known fiasco took place. Those members of the Select Committee which sat at Ootacamund who took part in the proceedings presented no report, as the Member in charge of the Bill submitted to Government a fresh draft which involved a radical alteration in the scope of the measure, and thus the whole question was once more thrown into the melting pot.

When we took up the question again in 1902 we decided with full consideration to adopt this new draft as a basis, and the present Bill was framed upon it. Now the great and important change which we have made in the principles of the Bill of 1898 is that general recognition of occupancy right has been accorded in the present Bill to every ryot admitted by the zamindar or landholder to the cultivation of the land in an estate which is not "sir" or home-farm land. This change of principle does away with the distinction between occupancy and non-occupancy rights which provoked so much difficulty and difference of opinion and dispenses with the necessity for special provisions to enable non-occupancy ryots to acquire occupancy rights. Now, so far as the Bill concedes occupancy right to all ryots, it is a Validation Bill, but I trust that this designation, which has been such a public bogie of late, will not alarm the public any more than it appears to alarm Honourable Members. The Bill does not only validate the acts of Government and the principles which Government have consistently sought to maintain, but it also validates the ancient custom of the land which has been confirmed and explained by decisions of the High Court. When the Bill of 1898 was introduced it became evident from the speeches of the Non-official Members and the comments of the press that the establishment of a special class of non-occupancy ryots with artificial provisions for acquiring occupancy rights did not commend itself to native opinion. We therefore decided no longer to take the Bengal Tenancy Act as our model, but adopted the principle that every cultivator admitted by the landholder to the cultivation of estate lands not being private domain is entitled to the status of an occupancy ryot, protected against eviction at the landholder's will so long as he pays the established or prescribed rates. This we hold is the position which the cultivator enjoyed under ancient custom throughout India and which although it has often been obscured has never been entirely lost in this Presidency. It is a position which has been confirmed by recent decisions of the High Court and we now wish to make it part of the substantive law of the land. I have heard it said that the ryot of Southern India will never know how much he owes to Justice Sir Subrahmanya Aiyar for having declared that "the common law of Madras gives every ryot an occupancy right irrespective of the period of his holding." It is this opinion—an opinion which has been upheld in repeated declarations of Government—which we wish to focus and stereotype. The rights of the ryot were originally obscured by the importation of phrases and notions belonging to English Law and we have been careful to avoid the repetition of this fruitful source of error in the phraseology of the present Bill. The well-known case of Chokkalingam Pillai was the most conspicuous instance of the trend of false ideas due to the influence of legal notions belonging to the English law of landlord and tenant, and the situation was only saved by the determined resistance to these misconceptions which was made by Sir Muttuswami Aiyar and Sir Subrahmanya Aiyar

in recent years. We consider that the views of the High Court as propounded by these two distinguished Judges were sounder than the views which had previously been promulgated and consequently we regard it as all-important to petrify them into law before the swing of the pendulum conduces to other theories. But the Bill is no longer called by the misleading name of Tenancy Bill; it has become the Madras Estates Land Bill. The change of designation has a significance which I trust will not escape general attention as it connotes the intention of the Bill to do equal justice to both the landlord and tenant and to remove the grievances of which both classes have complained. The Bill as I have said gives the tenant the all-important right of occupancy, but what does it do for the landholder? Well, the most important thing that the Bill concedes to the landholder is a first charge upon the holding for what is due by the ryot. As the law now stands the produce of the land is hypothecated for rent but not the holding itself. The landholder can only sell the ryot's interest in the land, and if it has been heavily encumbered and there are no crops to attach the landholder may be wholly defrauded of the arrears due by the ryot. It is therefore just and fair that the zamindar should possess a first charge upon the land and it is also in accordance with the law in all other parts of India. If landholders have been inclined to deny occupancy rights to the ryot it has been because of the uncertainty as to the recovery of their arrears from which they have suffered, and I do not doubt that the zamindars as a class will highly appreciate the remedy which we propose to apply to their grievances. The Bill further provides for the remedy of certain grievances of the landholders concerning which the Landholders' Association presented me with a memorial in March last year when I received a deputation of their number, but the present is not the occasion to enter into these or any other details. I trust that so far as the main principles of the Bill are concerned we shall have no difference of opinion, but I am not surprised to find that in the provisions regarding jurisdiction and judicial procedure Honourable Non-official Members have reasons to disagree with us. This was, I fear, inevitable as the standpoint from which our Non-official Colleagues regard all our legislation is different to ours and is the source of regular and constant disagreement.

The Honourable Non-official Members are nearly all lawyers, and the point of view of lawyers is fundamentally different from that of administrators. It is not only so in India, but it is also the case in other countries, and while I believe it to be a generally admitted theory that lawyers do not make good administrators I am of course willing to admit the converse theory that administrators are not good lawyers. The Hon'ble Mr. Desika Chari in his speech of two days ago took a different view and gave bold utterance to a theory that the administration of this country would be the better for being conducted to a large extent by lawyers and judges. I know that his view is shared by others and influences, perhaps unconsciously, a section of political opinion in this country, but I do not think that it is the general view or one which has been justified by experience. However it would be irrelevant to argue the point and the Honourable Member must not expect us to accept his view any more than we expect him to take ours; all people naturally think that they know their own business best and strangely enough most people think that they could do other people's business better themselves. It is of course an understood thing that, when generalizations of the kind on which I have ventured are made, present company is always excepted, so that Honourable Members must not think that there is anything personal about my remarks, nor should they think that I am speaking otherwise than in lighter vein; the point is that, as the Executive Government are responsible for the administration of the country, their view must prevail as to what laws are necessary for the purpose. If, therefore, we have the difference of opinion which I anticipate, we must agree to differ and while Honourable Non-official Members can console themselves with the reflection that they have done their best and that the responsibility for making the laws rests on the Government, we shall rest content in the assurance that anybody else in our position would do the same as we do. Thus Colleagues cannot agree with us, I can assure them that it is never in an overbearing or disdainful manner that we reject any of their suggestions, but entirely from a sense of the duties and responsibilities which devolve upon us. As regards our present bone of contention, I shall only remark that the matters left for revenue jurisdiction seem to us to be very limited and such as Revenue officers are best fitted to deal

with, but in view of the arguments which have been so ably advanced, we shall of course give the matter fresh consideration.

I do not think that there are many legislative assemblies in the world where measures are subjected to such searching criticism from the purely legal point of view as they are in the Madras Legislative Council, and even in the House of Commons it is not often that a Bill is subjected to the organized criticism of such an able body of lawyers as that which discusses these questions in private and finds its brilliant spokesmen in this Chamber. We do sincerely appreciate this assistance, and while we avail ourselves of it as far as possible, it is obvious that we must preserve our own point of view as administrators and make the law as we think it necessary for the proper government of the country. I trust therefore that all discussion and criticism on this Bill, the most important that we have hitherto undertaken, will proceed on the assumption that the Government are endeavouring after the longest and most anxious consideration to do what is fair to all parties concerned and to promote the best interests of the dwellers in the zamindari tracts of the Presidency.

The Hon'ble V. C. DESIKA CHARIYAR:—May it please your Excellency, Before I make a few remarks on the Bill I should like to clear the ground and endeavour to

point out a misapprehension upon which nearly the whole of the arguments of the Hon'ble Mr. Forbes is based. The simple question is: "Who has the control over 'waste lands and lands left unoccupied either through default or voluntary resignation' in an estate permanently settled? This question has been answered in very clear terms by section 11, clause (iv) of Madras Act VIII of 1865.

If therefore we accept that position as correct—and I venture to say that it is not open to us to say it is wrong—then the question of occupancy becomes very simple as I shall show later on. Now turning to this Bill I may at once say that I have not the misfortune to be either a landholder or a ryot and that I have no bias one way or another. I may also mention that during the last eighteen years I have in my professional capacity as often appeared for the ryot as for the zamindar, and I venture to speak with some confidence on the provisions of this Bill. In the first place I should like to say that there are some good features in the Bill some of which are unobjectionable, while others may, under certain limitations and restrictions, prove beneficial to the landholder or ryot for whom it is specially intended. First and foremost is clause 5 of the Bill which the landholders will recognise as a great boon to them. The provision is analogous to the existing provision in Madras Act II of 1864, viz., the Revenue Recovery Act, which makes revenue due to Government a first charge upon the land. The next provision which is in favour of the ryot is the presumption, raised by the Bill, of the right of occupancy in his favour. This is strictly in accordance with the recent decisions of the Madras High Court and should be welcomed by the large class of zamindari ryots. But I should like to point out that in carrying out this object the framer of the Bill has by oversight converted what he intended to be a rebuttable presumption or in the language of the Indian Evidence Act a case of "shall presume" into a conclusive matter not open to be disproved. I say by oversight, because while in the marginal note to clause 12 it is clearly stated "presumption of existence of occupancy right" in the body of clause 12 the words used are "shall be deemed to have permanent right of occupancy". If it is only a presumption which is rebuttable the provision is quite unobjectionable. But if it is intended to be a conclusive matter there will be hardly any inducement to the landlord to increase the extent of cultivation of the so-called assessed waste by giving it to any ryot and thus the ryots also will have no chance of getting it. Thus a large number of them who have but small holdings cannot increase the extent of their holdings and gradually acquire a right of occupancy in such increments. Past experience clearly shows many a ryot who, at the time of the permanent settlement, never had any occupancy right has by the tacit acquiescence of the landholder, subsequently acquired rights of occupancy. This only shows that the zamindars as a class are more or less willing to allow a tenant who has been on the land for some years to continue to hold it with right of occupancy and in such cases with the presumption which this Bill creates in favour of the ryot it will not be easy for the landholder to prove the contrary. So in the interests of the ryot himself

it will be well to have it as a rebuttable presumption subject to its being disproved by the landholder if in any case he can do so.

The next provision intended to benefit the ryot is the commutation of shist payable in kind. No doubt it will ordinarily save the ryot from the many worries which a troublesome landholder is capable of creating. Under the sharing or waram system the ryot cannot ordinarily harvest his crops or remove his kudivaram share without the permission of the landholder and except in the presence of the landholder or his agent. This is a real hardship in many cases. But commutation into money shist is not an unmixed good. In good years no doubt when there is a full crop the ryot will pay but the money value of the melvaram, but in years when the crop is only a fourteen-anna or a twelve-anna crop, the ryot would be a gainer if he is to pay the melvaram in kind, whereas he would be a loser if he is to pay the money shist commuted on the basis of a full crop. I am aware that clause 33 provides for an average being struck, having regard to the value of the shist actually paid in previous years. Then there is the difficulty of commuting waram rates varying with the crop into money shist. Probably a table of what is known as cropwar money assessment can, with some difficulty, be prepared. All things said I am entirely in favour of this provision for commutation of shist on the application of either the ryot or the landholder. I am also in favour of the provision contained in clause 118 re the acquisition of land for building and other purposes by a landholder. This is distinctly in favour of the landholder though it may be said that occasions for such acquisition would be but few and far between. Then again clause 37, sub-clause (2), is a great boon to the ryot though even without the clause it will always be open to Government to insist upon such suspension by making it a condition precedent to its granting a suspension of the payment of revenue by the landholder.

The next provision in favour of the ryot is that contained in clause 6, sub-clause (1). It is but just that by the fact of the ryot making any improvement in his holding at his own expense he should be allowed to enjoy the fruits of such improvement to the exclusion of the landholder. But the landholder will, it seems to me, be justified in taking exception to the provision contained in sub-clause (3) of clause 6 of the Bill. The landholder may well object to the ryot having the right of first refusal. It should not be forgotten that a landholder and a ryot have but co-ordinate rights and on no account the rights of the landholder should be subordinated to those of the ryot. So I would venture to suggest that the ryot should, in the first instance, call upon the landholder to contribute proportionately to the cost for making the improvement and only in the event of the landholder refusing to contribute, the ryot will be entitled to make the improvement. In this connection, reference may be made to clause 144, sub-clause (a), which puts it out of the power of a ryot to enter into a contract limiting or restricting his right to make improvements and to claim compensation for the same in accordance with the provisions of this Bill. As far as I have been able to ascertain—and this, I say, subject to correction—there is no provision in the Bill for claiming compensation for improvements at all.

Now passing on, it is very much to be regretted that the undesirable provisions under the existing Act imposing a liability to exchange pattas and muchalkas every year also finds a place in the present Bill, and the whole of chapter V consisting of clauses 52 to 61 deals with this obligation. In this connection I would quote, with your Excellency's permission, what a former officiating Chief Justice of the Madras High Court said when he was consulted on one of the ill-fated Land Bills—which the Hon'ble Mr. Forbes told us was much the same as the present Bill. I refer, My Lord, to that sound lawyer and able judge, Justice Shephard, who said:—

"While I think that a mistake has been made adopting much that has been borrowed from the Bengal Act I also think that it is unfortunate that some of the provisions of the Madras Act have been allowed to stand and that in some respect the Bengal Act has not been more closely followed. I refer particularly to the provisions regarding the exchange of patta and muchalka. The fact that these provisions have been given up in Bengal is some argument against the retention of them. The draftsman has adopted the Bengal provisions with regard to receipts (clauses 43 and 44) and yet preserves in addition the rules in the existing Act as to the exchange of pattas and muchalkas."

I hope it will still be possible for the Select Committee to take in this suggestion especially as it had received the unqualified approval of eminent judges and jurists alike. I may in passing mention that Sir V. Bhashyam Aiyangar and Justice Moore have expressed similar views. Next I would suggest the omission of sub-clause (d) in clause 3 altogether. It is not at all desirable to include an inam or shrotriem in the definition of "Estate". There are inams of all kinds—sarva inams and partial inams, inams of the land itself including both the melvaram and kudivaram, inams resumable and irresumable inams. Then there are the amara charana and amara mukta inams and nowkerpesha inams. In several of them the inamdar has the right to both varams subject, no doubt in certain cases, to payment of a nominal or favourable shist known as kattubadi, jodi, poruppu or quit-rent as the case may be. In my humble opinion the complications attached to the inam tenure would render the Bill if made applicable to them unworkable altogether. I should like to make one general remark with reference to clauses 8 and 9. I have opposed these objectionable provisions as to persons being kept in close custody under the paternal care of Revenue officials in the Tahsildar's or Deputy Tahsildar's office when we had to discuss the Land Encroachment Bill. Therefore it will be waste of time to repeat those arguments to-day once again. But I would venture to suggest to the Honourable Member in charge of the Bill that in clause 8 he might, with advantage, omit "village-sites" inasmuch as they are not set apart for the common use of the villagers. Again in sub-clause (2) to clause 9, it is stated "any property so forfeited shall be disposed of as the Collector may direct". Really this is not just or proper; such property should go to the landholder who must be taken to have set apart such lands for the common use of the villagers. Even if it be not possible to ascertain who set apart such lands for the common use of the villagers, I submit, My Lord, it is now too late in the day to claim any reservation on behalf of the Government in the face of the clear pronouncement contained in section 4 of Regulation 25 of 1802 which does not include this among the rights which the Government reserved to itself at the time of the permanent settlement. I would, therefore, suggest an amendment to that effect.

