Thursday,
28th February, 1895

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXIV

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

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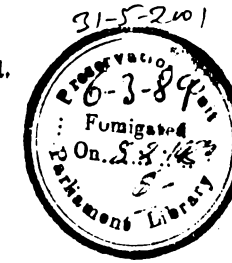

CALCUTTA
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1895

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 28th February, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

The Hon'ble Sir A. E. Miller, KT., Q.C.

The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.

The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.

The Hon'ble Sir J. Westland, K.C.S.I.

The Hon'ble Sir A. P. MacDonnell, K.C.S.I.

The Hon'ble Sir Luchmessur Singh, K.C.I.E., Mahárájá Bahádur of Durbhanga.

The Hon'ble Baba Khem Singh Bedi, C.I.E.

The Hon'ble P. M. Mehta, M.A., C.I.E.

The Hon'ble Gangadhar Rao Madhav Chitnavis.

The Hon'ble H. F. Clogstoun, C.S.I.

The Hon'ble P. Playfair.

The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.

The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.

The Hon'ble Mohiny Mohun Roy.

The Hon'ble Sir G. H. P. Evans, K.C.I.E.

The Hon'ble Sir F. W. R. Fryer, K.C.S.I.

The Hon'ble C. C. Stevens, C.S.I.

The Hon'ble H. E. M. James.

The Hon'ble A. S. Lethbridge, M.D., C.S.I.

NEW MEMBERS.

The Hon'ble MR. JAMES and the Hon'ble DR. LETHBRIDGE took their seats as Additional Members of Council.

CODE OF CIVIL PROCEDURE AND PUNJAB LAWS ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Reports of the Select Committee on the Bill to amend certain sections of the Code of Civil

Procedure and to repeal certain sections of the Punjab Laws Act, 1872, be taken into consideration. He said:—"The Bill has emerged from the Select Committee in a very mutilated condition, and, speaking for myself, I find, for the first time I think in my experience in this Council, a Bill returned from the Committee in a condition which I do not think an improvement. It was originally introduced to effect five objects: the first to relieve an inconvenience which had been felt in the case of the advocates in the Chief Court of the Punjab. The Select Committee have taken advantage of the introduction of this Bill to add also a clause which will have the effect of enabling the High Court of Bombay, if they should think fit, to remove a similar difficulty felt with regard to gentlemen who propose to practise in the Sadr Court of Sindh.

"The second object was to get rid of a somewhat strained interpretation with regard to one of the clauses of the Procedure Code which some of the Courts had adopted, an interpretation entirely contrary to the spirit of the procedure, but which possibly might have been supported as a mere matter of strict grammar: but the words have been altered so as to make it quite clear what is really intended.

"The third object was to get rid of an innovation introduced about eighteen years ago into the Code of Civil Procedure. The Select Committee have considered, however, that 'the country is not yet ripe for the change in the existing law which it is proposed to make,' and they have accordingly omitted it. I had intended to say a few words explaining my position with regard to this, because it seems to me a curious expression that 'the country is not ripe for a change' which itself is less than twenty years old. What I understand this to mean is that they do not think the time an opportune one for the change. But I do not think it necessary to say anything on the subject at present, because the Hon'ble Member from Bombay has given notice of an amendment on the subject, and what I want to say can, I think, be better said when his amendment comes on for discussion.

"The next thing originally proposed in the Bill was introduced in deference to certain representations made by practitioners in the North-Western Provinces as to the inconvenience under which respondents in some cases of appeal were placed from want of knowledge of the case to be made by the appellant, and, although the case was never felt to be a strong one, it was thought worth while to endeavour in the Bill to get rid of that difficulty and place respondents under this Code in all respects on the same footing as respondents in other places. However, the High Court of Calcutta showed us very clearly the

practical difficulties in the way of the introduction of the particular amendment, and the Select Committee have found so much difficulty in framing another amendment which would get rid of this difficulty and at the same time effect the object, that they thought it best on the whole merely to strike out the provision, and leave the law in its present state, and I for one have no reason to object to that decision, and do not intend to ask the Council to in any way depart from it in that particular.

"The fifth and last object in the Bill is to make some minute alterations in the procedure affecting the Punjab which were introduced at the request of the Punjab Government, who have made some observations with which I do not think it necessary to detain the Council. I therefore move the motion which stands in my name."

The Motion was put and agreed to.

The Hon'ble MR. MEHTA moved that the following be inserted as section 2A of the Bill as amended by the Select Committee, namely:—

'2A. After the first paragraph of section 260 of the said Code the following shall be added, namely:—

'Provided that no decree for restitution of conjugal rights shall be enforced by imprisonment of the defendant if the Court shall, for any sufficient reasons, to be stated in writing on the face of the order, think fit that it shall not be so enforced.'

He said:—"I have not brought forward this motion, my Lord, with the view of obtruding my own personal predilections on the subject. But I find that, while the subject affects all India alike, the Select Committee whose report we are considering, numerously as it is composed, comprises within it representatives only of the provinces of Bengal and the Punjab, while Bombay and Madras had no voice in it. I should probably have even then remained silent, if this Council contained a Hindu or Muhammadan member from Bombay or Madras who would have voiced the best Hindu view of either of these Presidencies. In the absence of any such member, I think it a duty to represent what, I believe, would have been the views put forward if, for instance, there was sitting at this Council a Hindu like my late friend Mr. Justice K. T. Telang, a true and sincere Hindu of Hindus, from whom I, as well as many others, have learned to respect and appreciate many valuable aspects of Hindu social and religious life, and many valuable lessons of Hindu social and religious philosophy. I am not one of those who believe in the utility of meddling with so peculiar

and complex a system of social life and religion as Hinduism, especially from outside, and I should go with those who hold that whatever reforms may be desirable and necessary should be left to be developed by the action of time and education. But the proposal originally embodied in the Bill, and which I have put forward by my amendment in a somewhat different shape, is not, I think, one of indigenous essential Hindu growth; it is an excrescence which has got itself grafted from an extraneous jurisprudence. However that may be, I find in the papers placed before the Council such a weighty consensus of Indian opinion in favour of the proposal as I do not think the Council would be justified in passing by lightly. The mode in which I have framed my amendment is in accordance with a suggestion made by the two eminent Judges who at present adorn the bench of the High Court of Bengal, Mr. Justice Ghose and Mr. Justice Banerjee. Their opinion on the subject is contained in the following joint Minute:—

'With reference to the proposed amendment of section 260 of the Code of Civil Procedure, we adhere to the opinion expressed by us in our minute of the 12th July, 1889. For the reasons therein stated, we think the law should be modified, not in the manner proposed by the Bill, which would make the enforcement of decrees for restitution of conjugal rights by imprisonment the exception and not the rule, but by adding to section 260 a proviso to the following effect:—

'Provided that no decree for restitution of conjugal rights shall be enforced by imprisonment of the defendant, if the Court shall, for any sufficient reasons to be stated in writing on the face of the order, think fit that it shall not be so enforced.'

'This will have the effect of disallowing imprisonment as a mode of enforcement of decrees for restitution of conjugal rights in any case in which it ought not to be allowed, without practically abolishing it, as the proposed amendment is likely to do.'

"The District Judge of Burdwan, Mr. Brojendra Cumar Seal, and the District Judge of Midnapur, Mr. K. N. Roy, both approve of the proposal, so also do the Zamindari Panchayat. That eminent scholar and distinguished Indian historian, Mr. Romesh Chunder Dutt, Officiating Commissioner of the Burdwan Division, gives it his entire support and approval. He says:—

'Section 3 is a move in the right direction. To enforce a decree for restitution of conjugal rights by imprisonment of the defendant is a provision which is, I believe, not sanctioned by the ancient laws of the Hindus and Muhammadans; it is a provision which has been imported into the law of this country from the English law. Its repeal therefore can give no just ground of complaint to Hindus and Muhammadans.

'In practice, no respectable Hindu or Muhammadan ever seeks to get back his wife by putting her in prison. The only instances in which I have seen the law resorted to were

instances of seduced or depraved women. Sections 497 and 498 of the Indian Penal Code are sufficient to meet the cases of seduction, and it is not necessary to have an additional provision in the civil law to meet such cases.

'On the other hand, the presence of the provision in the Civil Procedure Code is a standing threat against wronged women. It practically empowers the most profligate and cruel of husbands to keep his wife in custody like his cattle, and it prevents her from the only possible escape which is open to her, to go and live with her parents. The practice of habitually maltreating wives is not common in this country any more than in other civilized countries. But nevertheless such practice is not unknown among certain classes, and it is cruel and iniquitous to prevent a woman in such instances from going and living with her parents.