The definition of "public cultivable land" is too sweeping and too wide. It only excludes home farm *pannai* or *sir* land. I don't know if the enumeration in the definition is intended to be exhaustive or only illustrative. The English word home farm would include the Tamil word "*Pannai*", the Telugu word "*Kamatam*", the Sanskrit word "*Sir*" and the Kanarese word "*Khasgathi* or *Kanigay*". In the Northern Circars the word used is *Kamatam* and in the Punganur zamindari in the North Arcot district the word used is "*Khasgathu*" or "*Kanigay*". The object of the Bill seems to me to be that the landholder should not, after this Bill is passed into law, have the option of converting any waste land in an estate (which the existing law clearly declares to be at the absolute disposal of the landholder—vide clause (iv) of section 11 of Madras Act VIII of 1865) into home farm land. One is tempted to ask the question "What about land which a ryot relinquishes or land which is purchased by the landholder in an auction for the recovery of arrears of shist?" Is it the policy of the Bill that such lands must be given away with right of occupancy to a ryot or should not be cultivated at all by leasing them out? Is it not open to a landholder to sell a piece of land which he purchased in auction held for the recovery of arrears of shist? I don't believe such a contention would be advanced in the face of the fact that Government reserves to itself absolute right of disposal over cultivable waste land. Such lands (as in the case of Periyar-affected lands) have been sold by Government at exorbitant rates and many a foolish purchaser had to relinquish good portions of such purchases which may again be sold by Government at some future time. Why then should the landholder not sell his waste lands which are cultivable, or even let them on leases without creating rights of occupancy?

Speaking of the Punganur zamindari whose tenure is very peculiar, all the lands in the zamindari (except the inam lands) are divided into *Kalissu* lands (which corresponds to jerayoti or seri lands in the Northern Circars and patta lands in the Southern districts) and *Khasgathi* lands which to my mind correspond to *Pannai* or *Kamatam* lands. In that zamindari all the cultivable waste lands form *Khasgathi* and some of which are leased for one year or more to *Shikmē* tenants who are to claim no occupancy rights heritable or transferable.

No doubt if the zamindar likes he does grant khasgathi land even with the right of occupancy. Nobody would contend for one moment that a cultivator who lawfully—mind you the word lawfully—enters upon a land, improves it and makes it productive, should be turned out of that land.

But I must say that the Honourable Member in charge of the Bill is not correct in saying: "The zamindari settlement conferred no more proprietary rights in the waste than it did in the cultivated lands." I have at the beginning of this speech already referred to clause (iv) of section 11 of Madras Act VIII of 1865. In this connection I would beg to point out a somewhat misleading statement in the elaborate Statement of Objects and Reasons, that "the peshkash was fixed with reference to the assets at the date of the settlement." This is not universally true. No doubt in the case of some zamindaris the settlement was with reference to the assets. But I can mention cases where assets had nothing whatever to do with the fixing of the

1 P.M.

peshkash or the permanent settlement. Take Venkatagiri, Karvetnagar and Kalahasti. In the case of these zamindaris the peshkash was a mere commutation in money value of the military services rendered by those chiefs to the paramount power, irrespective of any assets. Again, take Udaiyarpalayam in the Trichinopoly district. For sixty villages granted to the zamindar under a permanent sanad the peshkash fixed was about 175 pagodas or Rs. 612-8-0. This again had nothing whatever to do with the assets. The peshkash should be considered very very small indeed to the income of the sixty villages even as it stood at the permanent settlement. The low peshkash was due to the fact that Government resumed a good portion of the zamindari which originally consisted of about 400 villages. So it seems to me that the fixing of peshkash on the assets then available has nothing whatever to do with the rights of the landholder to the waste lands in his estate. If I am right in thinking that Government has absolute power of disposal over waste lands in ryotwari tracts, it is but just and proper that a landholder should have similar rights to waste lands in his own estate. I trust, therefore, that the Honourable Member in charge of the Bill will make this point clear at least in the Select Committee.

It was said by the Honourable Member in charge of the Bill that the object of the Bill was to assimilate the position of a zamindari ryot to that of a Government ryot. Do it by all means. But I must say while the landholder does not want reduction of rent, the ryot does not want the enhancement. Under the Bill as it stands every day in the year suits for enhancement and reduction may be filed. Is it so in the case of Government and its ryot? While Government has its periodical settlement for enhancing the revenue the Government ryot is hardly allowed any right—as of right—to claim reduction. So far as the landholder is concerned he cannot claim a higher right than the Government. He will be satisfied if the enhancement and reduction be periodical, say once in 15 or 20 years, instead of his being harassed by suits all round the year.

In this connection I would make an appeal both on behalf of the landholder and the ryot. This question of enhancement and reduction is a vexed question. In giving these rights we should not disturb vested interests but must respect contracts for rent expressed or implied. I would ask the attention of the Council to the Full Bench decision of the Madras High Court in Indian Law Reports, 7 Madras, page 365. Chief Justice Sir Charles Turner says in his judgment that the provision that mutual agreements, express or implied, should be respected and enforced was introduced in the existing Act by the advice of Mr. Carmichael and the opinion of the Board of Revenue. On page 373 of Indian Law Reports, 7 Madras, you will find: "Payment of rent in a particular form or at a certain rate for a number of years is not only presumptive evidence of the existence of a contract to pay rent in that form or at that rate for these years, but it is also presumptive evidence that the parties have agreed that it is obligatory on the one party to pay, and the other to receive rent in that form and at that rate." I would, therefore, advise that sub-clause (d) to clause 30 by fixing the 1st May 1871 since which date contracts, express or implied, should not be deleted altogether which tries to draw an artificial and sharp line of demarcation be enforced. In this connection I must point out that the reference to Chokkalingam Pillai's case is rather amusing. It related to ryotwari land and not to zamindari estate at all.

If the sub-clause be retained it will work a great deal of hardship in cases where since 1871 people who have purchased estates at thirty years' purchase and get an income of 3 to 3½ per cent. on their outlay would suffer enormously and most unjustly.

While I fully agree to the proposition that the weak should be protected against the strong, I must say at the same time vested interests must not be disturbed and expectations already formed should not by one stroke of the Legislative pen be defeated and destroyed without any regard to the long period of 35 years from 1871.

Before I sit down I must say that the entire exclusion of the jurisdiction of the ordinary Civil Courts is very much to be regretted. With a simple Act dealing with mere procedure as the Madras Act VIII of 1865 does, we know how unsatisfactory is the work done by the Revenue or so-called summary courts. I might at once say that the fault is not personal. It is entirely due to the system. The Revenue officer who tries summary suits is the Divisional-officer who is a touring official after whom the landholder and the ryots who have summary suits have to roam about. I say this from personal experience as I had in my professional capacity to appear before these officers. I know these officers first attend to abkari sales and attend to criminal work next and should there be any time left the summary suits are called on. A few witnesses are examined and case is adjourned to a future day at some other place near or distant to the former place. The parties, their pleaders and the witnesses must travel back to their homes only to start again for the new station with the off-chance of the Divisional-officer being engaged the whole day with the abkari sales and his criminal work. Let alone this inconvenience, what about the quality of the work turned out? I am sorry to say the less said the better. But under the existing law there is the great satisfaction that appeals lie to District Courts and finally to the High Court where the irregularities of the summary courts are mended. Let me, with Your Excellency's permission, repeat that these Divisional-officers having had no judicial experience in civil cases, have neither the inclination to attend to this work nor the requisite knowledge of law to deal with the cases satisfactorily. I don't know what these landholders and ryots have done that they should not have the ordinary rights which the lowest and humblest of the subjects of His Gracious Majesty the King-Emperor, have of having their grievances redressed in an ordinary regularly constituted Civil Court with the usual rights of appeal to higher courts. I have had experience of Civil Courts as well as of Revenue Courts and I may be pardoned if I say that there is no comparing the two. One set of courts is as perfect as the other set is imperfect, to say nothing of the great convenience of the Civil Courts being manned by stationary officers and the great facility which the litigant population have of obtaining legal advice and help at a much cheaper rate from the legal practitioners practising before the Civil Courts, being ready at hand. This is the present state of things. But fancy what it would be under the elaborate and complicated provisions of a Bill like the present when the landholders and ryots will be debarred from seeking redress in Civil Courts and will be driven—I say much against their will—to go before comparatively inexperienced Divisional-officers—sometimes of one or two years' standing—without the chance, as at present, even of an appeal to a District Court or to the High Court. No doubt it will be said that in some cases appeals lie to the Board of Revenue. Unless it can be said that the Honourable Members of the Board of Revenue have not now enough of work to do, and have much leisure, it is idle to expect them to hear satisfactorily the numerous appeals that are certain to be filed. May I also ask if the people most concerned in the matter have ever been consulted. Your Excellency will pardon me if I candidly say that neither the ryot nor the landholder is in favour of the change. In Bengal, Sir, both the systems have been tried, and as anybody who knows both the systems will naturally do, Bengal has come back to the Civil Courts again, and I venture to hope, that as we have drawn largely upon the Bengal Tenancy Act, it may still be possible to retain at least the appellate jurisdiction of the Civil Courts, though the original court may be, as at present, the Revenue Court though I know that the Revenue officers—I mean the Divisional-officers themselves—have often expressed their disinclination to do this work, as, I believe, they feel their inability to do it satisfactorily.

In support of this part of my argument I may be permitted to quote one passage from the minute of Justice Shephard.

"I do not say that on some points the Revenue officer may not be the best judge. In his proper sphere I should be inclined to place more confidence in the opinion of

"the Collector than the draftsman is prepared to do. I would not put the Collector in the position of a judge who as such must form his decision solely upon the evidence adduced before him and I would not allow any appeal from his decision to a District Judge who whatever his revenue experience of the past is not likely to have any particular knowledge of the district. But I altogether demur to the proposition to give the Collector the general jurisdiction conferred on him by the Bill and to make the Board of Revenue a Court of final appeal. The Bengal precedent is against it and in Malabar, we have experience of litigation between landlord and tenant dealt with in the ordinary way by the Civil Courts and apart from a difficulty referred to hereafter, I am not aware that there has been any complaint as to the mode in which their jurisdiction has been exercised. I am surprised that anybody who has had to do with the proceedings of Revenue officers and of Act VIII of 1865 should propose to perpetuate the system prevailing under that Act. In a country where there are practically no professional surveyors or appraisers (other than those in Government service), it must always be difficult to obtain a safe opinion on questions such as those which may arise under clauses 17, 18, 19, 20, 25, 27, 116 and 121 of the Bill.

"The difficulty is as we all know felt in Malabar. But in my opinion it is no sufficient reason for removing cases in which such points arise entirely from the jurisdiction of the regular Courts.

"In those instances in which a necessity arises for invoking the assistance of the Revenue officers, I would suggest that power be given to the Civil Courts on the application of either party to refer questions of a certain class to the arbitrament of the Revenue officer whose award subject to revision by the Collector should be final. This procedure is adopted in clause 143 (2), and in another form in section 84 of the Bengal Act, which, I may observe, parenthetically, has not been adhered to in the Bill (clause 122). I do not mean to say that all the applications which may be made under the Act should be made to the Civil Court. The observation does not apply to matters dealt with in clauses 50, 51, 116, 118 or in Chapters IX and X.

"With regard to Chapter VIII, I would follow the precedent of section 84 of the Bengal Act. As to the nature of the repairs, the necessity for them, the probable cost, the expense and rental of the land irrigated by the work, the Collector would probably be the best judge. As to these matters therefore let him give a certificate or which would amount to the same thing, let him make a report on reference of the Civil Court. On the other hand let the Civil Court decide the question whether the proprietor is bound to repair the irrigation work that being essentially a question of law. This will serve to illustrate my meaning. A similar course might be followed in other proceedings under the Act save only in the case already excepted. Clauses 130 to 133 should in my view be omitted, for there seems no reason why any landlord should, in addition to his remedy by distraint, enjoy any other extraordinary remedy."

Thus, Sir, the Council will see that while the grounds mentioned in the Statement of Objects and Reasons for this entire ouster of the ordinary Civil Courts are slender, the grounds stated in the introductory speech of my Hon'ble friend Mr. Forbes are almost shadowy. The Honourable Member used the word "fiscal" and assumed Revenue officials were better fitted to deal with everything "fiscal" and assumed the "shist" payable by a ryot to a landholder has anything "fiscal" about it. I don't know if so why not the rent which a houseowner collects from his tenant or money or price one pays to the bazaarman for articles purchased be also treated fiscal? While "fiscal" may be used as synonymous with "monetary" it is only when it is used in relation to the Crown or State that some kind of policy is generally attached to its use.

I don't know if it is generally known that in spite of this Bill appeals could be taken to His Majesty's Judicial Committee of the Privy Council either by the landholder or by the ryot and I need hardly say who among the two is more likely to avail of it, whereas as against decisions of the Civil Courts the Civil Procedure Code places restrictions and limitations upon such appeals. Seeing that this measure has been with the Government for nearly fifteen years, and that the notice we had was perhaps only as many days, I thank your Excellency for the assurance that this measure is not to be rushed through in haste, and that we are to have 4 or 5 months' interval before it comes back to us for consideration.

The Hon'ble M. KRISHNAN NAYAR:—May it please your Excellency, I am glad that our proceedings are about to see the beginning of the end. I may be permitted to say, My Lord, that I congratulate most heartily the Honourable Member in charge of the Bill on the lucid enunciation of the principles of the Bill that he placed before us yesterday. In fact, the masterly and historical review showing the relations between the Government and the zamindar on the one hand and between the zamindar and the ryots on the other, given by him yesterday was very interesting and instructive. In this connection I should most respectfully ask your Excellency's permission to say that the review with which your Excellency followed up the speech of the Honourable Member in charge of the Bill this morning was also luminous and highly interesting. It has elucidated the causes which have led up to the present legislation.

Going to the provisions of the Bill, this is not the time to go into a detailed consideration of the various provisions contained in the Bill. Personally, I take objection to the various details that are contained in the measure, but, in spite of that, taking the Bill as a whole, I am very glad that I am able to give my entire support to the Bill. In fact, I may say that there is no Bill to which I shall with more pleasure give my support. That is with reference to the general provisions contained in the Bill, whatever may be said with regard to its detailed provisions. As said in the speech of the Honourable Member in charge of the Bill yesterday, a prosperous and contented peasantry is really a very important limb in the body politic. And this Bill tries to secure a healthy growth of that limb. The Honourable gentleman did not use these very words but his ideas are contained in them. The Government has tried to hold the scales even between two classes—the zamindars on the one hand and the ryots on the other. There are very many provisions contained in the Bill illustrative of this, and I do not intend at this stage going into them. There are various provisions contained in the Bill, which are highly favourable to the landlord and equally there are very many beneficent provisions in favour of the ryot. As an instance of the provisions which are calculated to be highly beneficial to landlords, may be mentioned the provision in the Bill constituting the holding of the ryots the first charge for any arrears of rent or shist that may be due to the landlord. In fact, the interests of the landlord are highly protected by this provision of the Bill. Then again there is the other provision which says that in order that the contractual relations existing between zamindars and ryots may be established in courts of law, it is not necessary that the pattas ought to contain even the minutest details. That has been the bane of the existing law and that has now been removed. There is a healthy provision contained in the Bill that the patta, in order that it may be enforced in a court of law, need be only substantially correct. Another instance of the provisions in favour of the landlord may be mentioned and that is that he is entitled to claim an enhancement of shist or rent when he has effected at his own cost directly or indirectly improvements on the land and the land which is in the possession of the tenant has been materially benefited by the improvements which the landlord has directly or indirectly effected on the land. There are also other provisions contained in the existing law, namely, the right of entry, the right of distraint, the right of sale, the right of ejectment and all these are repeated in this Bill. These are some of the instances of the provisions contained in the Bill, in favour of the landlord. On the other hand, there are several provisions which are for the benefit of the tenants. Of course in the forefront of these provisions, should be placed—that is the one subject to which a very large portion of the Honourable Member's speech was devoted—the right of occupancy. I must say that there are difficulties in working the detailed provisions which are contained in the Bill, with respect to the right of occupancy. I may refer to one thing that occurs to me. There is a provision in clause 47 which says that when the holding of a tenant is sold for arrears of shist, that holding might be purchased by the landlord. As to what is to become of the holding after it is purchased is not mentioned. Does it become his home-farm land? If it does not, what are the incidents to be attached to the holding that he has purchased? According to the provisions of the Bill, the purchaser acquires all the incidents which the owner of a holding has, namely, occupancy right, etc. The next person who occupies the land which the zamindar has purchased in court auction acquires under the Bill an occupancy right.

The Hon'ble Mr. G. S. FORBES:—That is with the zamindar's permission.

The Hon'ble M. KRISHNAN NAYAR:—Yes. Suppose the right of occupancy which was once vested in the tenant is purchased by the zamindar, how is the land to be treated? Suppose the zamindar lets it to another person, how is he to be treated? These points may be considered by the Select Committee. I have only mentioned one difficulty in connection with the working of the detailed provisions in respect of the right of occupancy. Whatever that may be, as I said more than once,

1-20 P.M.

I heartily approve of the principle, namely, the right of occupancy, that is conferred upon the tenants by this Bill, notwithstanding the objections in respect of the details. Another instance of a very good provision in favour of the tenant is the right to claim the value of the improvements effected by him. Another provision which is more or less connected with this is the absence of freedom of making a contract under which the tenant can prevent himself from claiming the value of improvements which he may effect upon the land. Opinions may differ with reference to this provision. Some may say that the legislature should not interfere with the freedom of contract between man and man in this way. The provision is that if a contract is entered into between the landlord and the ryot according to which the ryot is prevented from claiming the value of improvements, that contract is invalid. It may be stated that it is an extreme case and there is no necessity for interfering with the freedom of contract between man and man. There is an exactly similar provision in another Act, namely, the Act relating to the value of improvements made by a Malabar tenant. There the provision is that if a tenant and the janmi enter into a contract under which the landlord prevents the tenant from claiming the value of improvements effected on the land, that provision is invalid. In spite of the hardship which may sometimes occur, this provision has, on the whole, been working well. Probably I am right in thinking that a similar provision contained in this Bill will, on the whole, be beneficial and will not work any great hardship on the landlord. There are other provisions contained in the Bill in favour of the tenant. He has the right to see that irrigation channels are kept in proper order and there are various other provisions to which I need not refer. I may mention one or two of the things to which I object. One is the provision in the Bill relating to the enhancement or reduction of rent due to a rise or fall in prices. I submit, My Lord, that this provision for enhancement or reduction is probably not quite sound in principle. In fact, the peshkash which has been fixed as payable by the zamindar is a permanent one and does not vary. That is not increased on the ground that there has been an increase in the prices of food-grains. I take it, My Lord, that the permanent settlement was made not with reference to landlords alone but with reference to landlords and tenants as well. If in the historical review, given by the Honourable Member in charge of the Bill, the position sketched out by him showing what exactly is the legal status of the zamindar is correct, namely, that the original zamindars were only farmers of revenue—if that position be correct, and, as I am at present advised, I have no reason to think that the position assumed by the Honourable Member is not correct—then it follows that the peshkash was fixed as an amount of revenue payable to Government and that is fixed not with respect to the landlord alone but with reference to the ryot also, and with reference to land in general. If that be the case, I submit that there is no reason why the zamindar should be allowed to claim enhancement of rent when there is a rise in prices. If we extend the logical consequence of this principle, I submit it will be a hardship to the zamindars themselves, because all the reasons that may be urged in support of enhancement of rent by reason of rise in prices might with equal force be urged for the enhancement of the amount of peshkash. I don't think that is a desirable position altogether. For the reason that an increase of peshkash is not advisable, an enhancement of rent due to a rise in prices is also not advisable. Let us consider the analogous case, namely, the increase of revenue claimed by Government in ryotwari tracts. When there is a rise in prices, the Government claims the right of raising the revenue also, but I submit, My Lord, the analogy stops there. The analogy between the Government and the zamindar does not proceed further, because in respect of the Government, the enhanced revenue which the Government raises by reason of a rise in prices is spent by Government both theoretically and practically for the people, whatever differences of opinion there may be with reference to the best way in which that money could be spent. The Government has to keep up a large

army and a large amount has to be spent on the administration of the country. Thus the revenue raised by Government is spent by them both theoretically and practically for the people. The enhanced revenue collected from the people is spent for the people. It cannot be pretended that the enhanced rent or shist which the zamindars are entitled to claim by reason of a rise in prices will be spent by the zamindar for the ryot. In the interests of the zamindars themselves, the principle of enhancing the rent, in consequence of a rise in prices, should not be allowed. If the zamindar is not allowed to take enhanced rent when there is a rise in prices, the tenant should not be allowed to claim a reduction of rent when there is a reduction in prices. Reduction and enhancement in rent owing to a fall or rise in prices will lead to a multiplicity of suits. These provisions for the reduction or enhancement of rent due to a change in prices may, I think, be dropped altogether. I only wish at this stage to allude to one other instance, in which I take exception to some of the provisions of the Bill. That is the one that has already been referred to by my Non-official Colleagues. That is the clause under which the jurisdiction of the Civil Courts is taken away. With reference to this, My Lord, I may first of all be permitted to say that, speaking in behalf of myself and also of the Non-official Members, we feel indebted to Your Excellency for the various good things which Your Excellency has said, out of the goodness of your heart, with reference to the Non-official Members of this Council. We feel thankful to Your Excellency for the assurance given this morning that whatever may be the ultimate conclusion to which the Government may come on this question, the Government is prepared to consider the matter, namely, whether it is desirable to take away the jurisdiction of the Civil Courts or not. We feel thankful to Your Excellency for the assurance that further attention and consideration will be bestowed upon this subject. In regard to this matter, I may be permitted to say that, in spite of the various weighty reasons given by Your Excellency this morning, I don't think, My Lord, that I am altogether convinced that it is desirable or necessary to take away the jurisdiction of the Civil Courts. I don't propose to go into all the reasons and arguments for the position that I take up, for the simple reason that most, if not all, of the Non-official Members who spoke have referred to the subject and given their reasons. For those reasons I object most strongly to the provision, whereby the jurisdiction of Civil Courts is taken away, in respect of matters between zamindars and tenants to which the Bill relates. The place where disputes between zamindars and tenants are heard loudest is the Bengal Presidency. Before 1859 and certainly after 1859, ever since Lord Canning became the Governor-General, every successive Governor-General had to deal with this matter. Ultimately there was Act VIII of 1885, and in that the jurisdiction of Civil Courts was not taken away. That jurisdiction of Civil Courts should be taken away has not been placed before Your Excellency by any of the parties interested in the matter, either the landlords or the ryots. For these and other reasons already referred to, I submit, My Lord, that the provision doing away with the jurisdiction of Civil Courts, in respect of matters dealt with by this Bill, may be dropped altogether. I may end as I began by thanking Your Excellency for the assurance that Your Lordship gave in respect of this provision this morning. But before I sit down, I wish to make one suggestion. Your Excellency referred this morning and the Hon'ble Mr. Forbes referred yesterday to the various stages in the history of this Bill. Naturally there are in the Secretariat offices many papers relating to this Bill. The only papers that have been circulated to the Honourable Members so far are the draft Bill and the Statement of Objects and Reasons. In connection with the Municipal Bill that came on for discussion last year and in connection with the Impartible Estates Bill and other Bills such as the Village Panchayat Regulation, we were supplied with various papers connected with these measures. We know, My Lord, that whenever we make a request to see the papers, we are allowed access to them with Your Excellency's permission. That may be convenient for those who live in Madras; but for those of us who are living in the mufassal to come here to look at the papers is difficult. I would, therefore, suggest that the draft Bill of 1898, the memorandum prepared by the late Mr. Ross and the various other papers referred to in Your Excellency's speech and the speech of the Hon'ble Mr. Forbes may be printed and circulated to the Honourable Members for their consideration. There may be valuable suggestions in those papers some of which may be placed before your Excellency by us. With these observations I am very glad to give my support to the Bill.

The Hon'ble Mr. G. S. FORBES, in replying to the observations of various Honourable Members, said:—My Lord, I think the Government have every reason to be satisfied with the general reception which this Bill has met from the Council and the appreciation which has been expressed of their labours in bringing this legislation towards a final conclusion. The assent which has been intimated to the principles of the Bill by so many Honourable Members absolve me from going minutely into details. The objections taken by the Hon'ble Mr. Muttukumaraswami Mudaliyar and the Hon'ble Mr. Desika Chariyar, in so far as they go to the root of the Bill, have reference to the two important points of occupancy and the cultivation of the waste. The arguments which have been put forward on those points are in effect—

The Hon'ble V. C. DESIKA CHARIYAR:—I did not object to the root of the Bill. I said that they must have occupancy right; only it ought to be a rebuttable presumption.

The Hon'ble Mr. G. S. FORBES:—I am much obliged for the Honourable Member's correction, and I am glad he holds that view. With regard then to the Hon'ble Mr. Muttukumaraswami Mudaliyar, the whole of the objections which he took to the different provisions of the Bill in the long exposition with which he favoured the Council are simply a direct negative of the principles of the Bill. If occupancy right is to be accepted as a principle of the Bill, naturally all those objections which he has stated, or the great bulk of them, except in so far as they relate to mere matters of detail, must naturally fall to the ground. Therefore, I shall only deal with the main issues. To begin with, however, I may refer to an objection taken by the Hon'ble Mr. Govindaraghava Aiyar which is not fundamental, but which seems to have created a certain amount of misapprehension, and that is the position of an inamdar under the Bill. An inamdar who is a landholder, as defined in the Bill, is not quite in the same position as a zamindar under the permanent settlement. In the remarks which I made in introducing the Bill, I referred to both classes under the general terms of landholders under settlement or by grant. An inamdar ordinarily holds a grant of land revenue and is an assignee, at any rate in origin, pure and simple, and has not even the same pretensions as a zamindar under the permanent settlement to encroach upon the ryot's rights. But the Hon'ble Mr. Govindaraghava Aiyar was doubtful whether the definition of landholder did not go too far in including certain inamdars and shrotriendars, especially those who enjoyed only portions of a village. Where an inamdar is an inamdar of a whole village, I do not foresee any difficulty. But where an inamdar is an inamdar of a portion or part of a village, it may very likely be that he is both the ryot and the landholder. If he is the inamdar of a whole village, it is almost certain that the grant made to him was a grant of the revenue pure and simple. It is not likely that a whole village was lying waste. When he is the inamdar of a portion of a village the grant may have been of a piece of the actual village waste land as well as of the revenue derived from it, in which case he is both the ryot and the landholder. In such cases the inamdar would of course be able to deal with the lands as the ryot of them. The Hon'ble Mr. Muttukumaraswami Mudaliyar indicated a somewhat similar difficulty when he referred to the case of a mirasidar who bought zamindari rights; in such a case the purchaser would be both ryot and landholder; and the lands would be home-farm lands. If the position is clearly apprehended, no difficulty should arise. A ryot may become the zamindar of his lands, though the Bill would prevent a zamindar from acquiring ryot's rights in his estate. Apart from the question of occupancy right as an essential principle of the Bill, one of the most serious objections taken to it is the inclusion, within the objects of occupancy, of the whole of the waste lands in the zamindari, not being home-farm lands. The Hon'ble Mr. Desika Chariyar quoted section 11, clause (iv) of the Kent Recovery Act VIII of 1865. The view of most people who read that clause correctly—at any rate I share the view with many authorities—is that its true construction is governed by the proviso, which makes the whole clause subject to prescriptive rights or usage having the force of law. In the Chikate case which I quoted yesterday, Sir Subrahmanya Aiyar correctly described the actual situation when he stated that usage made no distinction between an old ryot and a ryot newly let into occupation of waste or abandoned lands. As the Hon'ble Mr. Desika Chariyar has himself said, what was given to the zamindar by the permanent settlement with reference to waste land was the control over its distribution among the ryots. These were the words used by the Hon'ble Mr. Desika

Chariyar; and they are perfectly correct. The zamindar can control the distribution of the waste lands amongst the ryots—that is to say he can distribute the lands to whomsoever he pleases.

The Hon'ble V. C. DESIKA CHARIYAR:—And fix his own rates?

The Hon'ble Mr. G. S. FORBES:—I do not think the Honourable Member said that clearly; however I accept his correction, and will have something to say on the question of rates later on. Under the Bill, no one can become the ryot of lands lying uncultivated except with the permission of the landholder. In other words the distribution is left with the landholder, as Act VIII of 1865 intended. The zamindar's rights were subject to the ryots' prescriptive rights, as well as their legal rights recognized by the old regulations. What these were down to 1865 I described yesterday; the Act of 1865 was a processual Act and altered nothing. Regulation XXX of

1-40 P.M.