'I do not think the enacting of section 3 of the Bill will give rise to any great agitation. One section of the community will oppose it—it is the section which would stop all reforms—it is the section which would like to see the practice of the burning of widows re-established in India. But the great mass of the Hindu and Muhammadan population will look upon the enactment of the section with indifference, and for the reasons which I have stated above it is incumbent on Government to enact it for the protection of those who cannot protect themselves.

'I have only to add that the clause allows imprisonment "for sufficient reasons to be stated in writing" by the Court. I myself think that imprisonment for the restitution of conjugal rights should be abolished altogether.'

"Writing for the Central National Muhammadan Association, Nawab Syud Ameer Hossein says:—

'The Committee have no objection to the proviso, but they would suggest that a rider be added to it to the following effect:—"Should the Court be of opinion that a decree for restitution of conjugal rights should not be enforced by imprisonment of the wife, the latter should be debarred from suing for her maintenance or for her dower as long as she does not return to her husband"'.

"With regard to this proposed rider, it should be borne in mind that no married woman could sue for maintenance if she refused to go to her husband without legal cause, and the very fact of a decree for restitution being passed would establish that there was no such cause. The Muhammadan Literary Society of Calcutta also approve of the proposal, only suggesting that 'the expression "sufficient reasons" in the proviso of the said section 3 should be interpreted consistently with the personal law of the Muhammadans.' Against this authoritative body of opinion it is right to mention that the powerful voice of the British Indian Association is strongly raised in condemnation of the

change. But their strongest arguments are directed against the way in which section 3 of the Bill as introduced in Council was framed, as they apprehended that, in that form, it would be tantamount to a virtual abolition of imprisonment for the wife's contumacy. It seems to me that the modified form proposed by Mr. Justice Ghose and Mr. Justice Banerjee, and which I have accepted in my amendment, should go far to disarm their opposition. Under the strictest Hindu law that has been expounded, the King would have a discretion (in practice he had a large one) in imposing the fullest penalty for contumacy or disobedience according to the special circumstances of each case. The opinions received from the Bombay Presidency not only do not disclose any disapproval, but the Local Government recommends a step further and is inclined to abolish imprisonment altogether, in accordance with a strong expression of opinion in that behalf by the District Judge of Satara, Mr. Satyendra Nath Tagore. The Madras Presidency is not only unanimously in favour of the proposal, but a voice comes from it which is entitled to the greatest respect. I refer to the opinion of a Hindu Judge whose loss all India deplores in common with the Presidency to which his great services were devoted, Sir T. Muthusami Aiyar. His devout and sincere conservatism was as unquestioned as his knowledge of Hindu law and usage was profound. In the Minute appended by him, Sir T. Muthusami Aiyar says:—

'The proviso added to section 260 is, I think, necessary, as cases frequently arise in which the relation between the husband and wife is so strained that their own permanent interest requires that execution by imprisonment should be safeguarded in the manner prescribed by the proviso.'

"I think that the above consensus of opinion is of so weighty a character that it justifies me in asking the Council whether it is not right and desirable that the proposal in the extremely moderate form in which I have put it in my amendment should not be passed into law. In their further Report, the Select Committee say that they 'have omitted section 3 of the Bill as introduced, because in our opinion the country is not yet ripe for the change in the existing law which it proposed to make.' This is a startling statement to make. There are certain pieces of legislation which I should have thought the Government would never bring forward at all unless they had ascertained that the country was ripe for them. I should have thought that section 6 of the Bill as introduced was one of such pieces. The announcement of the Select Committee cannot but therefore come upon the Council with great surprise. The materials before the Council, however, do not quite bear out their conclusion, and I therefore venture to place before the Council the amendment I have moved."

The Hon'ble SIR GRIFFITH EVANS said :—" As a member of the Select Committee I wish to state my position in regard to this matter. I entirely sympathise with those who desire to have imprisonment inflicted in cases of execution of a decree for the restitution of conjugal rights under the safeguard proposed by the Hon'ble Mr. Mehta. I myself, personally, am very strongly of opinion that it would be a very good thing for many reasons. First of all, there can be no doubt that imprisonment as a method of executing these decrees for the restitution of conjugal rights was taken from English ecclesiastical law, applied to Europeans in India, and there was before 1877 considerable doubts as to whether such a decree could be made between Natives, and further, after it had been once made, how it should be executed. Some Judges thought that the wife ought to be produced in Court and handed over to her husband, leaving it to him to keep her or not as it was in his power. But, when the amendment of the Civil Procedure Code was made in 1877, Mr. Whitley Stokes, who was then the Legal Member, considered that for the sake of uniformity there should be some method prescribed for executing every Civil Court decree, and he inserted this provision of imprisonment on refusal to obey the decree. Under these circumstances it was difficult to say how it could be a question of Hindu law, but it appears that a very large proportion of the lower classes of a great portion of India have resorted to this procedure to get back their wives who go away from them. They consider it a very valuable privilege to get back an unwilling wife, though the upper classes do not. Under these circumstances they seem to have made considerable use of this procedure, and they seemed to consider that, if the compulsory power exercised on their behalf by the Administration were taken away, their position would be weakened and they would not be able to get back their wives. It also appeared, whether it is according to our views reasonable or not, that there is a very large body of orthodox and conservative Hindus who, whether their reasons are good or bad, very strongly object to this change. Their reasons do not appear to be sufficient to me, but they appear to be sufficient to them, and they hold very strong opinions on them. However, this change which has been proposed is such a small one, and its effect would be so very beneficial in preventing such a scandal as that of Rukmabhai's case, which very nearly led to strong agitation in England, which would have been exceedingly inconvenient, that I would have been inclined to run a certain amount of risk of disturbing the feelings of certain classes of Hindus, had it not been that in Select Committee, when the Hon'ble Khem Singh Baba, who, as we all know, is a Guru among the Sikhs, and whose opinions carry the very greatest weight amongst them, was absolutely and irreconcilably

opposed to it. Enquiries were made from him; we got other Native members of the Committee to discuss it with him; it was discussed, so that there could be no misunderstanding, and we found that his attitude was resolute and uncompromising. Under these circumstances, much as I should like to have this amendment passed, we have to consider the political effects of it—whether we should leave a thing which we disapprove of, or in the attempt to remove it excite strong antagonistic feelings among the Hindus whom we were attempting to benefit by the amendment. Looking at it as a matter of policy in this way, I and others came to the conclusion, very reluctantly, that it would be safer to leave it alone."

"The Hon'ble MOHINY MOHUN ROY said:—"I must oppose this amendment. The change in the law seems to be wholly uncalled for. It is called for only by a very insignificant and microscopical minority of the people of India. We have, after much deliberation in Select Committee, omitted section 3 of the Bill, because we thought the country was not yet ripe for the change in the law which it proposed to make. The object of this amendment is to re-introduce section 3 of the Bill in a slightly modified form. I am not sure it is any great advantage to be what is commonly called 'in advance of the age.' Possibly a grateful posterity may do honour to the memory of men of such advanced ideas, but the present generation will not understand them, nor fall in with their views. Rukhmabai's case is generally cited in connection with the proposed change in the law. She was a lady of advanced ideas and thought her husband was not good for her. But according to Hindu notions this was very wrong of her. A few months' involuntary retirement to a place where she might think over this matter was a very good thing for her and might bring her round. Of the several provincial Governments which have expressed an opinion upon the proposed amendment of section 260 of the Code of Civil Procedure, a large majority are against it. The Punjab Government is strongly against it. It says: 'the practical effect of the amendments would be that no decree for the restitution of conjugal rights would be enforceable at all.' The general consensus of opinion was strongly in favour of maintaining the remedy on its existing footing, and there were very clear indications that the proposal to amend the law in the way proposed was looked upon with distrust and alarm.

The Chief Commissioner of the Central Provinces says:—

'The Legislature is, so far as we are aware, acting on its own motion or on the motion of a few faddists. We are not aware that the change of law has been asked for by the Hindu community at large. The question being a purely social one, it should fairly be left to be

dealt with by the Hindu society as it may think best in its own interests. It is clear from the newspaper discussion of 1887 that the orthodox, and therefore the enormously preponderant, party among the Hindus were under the gravest apprehensions as to the effect, upon their system, of these incidents and accidents of British law.'

"The Government of the North-Western Provinces says:—

'The amendment of section 260 will probably be laid hold of as a covert attack on the Hindu marriage custom.'

The Bengal Government says:—

'It would be inadvisable to alarm the orthodox and conservative class of Hindus by passing a measure for which it appears that there is little urgent necessity. It may be added that the persons most affected by the proposed legislation will be the lower classes.'