1802 declared distinctly, as I pointed out, that the ryots' payment to the zamindar was subject to certain limitations; and that, if there was any dispute as to what the proper rate was, that dispute was to go before the Collector, and the Collector was to settle the rate, and section 9 of the Regulation, which I read yesterday, defined distinctly how the rate was to be fixed by him. The question of the waste was discussed with the Government of India, who intimated their views in the following terms:—

"The Government of India are not prepared to accept the view that an absolute right was given to the zamindars, by the permanent settlement, to deal as they liked with waste lands. This question was fully discussed in connection with the passing of the Bengal Tenancy Act, and the conclusion then come to was that at the permanent settlement of Bengal waste was not included in the *khamar* or *sir* lands, in which occupancy rights cannot accrue. The rules and regulations of the permanent settlement in Madras where they differed from those of Bengal only went further in the direction of protecting the rights and interests of the ryots. On this point I am to invite reference to sections 37 and 39, Bengal Regulation VIII of 1793, and to paragraphs 25 and 34 of the instructions issued to Collectors as to the permanent settlement of lands in Madras. Paragraph 27 of these instructions does not appear to support the opinion based upon it, that absolute rights in waste lands were given to the zamindars by the permanent settlement. Having regard to the preceding observations, the true meaning of that paragraph seems to be that the zamindars were empowered, for their own sole benefit, to let such lands at the established rates and subject to the recognised customs of the country. The Government of India have no objection to allowing the growth of occupancy right in the landlord's home farm to be barred, but are strongly opposed to any such proposal regarding the waste. They apprehend that to exclude the growth of occupancy right on waste would be a contravention of the customary law of the country and would be opposed to public policy."

This question of subjecting to occupancy right the whole of the waste lands, not being home-farm lands, is a matter which has been carefully considered and decided having regard to the customary law of the country and to public policy. The ryots of the village have always considered it their indefeasible right—and for instance nowhere more strongly than in Chingleput—to extend their cultivation over the waste, and on exactly the same terms as they hold their other lands. These are special and prescriptive rights which are not abrogated by Act VIII of 1865. Both on this ground as well as on grounds of public policy this Bill cannot make any distinction in regard to the subjects of occupancy right, the landholder however retaining the right to distribute the waste. The apprehension expressed by the Hon'ble Mr. Desika Chariyar that by allowing occupancy to accrue in the waste, the consequence will be that the zamindar will allow the lands to remain barren is an argument which I do not think will commend itself to any person except as a verbal argument.

The Hon'ble V. C. DESIKA CHARIYAR:—That is not the whole of my argument. I said he would use hired labour and he would not give away the land to the tenants as he has been doing till now.

The Hon'ble Mr. G. S. FORBES:—Very well let us take it that he will use hired labour. If the waste land in an estate is of any importance, is it likely that he will allow it to remain barren, because he cannot give occupancy right, that he will cut

off his nose to spite his face? The landholder has his own interests too much at heart. Every body will admit that to have a contented tenant with an occupancy title in the waste land, which can be sold up for arrears, will add to the prosperity of the zamindar himself. If he chooses to cultivate the waste with his own labour and, remember, it must be *bona fide* by his own hired labourers, I doubt very much whether he would be able to exercise that effective supervision, which is essential to profit. Considering the facilities which this Bill proposes to give to the landholders in connection with the recovery of rent, I think they will find themselves in no way prejudiced in the end, by having it clearly declared that occupancy right accrues to the waste.

Another point to which the Hon'ble Mr. Muttukumaraswami Mudaliyar and the Hon'ble Mr. Desika Chariyar took objection was the exchange of pattas and muchalkas. There is no question that the zamindar at the present moment frequently finds the distribution of pattas a very difficult business, which very often leads to very undesirable results. But it is this very exchange of pattas and muchalkas that the Patta Regulation of 1802 considered so necessary as a safeguard to the ryots. As I said yesterday, it was to the neglect of the Patta Regulation that the old Court of Directors attributed the invasion of the ryots' rights and the exactions to which they were subjected by the zamindars. I do not know that I have ever heard of a good zamindar who, in giving pattas and muchalkas to his ryots, experienced any trouble in connection therewith. The very necessity of having to make out a patta with reference to the extent of land which the ryot holds and the rate which he has to pay is the opportunity which the ryot recognises for resisting any exaction or oppression that is put upon him. Now that the ryots' rights are to be placed on a firmer footing the question of the exchange annually of pattas and muchalkas does, no doubt, lose a certain amount of its importance; and so the Bill dispenses with annual exchange if both parties consent. The Hon'ble Mr. Muttukumaraswami Mudaliyar admits that what the Bill confers in this respect is a substantial benefit.

Turning now to the question of communal lands, I did not gather that the Hon'ble Mr. Muttukumaraswami Mudaliyar did object very strongly to the provisions connected therewith. He however asserted claims with reference to communal lands, which the Government in behalf of the people would not care to allow. He apparently contended that such lands including the village-sites were a part of the zamindar's estate and under the control of the zamindar. This is not so as a matter of law. Such lands were excluded from the permanent settlement as Lakhiraj lands. Lakhiraj lands include not only lands granted to a particular person free of revenue liability, but also all lands exempt from the revenue demand which were appropriated at that time for public purposes. Curiously enough in the memorial which the Honourable Member's Association submitted to the Government against the predecessor of this Bill in 1898, when referring for another purpose to the status of these lands, they distinctly admitted that such communal lands were excluded from the permanent settlement. In the first page of that memorial, the Landholders Association wrote:—

"At the time of the permanent settlement lands set apart for village-site called Natthamjari were excluded from the lands brought under the settlement. Any land beyond the limit of Natthamjari appropriated by a tenant is liable to be taxed."

The Landholders Association, in making that statement, were quite right in declaring that the Natthamjari or village-site was excluded from the permanent settlement. Their statement only corroborates what I said some days ago on the Encroachments Bill, and the view that is implied in the present Bill. I also find that in a speech made by the Hon'ble Mr. Jambulingam Mudaliyar in 1898, on the Bill of that year, he made precisely the same admission. This Bill, however, in terms enters into no question of the proprietary right in the village-sites or temple-sites or burial grounds or threshing floors. All that it directly declares is that in the public interests it is necessary that the Government should have control over these sites for the protection of the rights of those, who, from time immemorial, have been allowed to enjoy them under certain well-known conditions if they are excluded from the permanent settlement, as the Landholders Association admit.

The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR:—The statement refers only to cases where they are excluded.

The Hon'ble Mr. G. S. FORBES:—The memorial makes no distinction. Under the ordinary common law, these communal sites, from time immemorial, were exempt from taxation and appropriated for the use of the villagers.

The next question to which I will refer is the restriction upon the landholder from extending the home-farm or Kambattam lands, in which the zamindar has rights both of a ryot and a zamindar. Of course, it is a very plausible argument to say that he should be allowed to take up the waste to increase his home-farm land as well as to purchase ordinary ryotwar lands with the same object. Such freedom, however, would in the first place be used to deprive the villagers of the rights which they have been enjoying. They have certain well-known rights over waste lands in the zamindari, outside the home-farm lands, the right which they have enjoyed from time immemorial to extend their cultivation. Apart from this prescriptive right, it is necessary as matter of public policy to prevent the zamindar from enlarging his private domain. If he had the power to convert any unoccupied land he pleased into home-farm land, then, in course of years, he could get round the provisions of this Bill altogether, and turn the whole of his estate into home-farm land, in which case the cultivators would be mere tenants at will. As a matter of public policy, the Government will not permit that any situation of that sort should be created. Both in view of prescriptive right and on grounds of public policy, the extension of the home-farm is not admissible; and that is one of the fundamental principles of the Bill. The same principle has been applied in other parts of India.

The next very important question is that raised by the Hon'ble Mr. Krishnan Nayar as to the right which the Bill proposes to give to the zamindar to enhance the shist. I must say, speaking for myself, I very much sympathise with the views which the Honourable Member has expressed. The idea of the present Bill as originally submitted to the Government of India was, as I said yesterday in introducing the Bill, to adhere to what had been the immemorial custom in this Presidency and to make the decisive test of what the ryot ought to pay to be the established *waram*. If the *waram* were the test, then the enhancement and reduction of shist would become automatic, and commutation would be a matter of mutual arrangement, with which the Government need have nothing to do, unless, indeed, if the principle were misapplied they should be compelled to interfere on grounds of public policy. It has been said that there would be difficulties at any rate in certain places in ascertaining the established *waram* or produce rate. But although zamindars in some places may have obscured the rate by a permanent commutation of it many years ago into money, and raising the money shist in subsequent years, these rates I believe can still be proved without great difficulty. They are well known to the villagers. Where cultivators deem themselves oppressed, their whole test of oppression is in the excess of their shists over the old established village rates. This excess is still their universal measure of oppression and exaction. Under the Bill as now framed, however, enhancement is allowed under certain conditions; and as years go on and as circumstances change, it perhaps may be necessary to allow greater latitude to the landholders in this direction. Personally, I have no great sympathy with the zamindar in demanding more than his pound of flesh. At the permanent settlement the compact with him gave him one-third of the assessed assets as his own. He was to collect the Government revenue, pay over two-thirds, and retain one-third. Even at the time of the permanent settlement, that one-third must have been worth a great deal more. The country was little known and the assets could not have been calculated on any very exact scale. What the value at the present day of that compact is cannot be very easily computed; but we know that it has risen enormously and Sir Bhashyam Aiyangar 5 or 6 years ago in the debates on the Village Officers Bills estimated that the zamindar then took at least two-thirds of the assets. If the difference went into the public treasury, the amount would be available for the public good or might bring about a considerable reduction in taxation generally. The aggrandizement of a zamindar should come not from rackrenting but from the extension of cultivation by getting ryots for the waste lands, and so improving his income. It is to the great benefit of the country that such extension should be effected; and in so far as the landholders have encouraged this, they are to be applauded. Of course, there is no question of interfering with the settlement in any way; but seeing the advantage the zamindars have derived from it I must say that they are not entitled to the sympathy which they claim by

reason of the limitation of their supposed rights. The descendants of the zamindars of 1802 enjoy the fruits of a very good bargain, and as long they are not prodigal and reckless, they ought to be a wealthy and prosperous class. With regard to the question of enhancement to which I was referring, when I made this digression, the Bill does not leave the matter altogether without limitation. That limitation is imposed by the proviso to clause 22. In the first place, however, it will be seen that there is no means of enhancing the produce shist, so long as it is taken as a waram or in shares. Such a shist is not alterable under the Bill. The only shist which can be enhanced is a money shist; and that by a suit before the Collector. The proviso runs:—"Provided that if the established 'waram' of the village in which the holding is situated is ascertainable, the enhancement under this section shall not operate so as to raise the shist beyond the value of the said waram commuted in accordance with the provisions of section 33." In this way the Government have tried in the Bill now before the Council to continue to carry out the purpose of the Regulation of 1802 which places the ryots' payment under regulation and imposes a limit to it. As I said in my opening speech, I am somewhat uneasy as to one class who may come under this Bill. I mean the ryot who has paid a fixed shist since 1802. If he has paid a fixed shist in money since 1802 and can prove it, I am not clear how far the proviso will save him from enhancement. I doubt, however, whether he will be much damaged. In the law reports there are not wanting quite recent cases, in which the ryots have been able to establish that the money shist has never been altered, and the Courts have held that they were entitled to continue to pay that shist and no more. I have said that proof of the proper village waram or rate would be more easy than some people realize. In the Southern districts these rates are generally quite easily ascertained; but even in the Northern Circars where money rates have been more largely introduced the existence of such a standard is allowed. This is well illustrated by the observations which the Agent of the Kallikot and Attagada zamindaris in Ganjam submitted to Government in 1898 on the Bill of that year. He wrote:

"The ryots are bound to pay each year the rajabhagam or landlord's share in the produce to the zamindar; but as a matter of practice the rent is settled each year by estimating the probable crop, and the ryots and the Agent agreeing on a rent for each village for the current fasli. This rent is so much grain or so much money."

"When the ryots and landlord do not agree to the rent, the half share of the crops due to the landlord is taken by appraisement of the produce and is estimated by arbitrators."

That is a correct description of the ryots' prescriptive rights; and whatever the actual practice of landholders may be, it would be absurd to say that these rights are not inherently the same everywhere.

The final remarks that I wish to make are with reference to the judicial procedure provided by the Bill. Most if not all of the native Non-official Members have taken exception to the jurisdiction of the Revenue Courts. The Hon'ble Mr. Sivaswami Aiyar is one of the main exponents of this objection. The Hon'ble Mr. Sivaswami Aiyar is a great lawyer and he is a great advocate; and I rather think that to some extent he allowed the prepossessions of his profession to lead him to the use of arguments which were altogether of too general a character. Any one listening to the Hon'ble Mr. Sivaswami Aiyar would have thought that the Government were abolishing the Civil Courts altogether and that civil rights were no longer to be decided anywhere by these Courts. He did not in any way confine his remarks to the particular cases in which jurisdiction was to be restricted to Revenue Courts under this Bill. There is no interference with the usual jurisdiction of the Civil Courts in any case except where the jurisdiction is specifically excepted. In my opening speech I said that the matters which were reserved to the jurisdiction of the Revenue Courts were of a very limited description. If the Hon'ble Mr. Sivaswami Aiyar had dealt with the subject by taking up each of the cases in which the Bill proposes to reserve jurisdiction, and had examined each such case to see wherein it was undesirable that the Revenue Courts should have jurisdiction, it would have been a more proper mode of discussing the matter, and would, I am sure, have proved

most valuable. Instead, he indulged in general and sweeping arguments. In the second place, I think he rather misled the Council, in the references that he made to what had been enacted elsewhere, and especially to the Tenancy law of the North-West Provinces. The Punjab Act, he admitted, left the whole jurisdiction to the Revenue Courts. But referring to the Act of the North-West Provinces, 1901, both he and also the Hon'ble Mr. Govindaraghava Aiyar, read out the section of that Act, which while giving jurisdiction to the Assistant Collector in certain cases, provides that the appeal lies to the superior Revenue authorities only if the amount at issue is under Rs. 100, the appeal in other cases going to the Civil Court; and the inference which the Honourable Members of the Council must have drawn was that the jurisdiction was generally not with the Revenue Courts but with the Civil Courts. That is not an accurate description of the North-West Provinces Act. That Act reserves all the cases in the schedule of the Act for the primary jurisdiction of the Revenue authorities; but in certain cases, and in certain cases only, allows an appeal to the Civil Court. In a large number of cases, to which the Hon'ble Mr. Sivaswami Aiyar did not refer, the jurisdiction both original and appellate is confined entirely to the Revenue authorities; and if the Honourable Member had examined this Bill, he would have seen that, in the main, the important cases which it is proposed to bring under the exclusive jurisdiction of the Revenue Courts are reserved to the Revenue Courts in the North-West Provinces. The schedule of their Act arranges suits into three groups, A, B, and C, with reference to the extent of the jurisdiction and the character of the appellate authority, while "applications" are classed in group D. In group A if the value of the subject matter of the suit is under Rs. 100 the appeal is not to the Civil Court but to the Collector. And in all the suits in group C, the appeal can be only to the Revenue authorities. In the case also of all "applications," group D, there is, so far as I can make out, no appeal from the original order of the Revenue officer, unless it is passed by a junior Assistant Collector, when there is a final appeal to the Collector. If Honourable Members will turn to clause 147 of our Bill they will find there suits for the enhancement of the shist payable by the ryot, for the reduction of the shist, and for the commutation of the shist. These are the most important cases in which litigation may be expected and it is proposed by the Bill that such cases should be cognisable by Revenue authorities only. Such cases would fall under group C of the North-West Provinces schedule and there, equally as here, the jurisdiction would be exclusively in the Revenue Courts. Similarly the corresponding suits for obtaining a patta (sub-clause (e) of clause 147) and for enforcing the acceptance of a patta—sub-clause (f)—will also be found in group C of the Act referred to, in which the jurisdiction of the Revenue Courts is exclusive. When the Bill was before the North-West Provinces Council in 1901, I don't think that there was a single objection taken or argument advanced against that jurisdiction. In Bengal, the situation is different. In Bengal the original jurisdiction, as Honourable Members have said, was vested in Collectors in 1859. But this was subsequently transferred in 1869 to the Civil Courts. There were many reasons for the change, some of them depending on compromise, into which I need not go. In Bengal, however the situation is very different, and there exist complicated tenures of all sorts and descriptions, raising issues which for the Revenue Courts to decide, would be a difficult matter. In fact the Revenue authorities themselves said that they could not undertake it, and, therefore, their jurisdiction was abrogated. In 1885 the jurisdiction of the Civil Courts in Bengal was maintained, but the procedure was simplified. The Collectors were however given a very important primary jurisdiction in connection with the decision of disputes as to rent and the settlement of rent. Under this Bill, there will be no intricate tenures to deal with. There is virtually only the tenure of the occupancy ryot. A few years ago in 1897 the Government of Bengal introduced a Bill in amendment of the Act of 1885 by which they proposed to confer a more unfettered jurisdiction on Collectors in disputes as to rents in estates not permanently settled. Curiously enough, the Association in Calcutta which corresponds to the Landholders Association here after first repudiating the proposal that the Collectors should exercise similar jurisdiction in permanently settled estates, retracted, and went up to the Lieutenant-Governor, when however it was too late to modify the Bill, and prayed that the same revenue jurisdiction should be extended to such estates; or, if not, that if in a

civil suit the question of proper rates arose, it should be referred to the Revenue officers whose finding as to the liability to enhancement or the rate of rent should be made binding on the Civil Court. I cite this only to show how on reflection, zamindars in other parts of India, who were at first strongly opposed to any revenue jurisdiction, modified their view, at any rate in part. Having regard to the complicated and the varying circumstances of holdings, soils, etc., it has always been considered by the best authorities that, as regards questions which turn upon the proper rate of shist to be paid by a ryot, the best agency for adjudicating as to enhancement or reduction, is that of Revenue officers. This was very clearly pointed out in the course of the debate on the Bengal Bill of 1898 amending the Bengal Tenancy Act: "Revenue officers can go on the ground, see the land for themselves, observe and ascertain the facts on the land, and consult the people concerned in their villages. The hard and fast rules of the Law of Evidence and of the Civil Procedure Code are not suited for proceedings of that kind. It follows that it is not desirable to tie the Revenue officer down by the Civil Procedure Code or to prescribe any one method of settling the rates and to insist that he should follow that method only. He will recognise the fact that the people who have lived on the land all their lives know very very much more than he can of its capabilities; and he will not, if he is wise, attempt to raise or lower all rents to one dead level according to his own preconceived notions of the fitness of things. . . . It is deemed to be a matter of cardinal importance that officers settling rents should be free to consult the people in their villages, to note what they say, and themselves to observe facts on the spot and make use of their knowledge thus acquired in coming to a conclusion as to what a fair rate would be. But this the Law of Evidence and the Civil Procedure Code do not allow them to do. . . . If each landholder in a vast estate were to fight out every case as a (regular) civil suit, it is clear that the proceedings would be interminable and the expense intolerable."

These statements were made, I admit, not with reference to revenue jurisdiction in all cases but only in cases of settlement of rates, and of enhancement. The Revenue officers under clause 147 of our Bill will sit judicially to hear the suits mentioned in the clause, but the provisions of the Civil Procedure Code will not apply in their fulness. The extract I have read indicates however the kind of knowledge which an officer who has to deal with such cases should possess, and which is possessed not by the Judges of the Civil Courts but by Revenue officers who have in the course of their daily duties acquired knowledge of the kind indicated, and can bring it to bear upon the cases before them. Clause 147 also includes suits for arrears of shist and a zamindar told me the other day that he considered the jurisdiction of the Revenue Courts in this matter to be one of the most important and valuable benefits which the Bill proposed to give instead of the expensive and tedious process of suing the ryots in the Civil Courts as he now had to do. Clause 147 covers other matters such as the recovery of damages for wrongful distress, for illegal cesses, and the like — all matters which are more or less intimately connected with the procedure of distraint and recovery and should present no real difficulty in a Revenue Court. I will not however object to the scrutiny of the list by the Select Committee. All I deem essential and fundamental is that, with regard to suits concerned with the settlement or enhancement of rents and the exchange of pattas and muchalkas, the primary jurisdiction must be reserved to the Revenue Courts so that the ryots may have an easy, inexpensive and speedy remedy. Whether in some of the cases provision may be made for an appeal to the District Court instead of to the Board of Revenue or District Collector, I am content to leave for further consideration in the Select Committee.

I don't think that there are any other points with which I need trouble the Council at this hour. I have been already sufficiently tedious; and I think that any other points raised in the debate will find an answer implicitly or explicitly in the exposition which I attempted yesterday of the fundamental principles of the Bill.

Some complaints were made as to the short time allowed for the consideration of the Bill, but I would remind Honourable Members that this Bill, except in that one essential point of occupancy right, is substantially the Bill which came before this Council in 1898.

The Hon'ble V. C. DESIKA CHARIYAR:—These Honourable Members did not exist then.

The Hon'ble Mr. G. S. FORBES:—Every Honourable Member who professes to discharge public duties ought to keep himself acquainted with the course of legislation. More than six months ago His Excellency intimated to the Council that this Bill would be taken up. The Bill of 1898 was in the records of this Council and the whole of the debates were available; and I do not see how any Honourable Members can reasonably complain of short notice. The Hon'ble Mr. Muttukumaraswami Mudaliyar made a somewhat similar complaint at the end of his speech; but I don't think the complaint comes with very good grace from him since the objections taken by him are very much on the lines of the memorials which the Landholders Association presented in 1896 and 1898.

However, the Bill of 1898 and a large number of reports and other papers connected with the subject will be communicated to Honourable Members.

I do not think I have anything more to add. I can only say that I am confident that the Bill, if it passes, will do vast good to the country and the people at large in whose true interests it has been framed, and that even those zamindars who are now disposed to criticise its provisions will be converted by the logic of facts and become its warmest approvers and supporters. With these remarks, I beg to move that the Bill be read in Council.

The motion was put and agreed to.

The Secretary then read the title of the Bill.

The Hon'ble Mr. G. S. FORBES:—The next motion which I have to make is that the Bill be referred to a Select Committee. An important Bill like this must necessarily be referred to a Select Committee.

The Hon'ble Mr. M. Hammick seconded the motion.

The motion was put and agreed to.

The Hon'ble Mr. G. S. FORBES:—I beg to move, My Lord, that the Select Committee be constituted of the following members:—The Hon'ble Mr. Muttukumaraswami Mudaliyar, the Hon'ble Mr. L. A. Govindaraghava Aiyar, the Hon'ble Mr. P. S. Sivaswami Aiyar, the Hon'ble the Advocate-General, the Hon'ble Mr. M. Hammick, the Hon'ble Mr. H. Bradley and the mover.

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

The motion was put and agreed to.

2-20 P.M.

His Excellency the PRESIDENT:—The Council is adjourned *sine die*.

H. D. TAYLOR,
Ag. Secretary to Government, Legislative Dept.



**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 Vic., cap. 67, and 55 and
56 Vic., cap. 14.**

The Council met at the Council Chamber, Fort St. George, at noon on
Tuesday the 14th day of November 1905.

P R E S E N T :

His Excellency Baron AMPHILL, G.C.S.I., G.C.I.E, Governor of Madras—

Presiding.

The Hon'ble Mr. G. STOKES, C.S.I.

The Hon'ble Mr. G. S. FORBES, C.S.I.

The Hon'ble Mr. A. G. BOURNE, D.Sc., F.R.S.

The Hon'ble G. SRINIVASA RAO Avargal.

The Hon'ble M. KRISHNAN NAYAR Avargal.

The Hon'ble K. VENKATA RAO Garu.

The Hon'ble Mr. H. BRADLEY.

The Hon'ble C. MUTTUKUMARASWAMI MUDALIYAR Avargal, Zamindar of
Chunampet.

The Hon'ble Mr. A. E. CASTLESTUART STUART.

The Hon'ble P. S. SIVASWAMI AIYAR Avargal.

The Hon'ble V. C. DESIKA CHARIYAR Avargal.

The Hon'ble Mr. J. E. P. WALLIS (Advocate-General).

The Hon'ble Mr. J. TWIGG.

The Hon'ble L. A. GOVINDABAGHAVA AIYAR Avargal.

The Hon'ble Mr. A. J. YOEKE.

The Hon'ble Mr. M. HAMMICK, C.I.E.

The Hon'ble K. VASUDEVA AIYANGAR Avargal.

The Hon'ble Mr. W. B. DEWINTON, C.I.E.

The Hon'ble Mr. J. N. ATKINSON.

The Hon'ble Mr. C. J. WEIR.

The Hon'ble R. V. SRINIVASA AIYAR Avargal, Diwan Bahadur.

ADDITIONAL MEMBERS.

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

The Hon'ble Mr. J. N. ATKINSON.

" " Mr. C. J. WEIR.

" " R. V. SRINIVASA AIYAR Avargal, Diwan Bahadur.

QUESTIONS AND ANSWERS.

The Hon'ble G. SRINIVASA RAO :—

I. (a) The *Ceylon Observer* states that the arrival of emigrants in March 1905
was more than 12,000 as against 4,000 in the previous months and that they were
chiefly recruited from the districts of Trichinopoly and Salem. Is this a fact?

(b) Will the Government be pleased to enquire if such large exodus in one
month has had a depressing effect upon the agriculture of the districts in question
and take the steps necessary to stop emigration in such large numbers?

The Hon'ble Mr. Hammick :—

I. (a) The Government have no knowledge of the article in the *Ceylon Observer* to which the Honourable Member alludes. As stated in the reply given to the Honourable Member's question No. XXIV asked at the meeting of the Legislative Council held on the 21st March 1905, the Government receive only annual reports showing the number of passengers who embark for Ceylon in a year from the ports in the Madras Presidency. The report for 1905 is due in April 1906, and the Government do not propose to undertake the collection of special statistics in anticipation of the usual returns.

(b) The Government see no sufficient reason to institute the inquiry proposed by the Honourable Member. Emigration to Ceylon is free from all restrictions, and labourers are at liberty to go or stay as they may find to their own advantage.

The Hon'ble G. SRINIVASA RAO :—

II. (a) Has the attention of Government been drawn to the article headed "Madras Cooly Emigrants" in the *Madras Weekly Mail*, dated 6th July 1905?

(b) Is it a fact that the emigration to Ceylon alone was daily 800 as stated therein?

(c) Is it a fact that in the month of April last no fewer than 22,000 crossed over from Tuticorin as against 5,000 in the corresponding month of the previous year?

(d) Will the Government be pleased to order that intending emigrants shall enlist themselves under their own names and that the license of a recruiting agent shall be withdrawn whenever he is found to have changed the name of a recruit?

(e) Will the Government be further pleased to direct—

(1) that the necessary order of a Magistrate shall always be obtained in the taluq or division of a taluq in which the intending emigrant lives at the time,

(2) that before issuing the order, the Magistrate shall publish the name of the recruit in his own village for at least two days,

(3) that up to the date of embarkation the nearest relations of recruits shall have access to them under the orders of the Protector of Emigrants and without the payment of any fees therefor, and

(4) that the recruit shall be at liberty at any time to withdraw on payment of the sum which the recruiting agent has actually spent on him, but without, what is now demanded, compensation for loss of commission?

The Hon'ble Mr. Hammick :—

II. (a) The Government have now perused the article in question.

(b) & (c) The Honourable Member is referred to the reply given to question No. I (a).

(d) The Indian Emigration Act, 1883, does not apply to emigration to Ceylon. As regards that Act the Government consider that the rules framed thereunder afford sufficient safeguards. If a recruiting agent working under the Act of 1883 changes the name of an intending emigrant, the fact should be brought to the notice of the Protector of Emigrants or the District Magistrate.

(e) (1) The Indian Emigration Act and the rules framed under it do not require that an intending emigrant should be registered in the taluq or division in which he resides. If a labourer wanders into another district in search of work and, finding no employment, offers himself to a recruiter as an emigrant, the recruiter can have the labourer registered only in the district of recruitment. The

registering officer should, however, satisfy himself that the recruiter has not been operating outside the district for which he is licensed and, if in the case of any labourer there are sufficient grounds for believing that such is the case, the registering officer would report the circumstances to the District Magistrate in view to the cancellation of the recruiter's license.

(2) The Government are unable to accept this suggestion.

(3) Passes are freely issued by the Protector of Emigrants to all relatives or friends of emigrants who desire them. No fees are charged for them. They used to entitle the persons to whom they were issued to free admission within the depot, but since January last admission within the depot has not been allowed with a view to lessen the risk of infection; and visitors have now to remain at the gate till the emigrant they wish to see is brought to them.

(4) The terms on which the discharge of an emigrant can be obtained is a matter for private arrangement between the parties. So far as the Government are aware, the agents are not unreasonable in their demands.

The Hon'ble G. SRINIVASA RAO :—

III. (a) Will the Government be pleased to lay on the table the papers relating to the starting of a Textile school at Madura and the correspondence between the Madras Government and the Government of India on the subject?

(b) Will they be so good as to open a Textile school at Madura for imparting instruction in weaving and dyeing to the artisan classes of the Presidency?

(c) Will the Government be pleased to purchase a few dozens of Japanese looms and fly-shuttles and cause their working to be explained in the districts where weaving is carried on largely?

The Hon'ble Mr. Hammick :—

III. (a) There has been no correspondence between this Government and the Government of India on the subject of starting a Textile school at Madura.

(b) The question of opening a factory for the trial and introduction of improved hand-looms and other weaving appliances is now under the consideration of Government, but the selection of the town in which the school should be located has not yet been finally made.

(c) The Government will consider the Honourable Member's suggestion.

The Hon'ble G. SRINIVASA RAO :—

IV. (a) Has the attention of Government been drawn to the leader headed "The Tramway Peril in Chintadripet" published in the *Hindu*, dated 6th June 1905?