"It is important that the Legislature should take specially tender care of the interests of those who have the most difficulty of being heard. The Assam Government is in favour of the amendment with some modification. The only Governments which are in favour of the proposed amendment are those of Bombay and Hyderabad Assigned Districts."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said:—"My Lord, the amendment as proposed by my friend the Hon'ble Mr. Mehta does not abolish imprisonment altogether. It gives discretionary power to the Court just as in the case of imprisonment for debt, so that the measure proposed is a very mild one indeed. Even the strongest advocate of the husband would admit that there might be cases where it would be cruel to force the wife to go to the husband. Of course, so long as the marriage tie is not dissolved (and among Hindus it cannot be dissolved except among some of the lower classes), the Court is bound to give a decree against the wife. But all the same it may be a very great hardship to force her to go to, it may be, a very cruel husband, so that there ought to be some discretion given to the Court in the matter. It ought not to be made obligatory on the Court to send every wife who refused to go to her husband to jail. As regards the general question, how far disobedience to the orders of the Court directing a wife to return to the society of her husband shall be dealt with by imprisonment, as far as I have been able to make out, the Hindu law does not recognise deprivation of personal liberty or employment of physical force as a legitimate means of compelling an unwilling wife to go and live with her husband. The present law seems to owe its origin entirely to the extra-judicial dictum of their Lordships of the Privy Council in the case of *Munshi Busloor Rahim* v. *Shamsunissa Begum* (Moore's Indian

Appeals, Vol. XI, page 531) to the effect that disobedience to the order of a Court directing the wife to return to cohabitation would seem to fall within section 200 of the Civil Procedure Code (Act VIII of 1859). The principle underlying the provisions of section 260 of the present Code appears to be that marriage is an ordinary civil contract, and a refusal to perform its obligations is like breaking a contract; therefore the same penalties that attach to non-compliance with the order of the Court to specifically perform a contract should also apply to the refusal to abide by the decree for restitution of conjugal rights. But among Hindus marriage is not a contract, but a religious sacrament, being the last of the initiatory rites prescribed for men of the regenerate classes, and the only one for women and sudras. Non-compliance with the duties and obligations of a religious rite should not, according to Hindu ideas, be visited with worldly punishment. Hindus as such will therefore have no right to complain if the Legislature curtails to some extent a power existing under a provision of law of its own creation, and which finds no place among their own Dharma Shastras. I do not think the present amendment will injuriously affect the social relations of the Hindus. Hindus of the higher and respectable classes seldom, if ever, seek the aid of our Courts to enforce their marital rights, and even if they were to do so they would never think of enforcing the decree by a coercive process directed against the person of the recusant wife. The disgrace and infamy resulting from incarceration in jail would attach to the husband and his family more than to the wife, and before a wife, who has been to jail, can be taken back into the family, she will have to go through a series of expiatory ceremonies. It would thus appear that, if the machinery of the present law is ever set going, it can only be with a view to the gratification of vindictive feelings and not to secure the society of the wife. I do not see why the Legislature should aid and abet a Hindu in the commission of an act so repugnant to the dictates of his personal law and religion.

"My hon'ble friend Sir Griffith Evans has just told us that a considerable class, especially the lower classes, have taken advantage of this section, and their position would be weakened if this section were radically changed. But the amendment now proposed, I humbly beg to submit, while it does not take away what ought to be considered as a sort of protection which the present law afforded to some sections of the people, only allows a discretion to the Court in cases where the motives of the suitor can be clearly perceived to have been actuated by resentment or revenge, pure and simple."

The Hon'ble THE MAHÁRÁJÁ OF DURBHANGA said :—"As a member of the Select Committee I wish to say a few words to explain the reason why in Select Committee I was unable to vote for an amendment very similar to that now proposed by the Hon'ble Mr. Mehta. I quite agree with the Hon'ble Mr. Chitnavis in thinking that there is absolutely nothing in the Hindu religion to force an unwilling wife to cohabit with her husband. In fact, I believe there are certain cases in which it is found that the orthodox Hindu community would only be too glad if this law of imprisonment is done away with. For instance, there might be a case in which the husband or wife might have changed their religions. In all such cases I think every orthodox Hindu will agree with me in thinking that the husband or the wife should have full liberty either to live together or not as they please. Then, again, there are cases where the husband or wife might be suffering from infectious diseases, or cases where the wife might be subject to very cruel treatment from her husband. In all such cases I think it is our duty to protect the wife, and I think the orthodox community as a class would not object to restrictions being put on the power of the Courts to imprison unwilling wives or husbands, as the case might be. The only reason why I was forced to vote against the amendment was because after what the Hon'ble Member near me, Baba Khem Singh, told me in Select Committee, I thought there might be some chance of exciting the fanaticism of the Sikh community. He seemed to think that any change in the present law would do this, and therefore I hesitated to vote for the amendment. It might lead to grave political consequences."