(b) Has any memorial by the residents of Chintadripet been before Government regarding their grievances in respect of the tramway and have any orders been passed thereon?

(c) Is it a fact that the tramcars, as they now are, have no mechanism to stop them instantaneously in cases of emergency?

(d) Is it a fact that the Senior Presidency Magistrate, Madras, tried it as an experiment and found out that it was impossible to stop the car instantaneously?

(e) If the answers to (c) and (d) are in the affirmative, will the Government be pleased to direct the Tramcar Company to take early steps of providing their cars with the required mechanism or contrive to avert the danger in some other feasible manner?

The Hon'ble Mr. de Winton :—

IV. (a) The attention of Government has been drawn to the leader headed "The Tramway Peril" in Chintadripet.

(b) Government received a memorial from the residents of Chintadripet in which they made the following suggestions :—

- (1) The diversion of the tramway from Iyah Mudali and Sami Naik streets to less congested roads.
- (2) The provision in the cars of better appliances for stopping them.
- (3) A reduction in the speed of tramcars.
- (4) The prohibition of the employment as drivers of men who are not trained for the work.

The memorialists have been informed with regard to the first of these suggestions that the Government have no power to order the Tramway Company to divert the line in question to other streets, and with regard to (2) that Government consider that the appliances now in use for stopping the cars are sufficient for the purpose. With regard to (3) orders are about to be issued reducing the maximum speed to six miles an hour. The question of prohibiting the employment of drivers unless they are certificated is still under the consideration of Government.

(c), (d) & (e) The Honourable Member's questions have been answered already in the reply given to the Hon'ble M. Krishnan Nayar Avargal at the last meeting of the Council (No. VIII).

The Hon'ble G. SRINIVASA RAO :—

V. (a) Is it a fact that, in the inam villages of the district of Madura, water-rates are collected on mamul or faisal nanja lands?

(b) Will the Government be pleased to state if it is legal to do so, and, if it is not legal, will the Government be so good as to direct the collection of such rates to be discontinued?

The Hon'ble Mr. Hammick :—

V. The Government have no information as to the practice referred to, but will make enquiries.

The Hon'ble G. SRINIVASA RAO :—

VI. (a) Is the Presidency of Madras capable of manufacturing the entire quantity of salt required for its consumption?

(b) Does it actually produce it, and, if not, why not?

(c) Is Madras salt able to compete with Bombay salt, and, if not, why not?

(d) Have the discontinuance of the excise system and the establishment of the monopoly system in parts of the Presidency had any effect on the competition between the two salts?

(e) Is it by any means possible to stop the import of Bombay salt into Madras and make Madras self-supporting?

(f) Are the factories at Ennore capable of producing the quantity required for half the Presidency as also the quantity now imported from Bombay?

(g) If not, what fraction of the demand of the Presidency will the Ennore factories be able to meet?

(h) Is it a fact that the Ennore salt gets crushed by its transit in boats to Madras and thereby suffers in quality and weight?

(i) Is it possible by any means to avoid the storage of Ennore salt in the Madras Salt depot?

(j) Will the storage of salt in a central place between Attiput and Vayalur near Minjur prevent the crushing of the salt and make it sell cheaper?

(k) Will the opening of a tramway to Ennore be possible, and will this secure the end of getting the Madras salt sell cheaper and of its successfully competing with the Bombay salt?

(l) If the answer to (k) is in the affirmative, will the Government be pleased to undertake the opening of a tramway to Ennore or sanction its being opened by a private firm?

The Hon'ble Mr. Bradley :—

VI. It is impossible to answer the Honourable Member's questions satisfactorily except by a lengthy dissertation on the whole policy of Madras Salt administration, for which this is not the proper occasion. The specific answers to the Honourable Member's enquiries are as follows :—

(a) & (b) The answer is in the affirmative.

(c) The explanation of the fact that Madras salt does not compete with Bombay salt in certain localities is mainly trade preference and enterprise.

(d) The answer is in the negative.

(e) The answer is in the affirmative.

(f) The answer is in the negative.

(g) About 23 per cent. of the demand.

(h) It is a fact that the crystals get crushed to some extent, but the quality is not affected nor is the weight apart from wastage.

(i) Yes, by storing at the factories themselves.

(j), (k) & (l) The answer is in the negative.

The Hon'ble G. SRINIVASA RAO :—

VII. (a) Has the attention of Government been drawn to the leader styled "Another Hard Case" in the *Hindu*, dated 12th June 1905?

(b) Is it a fact that an influentially-signed memorial was addressed to Government on behalf of the person who had put in 22 years of good service under Government?

(c) Will the Government be pleased to reconsider the case and either restore the Assistant Inspector in question or else permit him to retire?

The Hon'ble Mr. Bradley :—

VII. The Government have seen the article referred to. A memorial on behalf of S. Krishnaswami Aiyar was received by Government in February last. It was signed by some 40 merchants and licensees of salt factories in Tinnevely district. The case has already received from Government very careful and full consideration and they are not disposed to reopen it.

The Hon'ble G. SRINIVASA RAO :—

VIII. (a) Is it a fact that the Kodingal channel in Kulittalai taluq, Trichinopoly district, has got greatly silted up and overgrown with trees to the obstruction of the flow of water in it?

(b) Is it true that its banks have become so eroded that, during the floods, there are heavy breaches and consequent damages to the fields and the crops thereon?

(c) Will the Government be pleased to direct that the channel be repaired properly and loss to people avoided?

The Hon'ble Mr. deWinton :—

VIII. The channel is not in a satisfactory condition. The Superintending Engineer is now engaged on a report dealing with this channel, and until it is received Government are not in a position to say what the actual condition of the channel is, or whether it can be improved in such a manner as to render it entirely satisfactory.

The Hon'ble G. SRINIVASA RAO :—

IX. (a) Is it a fact that the villages supplied by the Marudur channel in Kulittalai taluq, Trichinopoly district, do not receive their proper supply of water in consequence of the channel silting up abnormally and thereby obstructing the even flow of water in it?

(b) Is it also a fact that the one sand-escape is not sufficient to keep the channel free from silt and that the construction of two or more sand-escapes in places like Valayapalayam and Kulittalai will successfully prevent the silting up of the channel?

(c) If so, will the Government be pleased to direct the construction of the additional sand-escapes instead of allowing heavy expenditure on silt clearances?

The Hon'ble Mr. deWinton :—

IX. (a) The first four miles of the Marudur channel have been cleared this year by the Public Works Department, and observations will be taken with a view to ascertaining the rate at which silt is deposited. There is no evidence to show that the silting and difficulties with the water-supply are abnormal.

(b) & (c) There are two sand-escapes on the channel, one at the head and the other five and a half miles below it. From a report received from the Superintending Engineer it seems possible that these escapes may be rendered more efficient and estimates will be prepared. Additional escapes are not considered necessary.

The Hon'ble G. SRINIVASA RAO :—

X. (a) Is it true that the taluqs of Karúr and Námakkal are to be added to the district of Trichinopoly?

(b) Is it a fact that Karúr is proposed to be added to Kulittalai and Námakkal to Musiri?

(c) Will the Government be pleased to have Kulittalai and Musiri as one taluq and Karúr and Námakkal as another taluq?

The Hon'ble Mr. Hammick :—

X. (a) The changes mentioned are contemplated, but no final decision has yet been reached.

(b) It has been proposed to constitute Karúr and Kulittalai one division and Námakkal and Musiri another division.

(c) The Government do not think that the proposal would be advantageous, as the river Cauvery which is not bridged between Erode and Trichinopoly would have to be crossed to reach Karúr from Námakkal and to reach Musiri from Kulittalai.

The Hon'ble G. SRINIVASA RAO :—

XI. (a) Is it a fact that the District Court Sarishtadar of Bellary is over 60 years of age now and has had four extensions of service given to him already?

(b) Is it true that there is an application to Government on his behalf for a further year's extension?

The Hon'ble Mr. Hammick :—

XI. The Sarishtadar of the District Court, Bellary, M.R.Ry. G. Balaji Sing, completed his 60th year on the 30th June 1905. As in the opinion of the Government he is physically and mentally fit to perform his work efficiently, the Government have sanctioned his retention in service until the 30th June 1906 if he should so long continue efficient. They see no reason to reconsider these orders.

The Hon'ble G. SRINIVASA RAO :—

XII. (a) Is there an application by the Madras Railway before Government to acquire the places covered by the Megasken Street, Chembada Pillaiyar Street, Mint Street entrance from Memorial Hall, Wall Tax Road up to Post Office and John Pereira's Road?

(b) Is there before Government a memorial by the 3,000 residents of the above streets setting forth their grievances and protesting against the granting of the locality applied for by the Madras Railway?

(c) Will the Government be pleased to consider the memorial favourably and direct the Railway Company to take up lands at Basin Road or at Mulakothalam, which are equally suitable for their purposes, without inconvenience to the memorialists?

The Hon'ble Mr. deWinton :—

XII. (a) The Madras Railway Company has submitted proposals to Government for the construction of new general offices near the Central Station in Madras.

(b) A petition has been received protesting against the locality selected by the Madras Railway.

(c) Before sanction is accorded to the acquisition of the land required for the site of the new offices, the objections put forward by the memorialists will have the full consideration of Government, who as at present advised are unable to agree with the Honourable Member that the lands at Basin Bridge or at Mulakothalam are equally suitable for the purpose.

The Hon'ble G. SRINIVASA RAO :—

XIII. (a) Is it a fact that, for the work turned out by the District Munsifs of the Presidency, the initial pay of Rs. 200 a month is small?

(b) Is it also a fact that the District Munsifs as a class are overworked and are forced to leave large arrears of work in spite of the high strain they put upon it?

(c) Will the Government be pleased to raise their starting pay to Rs. 300 and also increase the number of District Munsifs in the Presidency?

The Hon'ble Mr. Hammick :—

XIII. The Government do not consider any rise in the initial salary of Munsifs required. Where the number of cases proves to be too much for the existing courts to dispose of, the High Court recommends the establishment of temporary Munsifs' Courts.

The Hon'ble G. SRINIVASA RAO :—

XIV. In connection with the recent outbreak of severe cholera in the City of Madras, will the Government be pleased to give information on—

(a) the number of persons that emigrated into Madras from the adjoining districts,

(b) the state of crime in them,

(c) the state of public health then, and

(d) the condition of the cattle in them?

(e) Is it a fact that dacoities have increased in the districts of Nellore and Cuddapah?

The Hon'ble Mr. Hammick :—

XIV. (a) The Government have no definite information as to the number of people who entered Madras from adjoining districts, but the most probable estimate is that about four thousand persons came into the City from Chingleput, Nellore and North Arcot.

(b) & (e) Statistics on these points are not as yet available.

(c) The Honourable Member is referred to the weekly returns of deaths in the City which are published in the *Fort St. George Gazette* and to the monthly returns of births and deaths in the districts which are similarly published.

(d) The condition of the cattle in those districts was reported to be generally good at the time to which the question relates.

The Hon'ble G. SRINIVASA RAO :—

XV. (a) Will the Government be pleased to state the principle which regulates the prices fixed upon the publications issued from the Government Press?

(b) Will they be so good as to state why pamphlets of a few pages are charged at eight annas and twelve annas?

(c) What has been the annual income derived from the sale of the publications from the Government Press within the last six years?

(d) Will the Government be pleased to make their publications from the Government Press available free of cost or put upon them a nominal value—as nominal as that of the District Gazette?

(e) Will the Government be further pleased to direct all agricultural, industrial and other technical bulletins to be translated into the vernaculars, published in the District Gazettes and distributed free of cost?

The Hon'ble Mr. Hammick :—

XV. The prices of manuals and similar publications are based on the actual cost of production plus a percentage for the commission allowed to the agents for the sale of Government publications. Government proceedings placed at the disposal of the Press are sold at a uniform rate of one anna for every eight pages or fraction thereof. This is below the cost price. Acts and Bills are also sold at a low rate (irrespective of cost) based on the number of pages. Differences of price will thus arise with reference to the number of copies printed. The gross receipts from sales have been in—

1899-1900	..	..	..	..	..	47,746 rupees
1900-1901	..	..	..	..	..	42,074 rupees
1901-1902	..	..	..	..	..	45,246 rupees
1902-1903	..	..	..	..	..	43,391 rupees
1903-1904	..	..	..	..	..	47,490 rupees
1904-1905	..	..	..	..	..	46,846 rupees

The total receipts, however, have not covered the total cost and there has consequently been a loss, not a profit. The cost of publications from the Government Press is in most cases already nominal as compared with similar publications issued by private firms. The Government are not prepared to issue such publications free of cost.

The Government cannot promise to publish vernacular translations of all agricultural, industrial and other technical bulletins, but the more important of them are already being published in the chief vernaculars and issued in the village sheets of the Gazettes.

The Hon'ble K. VENKATA RAO :—

XVI. (a) Is it a fact that early in October last a native patient died at the residence of Major R. H. Elliot, I.M.S., from the effects of chloroform?

(b) Is it a fact that an inquest was held on that death and that the Commissioner of Police has declined to permit the evidence of witnesses at the inquest to be published in the lay or medical papers?

(c) If it is true that the Commissioner of Police did decline to permit the publication of such evidence even in a purely medical paper, what is the object of enforcing such secrecy as to what transpires at an inquest?

(d) Was a *post-mortem* examination held on this patient before inquest?

(e) If not, will the Government be pleased to say why it was not so held?

(f) Will the Government be pleased to obtain the opinion of Surgeon-General Browne on the evidence given at this inquest and to lay it before the Council?

The Hon'ble Mr. Hammick :—

XVI. (a) The answer to the question is in the affirmative.

(b) & (c) An inquest was held. The Commissioner of Police did not decline to permit the evidence of the witnesses at the inquest to be published in the lay or medical papers. A representative of the *Madras Times* and one N. Rama Rao, who said that he represented a medical journal, were allowed by the Commissioner of Police to take notes from the proceedings recorded at the inquest. No other applications for information were made to the Commissioner of Police.

(d) The answer is in the negative.

(e) The Presidency District Surgeon who attended the inquest considered a *post-mortem* examination unnecessary as it would probably disclose nothing. The Surgeon-General has been consulted and saw no reason to differ from this opinion. *Post-mortem* examinations are always painful to the relatives of the deceased, especially if natives of India. In the present case the deceased was a Marwari of Hyderabad.

(f) The Government have read the evidence and do not consider it necessary to lay the opinion of Surgeon-General Browne on the table.

The Hon'ble K. VENKATA RAO :—

XVII. (a) Is it a fact that the Crown Prosecutor asked the Government for the services of a Commissioned Medical Officer to help him in conducting the prosecution of Mr. Lee, the Travancore planter, before the Criminal Sessions of the Madras High Court in September last?

(b) If so, will the Government be pleased to say why he was not given the help he wanted?

The Hon'ble Mr. Hammick :—

XVII. The Crown Prosecutor enquired to whom he could resort for expert medical opinion in the case. The Government suggested three I.M.S. officers, but the Crown Prosecutor decided not to call any one of them as a witness.

The Hon'ble K. VENKATA RAO :—

XVIII. (a) Is it a fact that a large number of cholera cases broke out in the Natal emigration depot at Rayapuram on the 17th July last?

(b) Is it a fact that, on the advice of the Medical Inspector of Emigrants, the coolies were removed from the depot into quarantine camps the following day, viz., 18th July?

(c) Is it a fact that in the course of such removal a large number of coolies escaped from the depot and dispersed themselves into different parts of the City of Madras?

(d) To prevent such accidents in future, will the Government be pleased to remove the emigration depots to some less populous part using, if necessary, the power vested in them by chapter II, section 7, sub-section (3) of the Indian Emigration Act by extending the boundaries of the port of Madras?

The Hon'ble Mr. Hammick :—

XVIII. (a) There were nine cases of cholera among the emigrants in the Natal emigration depot on the 17th July 1905.

(b) The emigrants were removed from the main Natal emigration depot on the 19th and 20th July.

(c) The answer is in the affirmative.

(d) The Government see no sufficient reason to direct the removal of the depots from their present sites. They do not consider that any greater danger arises from such occurrences than from the free movement of the population in a time of epidemic. On the contrary as the emigrants are under medical supervision, the depots are likely to be less dangerous centres of infection than most parts of the town.

The Hon'ble K. VENKATA RAO :—

XIX. (a) Is it a fact that the Emigration sub-depots in Madras are not under any special Medical Inspector?

(b) If so, is it not against the notification of the Government of India, dated 18th March 1896, regarding medical control over them?

The Hon'ble Mr. Hammick :—

XIX. Sub-depots are places of accommodation provided by recruiters for emigrants who await their removal to the main depots established by the Emigration Agents, and are not required under the rules to be periodically inspected by medical officers, but a report has to be made to the medical authorities of any case of contagious disease occurring in a sub-depot. The Commissioner of Police, however, arranges for the inspection of the sub-depots in the Madras City at least once a week by an Inspector of the City Police.

The Hon'ble K. VENKATA RAO :—

XX. (a) Is it a fact that a boy, named Perumal alias Peruman, aged 5, and a cooly, named Iyakannu, aged 25, were attacked with cholera at the Natal emigration depot at Rayapuram on the 17th July 1905 and that both of them were kept in the depot till 20th July 1905 when they died there?

(b) If so, will Government be pleased to state whether the procedure did not contravene the notification of the Government of India, dated 18th March 1896, paragraph 68, which says that "In the event of cholera, small-pox or other dangerous communicable diseases appearing in the depot, every emigrant or dependant attacked shall immediately be sent to an outside hospital for treatment"?

(c) If the answers to clauses (a) and (b) be in the affirmative, will the Government be pleased to state whether they have taken any action in the matter?

The Hon'ble Mr. Hammick :—

XX. (a) The individuals referred to were taken ill on the 17th July and died of cholera in the depot on the 20th July.

(b) The disease was not diagnosed as cholera till the 18th July, when it was ordered that all who could should be removed to the hospital. In certain cases the condition of the patients was such that they could not be moved. Their retention in the depot did not tend to spread the disease there as the isolation sheds are at a distance from the portion of the depot set apart for the ordinary accommodation of emigrants.

(c) Under the rule quoted by the Honourable Member in clause (b) of the question, if any severe outbreak of cholera occurs in a depot, the Medical Inspector shall without delay forward a report thereon to the Protector for submission to Government. On receipt of the report in this instance, the Government made careful enquiries into the matter and have already issued such orders as they deem necessary.

The Hon'ble K. VENKATA RAO :—

XXI. Will the Government be pleased to order an enquiry by a mixed Commission of officials and non-officials into the origin of the cholera epidemic in Madras?

The Hon'ble Mr. Hammick :—

XXI. A detailed enquiry into the origin of the outbreak of cholera in Madras was made by the Sanitary Commissioner. The Government do not think that any useful purpose would be served by the appointment of a Commission of enquiry such as the Honourable Member suggests.

The Hon'ble K. VENKATA RAO :—

XXII. (a) Have the Government noticed an article headed "Diamonds: Government Claim" in the *Indian Patriot*, of the 4th October 1905, regarding diamonds picked up by the villagers in the surface soil at Vajrakarur, Gooty taluq, Anantapur district; and, if so, do the Government propose to take any steps in the matter?

(b) Are the Government informed of the seven cases of criminal misappropriation instituted by the Sub-Magistrate of Uravakonda in his own Court against the finders of such diamonds?

(c) Have the finders of such diamonds been criminally prosecuted before?

(d) Is it true that the local authorities searched the houses of many persons at Vajrakarur as being the possessors or purchasers of diamonds so picked up?

(e) If so, have the Government obtained legal opinion regarding the nature of their claim, and the procedure to be adopted in enforcing such claim?

(f) If the legal opinion has been obtained to justify the present procedure, will the Government be pleased to lay it before the Council?

The Hon'ble Mr. Hammick :—

XXII. The Government have seen the article, but have no information regarding the facts alleged in it and referred to in the question. No legal opinion on the question has been obtained.

The Hon'ble K. VENKATA RAO :—

XXIII. (1) Will the Government be pleased to state whether—

(a) it is a fact that the ryots under the Gooty tank, Anantapur district, cultivated in 1904 only a portion of the ayacut land under the advice of the local authorities according to the supply of water in the tank;

(b) it is a fact that these ryots were refused remission for waste amounting to about Rs. 2,000 by the Collector of Anantapur;

(c) it is a fact that an appeal was submitted by the ryots to the Board of Revenue on the 24th April last followed by a telegram on the 30th April and that the further information called for on the 18th May was submitted on the 8th June;

(d) it is a fact that a telegram was submitted to the Board of Revenue on the 18th June followed by another petition reporting that movable properties and lands of these ryots are being sold;

(e) it is a fact that nearly the whole amount has been collected since by sale or otherwise;

(f) it is a fact that the appeal petition would remain pending?

(2) If the facts noted in the above question be true, will the Government be pleased to order refund of monies collected and to order the Collector of Anantapur not to make further collections till the appeals of the ryots are disposed of?

The Hon'ble Mr. Hammick :—

XXIII. The Government have no information concerning the facts alleged. The matter appears to be one of ordinary local administration.

The Hon'ble K. VENKATA RAO :—

XXIV. Will the Government be pleased to give the number of licenses under the Arms Act issued in 1903, 1904 and 1905 in the districts of Bellary, Anantapur and Cuddapah?

The Hon'ble Mr. Hammick :—

XXIV. The numbers are—

		Bellary.	Anantapur.	Cuddapah.
1903		2,654	1,715	4,679
1904		2,615	1,439	4,484
1905		2,391	784	4,484

The Hon'ble G. SRINIVASA RAO :—

XXV. (a) Is it a fact that the Railway Board established at Simla have issued orders to the Agents of Railways to avoid crowding in third-class compartments and in booking-sheds?

(b) Are the Government aware that the South Indian Railway Company are systematically putting the third-class passengers in cattle trucks on occasions of festivity?

(c) Will the Government be pleased to state whether the entire proportion of the earnings of the South Indian Railway is being set apart and spent upon the rolling-stock that is required for the full convenience of the passengers?

(d) Will the Government be further pleased to direct the South Indian Railway Company persistently to refrain from placing the passengers in the cattle trucks?

The Hon'ble Mr. de Winton :—

XXV. (a) The Railway Board have informed all Railway Administrations that early provision should be made to avoid overcrowding in third-class carriages, and that facilities should be given for obtaining tickets.

(b) Government are aware that the use of goods wagons for passengers is occasionally resorted to during festivals as it is in many other countries at times of exceptionally heavy traffic and the practice does not usually give rise to complaint. The use of cattle trucks for the purpose has not been brought to the notice of Government.

(c) The rolling-stock on the South Indian Railway has been and is being largely increased. Funds for the purpose are not provided from the earnings of the railway as the cost is charged against Capital and there is of course no fixed proportion of obligatory annual expenditure on rolling-stock.

(d) Government see no reason for taking any special action on the Honourable Member's representation.

The Hon'ble G. SRINIVASA RAO :—

XXVI. (a) Is the cholera that broke out in Madras due to the tainted water in the pipes?

(b) Is it a fact that the gutter water escaped into the pipes?

(c) Has the Madras Municipal Corporation taken any, and if so what, steps to remove the impurities and supply the Presidency town with pure and constant supply of drinking water?

The Hon'ble Mr. Hammick :—

XXVI. (a) & (b) The Government have no specific information on the subject.

(c) Mr. Hormusji Nowroji was placed on special duty on the 5th January 1905 for a period of six months in connection with the revision of the estimates for the water-supply. These estimates will be considered by the Corporation.

The Hon'ble G. SRINIVASA RAO :—

XXVII. (a) Has the attention of Government been drawn to a contribution headed "Another Mysterious Tragedy" under Malabar notes in the *Hindu*, dated 20th September 1905?

(b) Are the facts mentioned therein true regarding the three soldiers of the 2nd Cheshire Regiment in connection with the death of a three-year old child of a Tiyya woman?

(c) Has the cause of the death been finally ascertained and has any culprit been traced and brought to book?

The Hon'ble Mr. Hammick :—

XXVII. Government have read the article. The report is not accurate. On the 10th September last Private Stafford with two other soldiers of the Cheshire Regiment went into the bazaar at Cannanore. At the time they appear to have been the worse for drink. Private Stafford entered a house through an open door, apparently under the impression that the door belonged to a house (next door) which he was in the habit of frequenting. The woman who lived in the house had gone out leaving a child, about a year old, asleep on a mat in the front room of the house. Private Stafford appears, though that has not been clearly proved, to have accidentally trodden on the child and the child was found dead. A magisterial enquiry was duly held. The Civil Surgeon's evidence went to show that the child met with its death by being trodden upon. Charges were framed of house trespass and causing death by a rash and negligent act. The accused was acquitted of the latter charge, the Magistrate holding that the occurrence was accidental, and that the defendant could not be held not to have exercised the caution incumbent upon him. He was convicted, however, of house trespass and sentenced to pay a fine of Rs. 60 or in default to undergo six weeks' rigorous imprisonment.

The Hon'ble G. SRINIVASA RAO :—

XXVIII. (a) Is it a fact that at the time when a member of the Indian Civil Service was appointed to act as District and Sessions Judge in the place of Mr. Venkataramana Poi there were only three Indian District Judges?

(b) Will the Government be pleased to state why a fourth Indian District Judge was not then appointed?

The Hon'ble Mr. Hammick :—

XXVIII. The Honourable Member has been misinformed. There was no period in which the number of Indian District Judges was reduced to three. Mr. Venkataramana Poi's vacancy occurred on 24th July, on which date another Indian Judge, Mr. Rangachariyar, was appointed as District and Sessions Judge, Cuddapah.

The Hon'ble G. SRINIVASA RAO :—

XXIX. (a) Has the attention of Government been drawn to a contribution by X from Tanjore regarding the treatment of the jurors by the Sessions Judge, published in page 3 of the *Hindu*, dated the 24th of July 1905?

(b) Are the facts alleged therein true, viz., that the medical certificate sent by a juror was refused to be accepted on the ground that the identity of the person must be proved, that a Brahmin juror was refused to be exempted from attendance even on the ground of the sacred ceremony of his son's upanayanam or thread marriage, and that after all the juror had not to serve at the sessions?

(c) If so, will Government take steps to prevent the repetition of any similar occurrence?

The Hon'ble Mr. Hammick :—

XXIX. The Government have now read the article, but do not think it necessary to call for a report in the matter.

The Hon'ble G. SRINIVASA RAO :—

XXX. (a) Is the attention of Government drawn to the article styled "A Hard Case" in page 3 of the *Hindu*, dated 2nd June 1905?

(b) Is not the punishment awarded, namely, deprivation of pension and title, out of proportion to the alleged offence, namely, violation of departmental orders?

If so, will Government be pleased to reconsider the case?

The Hon'ble Mr. Hammick :—

XXX. (a) The answer is in the affirmative.

(b) The Government do not consider the punishment out of proportion to the offence committed and see no reason to reconsider their decision.

The Hon'ble P. S. SIVASWAMI AIYAR :—

XXXI. Are the Government aware that in the recent notification by Mr. Lushington, Government Conservator of Forests of the Northern Circle, in

the *Fort St. George Gazette* in respect of scholarships to candidates to be selected to undergo a course of training in the Forest school at Dehra Dun, it is stated that only non-Brahmins need apply, and will the Government be pleased to state the reasons, if any, for the restriction?

The Hon'ble Mr. Hammick :—

XXXI. The Government do not approve of the passage in the notification to which their attention has now been called, and the Board of Revenue will be directed to instruct the Conservator not to repeat it.

The Hon'ble P. S. SIVASWAMI AIYAR :—

XXXII. (a) Has the attention of the Government been drawn to an article in the *Madras Mail* of the 29th June 1905 on Madras Cooly Emigrants pointing out

alleged defects in the working of the present system of emigration and suggesting certain remedies?

(b) Will the Government be pleased to consider the expediency of adopting the said suggestions or of otherwise remedying the alleged defects of the present system?

The Hon'ble Mr. Hammick :—

XXXII. The Honourable Member is referred to the reply given to question No II asked by the Hon'ble G. Srinivasa Rao.

The Hon'ble M. KRISHNAN NAYAR :—

XXXIII. (a) Has the attention of the Government been called to an article under the heading of "A Case of Glaring Injustice" published in the *Hindu* newspaper of the 31st May 1905?

(b) Will the Government be pleased to state—

(1) whether Minakshisundaram Aiyar referred to in the article was employed as acting Second Assistant Instructor in Drawing in the Madras College of Engineering?

(2) whether his future employment in the service of Government has been prohibited?

(3) what are the reasons for the prohibition?

(4) whether it is a fact that Minakshisundaram Aiyar had communicated to the Director of Public Instruction his appointment in the Agricultural Department before the Director appointed him in the Engineering College, and had also informed the Deputy Director of Agriculture of his appointment in the Engineering College before he declined the appointment in the Agricultural Department?

(5) whether the Government gave an opportunity to Minakshisundaram Aiyar to offer his explanation before the order of prohibition was passed?

(c) Will the Government be pleased to reconsider the order prohibiting his re-employment in Government service?

The Hon'ble Mr. Hammick :—

XXXIII. The article in question has now been perused. Minakshisundaram Aiyar was employed as Acting Second Assistant Instructor at the Engineering College; and his future employment in Government service has been prohibited. The man had no permanent appointment in the public service and his temporary services were dispensed with as well as his future employment barred because of his untruthfulness. All the facts were fully before the Government who see no reason to reconsider the order passed.

The Hon'ble M. KRISHNAN NAYAR :—

XXXIV. (a) Is it a fact that in the Malabar district Government have recently begun to levy assessment on lands which are used exclusively for the purpose of raising seedlings?

(b) Having regard to the fact that seedlings themselves are not crops and assessment is levied on lands wherein the seedlings are transplanted for the purpose of raising crops, will the Government be pleased to direct that no assessment be levied on seed-beds?

The Hon'ble Mr. Hammick :—

XXXIV. The Government are considering the question of the assessment of seed-beds in Malabar and hope to issue orders shortly.

The Hon'ble M. KRISHNAN NAYAR :—

XXXV. (1) (a) Will the Government be pleased to state whether there are any, and if so how many, first appeals filed in the High Court in 1901, 1902 and 1903 and how many second appeals filed in 1903 are still pending?

(b) With a view to prevent accumulation of work, will Government be pleased to take steps for the appointment of an additional Judge or Judges in the High Court?

(2) Will Government be pleased to alter or recommend the alteration of the period of midsummer vacation in the Munsifs' Courts from six weeks to two months?

The Hon'ble Mr. Hammick :—

XXXV. (1) (a) Government have not the information required, but will ask the High Court to prepare the return asked for.

(b) The Government are not at present in a position to say what action, if any, they are prepared to take.

(2) Under section 30 of the Madras Civil Courts Act, 1873, the High Court fixes the period of vacation of the Courts under its control.

The Hon'ble M. KRISHNAN NAYAR :—

XXXVI. (1) (a) Is it a fact that the Sub-Inspectors of the lower grade employed in the Distillery branch of the Salt, Abkari and Customs department do not generally get their due promotion?

(b) Will Government be pleased to make enquiries into the matter and do what they deem fit?

(2) Will Government be pleased to abolish the system of rewards obtaining in the Salt and Abkari department under which, in cases of conviction of offenders, the officers who have taken part in the investigation of offences are given rewards?

The Hon'ble Mr. Hammick :—

XXXVI. (1) The Government have no reason to believe that the officers in question do not receive due promotion and see no reason to make the suggested enquiry.

(2) The answer is in the negative.

The Hon'ble G. SRINIVASA RAO :—

XXXVII. (a) Has the attention of Government been drawn to the article headed "Civil Hospital Assistants" in page 4 of the *Madras Mail*, dated the 3rd of November 1905?

(b) Will the Government be pleased to adopt the suggestion of the *Madras Mail* to give the deserving and zealous workers among the Civil Hospital Assistants the chance of entering a grade of the Subordinate Medical Service in which the emoluments are higher or improve their status and pay in some other manner commensurate with the work demanded of them?

The Hon'ble Mr. Hammick :—

XXXVII. The Government have perused the article and do not see their way to accept the suggestion made therein.

The Hon'ble G. SRINIVASA RAO :—

XXXVIII. (a) Is it a fact that seedlings raised in village ponds and communal porambokes have been exempt from assessment under the British Government and under all the governments which preceded it?

(b) Is there any attempt to assess them, and assess them penally too, in the district of Tanjore by the Revenue authorities?

(c) Is there any memorial or requisition to Government by the District Association of Tanjore to direct that "the time-honoured right and privilege of the ryots" may not be interfered with, and will the Government be pleased to view it favourably?

ACTS ASSENTED TO BY HIS EXCELLENCY THE GOVERNOR-GENERAL.

The Hon'ble Mr. Hammick :—

XXXVIII. (a) The answer is in the negative.

(b) The answer is in the affirmative.

(c) A memorial was received last January and the memorialists were referred to the local authorities and the Board of Revenue whose instructions in the matter had the approval of the Government.

The Hon'ble G. SRINIVASA RAO :—

XXXIX. Will the Government be pleased to state the stage at which their investigation into the inland and marine fisheries of the Presidency is and when they expect to publish their report on the subject?

The Hon'ble Mr. Hammick :—

XXXIX. The Government have entrusted to Sir Frederick Nicholson, K.C.I.B., the investigation of the inland and marine fisheries of the Presidency, and he commenced his enquiries in July last. It is expected that they will occupy about two years.

The Hon'ble G. SRINIVASA RAO :—

XL. (a) Is it a fact that in Municipal towns the road sides and the drains are used as public latrines and that squatting in streets goes on promiscuously even during the day time under the very nose of the Police?

(b) Is it also a fact that the power given to the Municipal Sanitary Inspectors to arrest the offenders without the necessary adjunct of releasing them on bail is anomalous and highly inconvenient and works hardship upon the public?

(c) Will the Government be pleased to secure to the Municipalities the hearty and systematic co-operation of the Police in putting down effectively the unwholesome habit of using the streets as latrines and to invest the Sanitary Inspectors with the power immediately to admit to bail the offenders whom they arrest without subjecting them to the indignity of being marched to the Police station?

The Hon'ble Mr. Hammick :—

XI. It is the duty of the Police to assist the Municipal authorities in preventing the public from committing nuisances in the public streets. The Government are not aware that any hardship has arisen owing to the exercise by the Municipal Sanitary Inspectors of their legal powers. Under sub-section (2) of section 282 of the District Municipalities Act, 1884, only Municipal servants who have been specially empowered under sub-section (4) of the same section to exercise the powers of a Police officer for the purposes of that Act have authority to arrest, and then only persons who decline to give their name and address or who give a name and address the accuracy of which is open to doubt. The Government have no power to invest Municipal servants with greater authority than the Act allows.

ACTS ASSENTED TO BY HIS EXCELLENCY THE GOVERNOR.

The Secretary reported that the Madras Port Trust Act, 1905, and the Madras Land Encroachment Act, 1905, had received the assent of His Excellency the Governor on the 19th April last.

ACTS ASSENTED TO BY HIS EXCELLENCY THE GOVERNOR- GENERAL.

His Excellency the President :—I have the honour to announce that the Madras Abkari (Amendment) Act, 1905, the Madras Port Trust Act, 1905, and the Madras Land Encroachment Act, 1905, received the assent of His Excellency the Governor-General on the 14th April, the 17th May and the 22nd May 1905, respectively.

COMMUNICATIONS FOR THE COUNCIL.

The Secretary reported that the following papers on the subject of the Madras Estates Land Bill, 1905, had been referred to the Select Committee on the Bill:—

- (1) From M.R.Ry. M. M. Muttirulappa Pillai, Madura, dated 26th May 1905.
- (2) From Baindur Venkata Rao and other ryots, Coondapoor taluq, South Canara district, dated 23rd June 1905.
- (3) From the Zamindar of Surangi, dated 9th October 1905.
- (4) From the Zamindar of Kangundi, dated 20th October 1905.
- (5) From M.R.Ry. B. Narasimha Rao Nayudu Garu of Valloor, Kistna district, dated 26th October 1905.
- (6) Minutes by the Hon'ble Mr. Justice Benson and the Hon'ble Sir S. Subrahmanya Aiyar, Acting Chief Justice of the High Court of Judicature, Madras, dated 27th September 1905.
- (7) From the Zamindar of Dhárakóta, dated 31st October 1905.
- (8) From certain inamdars and kattukuthagaidars, Tinnevely district, dated 1st October 1905.
- (9) From certain zamindars, Tinnevely district, dated 1st October 1905.
- (10) From the Zamindar of Kurupám, dated 6th November 1905.
- (11) From the Proprietors of Siripuram and Chidikada estates, dated 31st October 1905.

The Secretary further reported that two more communications had been subsequently received—one from the Zamindar of Vettavalam and the other from the Zamindar of Sangamvalasa — and that these would be duly communicated to the Select Committee.

THE MADRAS ESTATES LAND BILL, 1905.

The Hon'ble Mr. G. S. FORBES :—I beg to move that the Hon'ble Mr. J. N. Atkinson be added to the Select Committee on the Madras Estates Land Bill, 1905. I make this motion, because the Hon'ble Mr. Atkinson took an active part in the discussions on the draft of the Bill before it was finally introduced into the Council and his assistance on the Select Committee will be very useful. His name would have been originally proposed when the Select Committee was formed, but for the fact that he was about to proceed on leave for a period which made him vacate his seat on the Council.

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

The motion was put and agreed to.

BILL TO AMEND THE MADRAS CITY POLICE ACT, 1888.

The Hon'ble Mr. G. S. FORBES :—My Lord, it now devolves upon me to introduce the short Bill to amend the City Police Act in respect of the carrying of lights by carriages, carts and other vehicles. The Bill has been duly published, and the Statement of Objects and Reasons attached to it sets out shortly its purpose.

As the law stands every vehicle driven in the city must carry a light during what is called the "dark fortnight," that is when there is no moon; but if there is a moon a driver is not obliged to show a light provided there is "sufficient moonlight to render such light unnecessary." This in the first place renders the obligation extremely uncertain, for it is often impossible to determine the sufficiency of moonlight as a matter of fact, and still more difficult to decide it as a matter of evidence in the particular circumstances of a case.

In this dilemma I understand that practically the Police do not enforce the law during the "light fortnight," however little moonlight there may be or however obscured that light may be by clouds or storm, and whether the road be in deep

shadow in narrow streets or in tree-lined roads. The consequence is numerous accidents and great and unnecessary risks from unlighted vehicles during this half of the month.

To avoid these evils, an amendment of the law has often been talked about; but the proximate cause of the present Bill is the numerous and very influentially signed memorial, a copy of which has been circulated with the Bill. The memorial is signed by nearly 800 persons representing, I think, every class and race and profession in the city. I will read a few extracts from the memorial. These will show more fully public opinion as to the necessity of this legislation:

"For years past accidents have from time to time occurred in the City of Madras in consequence of persons who were in charge of vehicles, propelled along the roads and thoroughfares at night, failing to exhibit a light.

"(2) The only enactment which imposes any legal obligation on such persons "to exhibit a light is contained in Madras Act III of 1888.

"(3) Section 71 of that Act read with sub-section (iv) provides that, whoever "drives, drags or pushes any vehicle at any time between half an hour after sunset and "one hour before sunrise without a sufficient light 'except when there may be "sufficient moonlight to render such light unnecessary' (the words in inverted "commas are hereinafter referred to as 'the excepting clause'), shall be liable on "conviction to fine not exceeding Rs. 50 or to imprisonment which may extend to "one month.

"(4) The excepting clause is, as your petitioners respectfully submit, vague "and unsatisfactory

"(5) Your petitioners desire respectfully to submit further that inasmuch as "the moon may at one moment be shining brightly and at another may be heavily "over-shadowed, the interpretation of section 71, sub-section (iv), of the said Act, and "the consequent safeguarding of the welfare of the public thereunder are rendered "extremely difficult if not impossible.

"(6) The excepting clause is apparently understood by the jutka-drivers, "bullock-drivers and others propelling vehicles along the road to mean that during "that period in each month which is known as 'the light fortnight' no lamps are "necessary, whatever the state of the weather may be.

"(7) The careless and at times reckless manner in which vehicles are propelled "along the roads and thoroughfares is a matter of common knowledge, and this, your "petitioners most respectfully submit, is an additional argument why the persons in "charge of such vehicles should be compelled to exhibit a light at all times between "half an hour after sunset and one hour before sunrise without any exception

"(9) The comparative additional expense of carrying lighted lamps throughout "all seasons of the year ought not, it is submitted, to be permitted to prevail against "the risk to limb and property which is enhanced by the present condition of affairs "to the serious danger and inconvenience of the residents of the city.

"(10) Your petitioners most respectfully submit that, in the interests of the "general public resident in the City of Madras, it is desirable that the 'excepting "clause' should be eliminated from sub-section (iv) of section 71 of Act III of 1888."

To resume, not only is the proposed amendment justified in the interests of the public safety, which is, of course, the prime object of the Bill; but there is another ground of justification which seems to me of some importance.

As I have said, the existing law is practically a dead letter during the dark fortnight. Now, however, that special attention is called to the law, the result will be, if the existing provision is not altered, that the Police will become active in its prosecution, and we may feel pretty sure that the lower subordinates, however carefully supervised, will not leave unexploited so fruitful a source of exaction and peculation springing from the vagueness and indefiniteness of the law. The proposed amendment will remove the risk of such abuses of official authority. The grounds for this legislation then are, primarily to secure the public safety, and secondarily to render the law certain and not vague, and, so to avoid abuses of authority.

I do not think it is necessary for me to say more to commend the Bill to the approval of Honourable Members, and I accordingly move that it be read in Council.

The Hon'ble V. C. Desika Chariyar seconded the motion.

The motion was put and agreed to.

The Secretary then read the title of the Bill.

The Hon'ble Mr. G. S. FORBES :—The Bill having been read in Council, I now move that it be not referred to a Select Committee. There is only one simple issue in this Bill, viz., whether or not certain words should be eliminated from the Act, so as to make it obligatory on drivers to carry lights on all nights. I do not think that this being so there is any necessity for the Bill being referred to a Select Committee.

The Hon'ble M. Krishnan Nayar seconded the motion.

The motion was put and agreed to.

The Hon'ble Mr. G. S. FORBES :—I beg to move that Council rule 46 be suspended, so as to enable the Council to take the Bill into consideration at once.

The rule runs as follows :—“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.”

The question in this Bill is, as I have said, so simple that it seems quite unnecessary to allow fifteen clear days to elapse after its introduction, before it is taken into consideration. The Bill may, therefore, be taken into consideration at this meeting and passed into law.

The motion was put and agreed to.

The clauses of the Bill with the title and preamble were then severally put and agreed to without amendment.

The Hon'ble Mr. G. S. FORBES :—I now beg to move that the Bill as settled in Council be passed into law.

The Hon'ble M. Krishnan Nayar seconded the motion.

The motion was put and agreed to.

His Excellency the PRESIDENT :—Honourable Members, I am afraid that I cannot at present give you any idea as to when the Council will have to meet again as it will depend upon the progress made by the Select Committee on the Estates Land Bill. But I hope that they will get through their work by about Christmas time, and that we shall be able to consider their report on the Estates Land Bill, say, somewhere about 10th of January. Meanwhile the Council is adjourned *sine die*.

12-40 P.M.

H. D. TAYLOR,
Ag. Secretary to Government, Legislative Dept.



PREFATORY NOTES.

The figures in square brackets after the Arabic numbers of questions indicate the serial numbers of the questions for each meeting.

2. Where in a question or answer reference is made to another question or answer at the same or at a different meeting, the page of the volume at which the question or answer so referred to appears has been noted at the foot of the page.

3. When a question has been repeated at a meeting subsequent to that at which it was first put, the ~~number~~ ^{date} of the two questions has been noted.

4. The date of the meeting to which the questions on a page relate has been noted at the top of the page.

5. In the index, the entries have been arranged in the alphabetical order of the subjects to which they relate.

6. The references in the last column of the index are entered for convenience of reference only and are not necessarily exhaustive.