The Hon'ble SIR ANTONY MACDONNELL said:—"I entirely sympathise with the spirit of this amendment. The Hon'ble Mr. Mehta, speaking in this Council to-day, offers himself, as I understand him, as the exponent of the most advanced Hindu opinion in Bombay. We, however, who are concerned with the government of this great Empire have been taking into our consideration other matters besides the opinion of the most advanced classes of Indian society. It would be easy to rule India if we had merely to deal with the most advanced classes. The difficulty of the administration in India is that it has to deal with classes and sections of the community that are not advanced, and among whom a wave of religious fanaticism would undo in a very brief space of time all that the advanced classes have done in the space of half a century.

"My Lord, I have always been of the opinion that the Rukhmabhai case showed the Hindu system at its very worst, and that it is unfair to the Hindu

system of marriage to consider that the evils which the Rukhmabhai case brought out are inherent in the system. Hard cases make bad law, and it is inadvisable for the Government of this Empire to legislate against the feelings and wishes of the people because a case had occurred in which the system had worked probably at its worst, and certain people judging from that case considered that the system had failed.

"Your Excellency has heard how this question was dealt with in Select Committee. For my part I was most anxious to give no lead in the Select Committee to the decision of the question. It was a question intimately connected with the religious feelings of the Hindus and their marriage system, and I was anxious that a decision should be come to by the Native members of the Select Committee alone. The Select Committee was composed of the most representative men we could find in Your Excellency's Council. We discussed it, as my hon'ble friend Sir Griffith Evans has said, in all its bearings, and for my own part I can say that I was greatly satisfied with the fact that the Native members of the Select Committee not only regarded the question in its social, I may almost say its religious, aspects, but also in its bearings on the administration of the country. Although some of the Select Committee thought that in certain classes of society this change might be received with satisfaction, the conclusion was that other large and important sections among whom this practice prevails would be dissatisfied if such a change were made. I think the conclusion they came to was a right and patriotic one. Although I, with the Hon'ble Mr. Mehta, look forward to the time when such an amendment will be placed on the Statute-book, yet I think as practical administrators we cannot conclude that that time has yet come. For those reasons I agreed with the majority of the Select Committee."

His Honour THE LIEUTENANT-GOVERNOR said:—"I am glad to hear from the Hon'ble Sir Antony MacDonnell that it is the intention of the Government of India to oppose this amendment. There is no doubt that it has been so altered as to considerably take the sting out of the section as it was originally framed in the Bill. The procedure has been turned round, and whereas imprisonment would have been the exception unless where supported by a special order in which the Judge should give his reasons for inflicting it, under this amendment imprisonment will be the rule, and the exception would be where the Judge gives his reasons if he considers it inappropriate. This was the proposal which was made by Sir Dennis Fitzpatrick in the extremely able letter which is before the Council, and it occurs also in the proposal made

by the two Judges of the High Court whom the hon'ble mover of the amendment has quoted. But the principle which has weighed with me most in coming to the conclusion, although with great hesitation, that the amendment ought to be resisted is that touched upon both by the Hon'ble Member in charge of the Home Department and by the Hon'ble Babu Mohiny Mohun Roy, that we have to reconcile the objects, wishes and habits of totally different classes of society. With all Hindus of the higher classes, both the orthodox and the more advanced members, this change in the law would not be unpopular, but it would be extremely unpopular with the lower classes, among whom the practice is extremely common of applying for the restitution of conjugal rights in the case of a runaway wife. There is no officer serving under the Government of India who has more experience of this class of cases than the Chief Commissioner of Assam. I was brought much into contact with them when I held that office, and the late officiating Chief Commissioner, Mr. C. J. Lyall, has given us the results of his experience, in language which I entirely endorse. He writes as follows :—

'Cases of this kind are generally brought by persons who are either not Hindu or only recently converted to Hinduism and of minor social status. There seems to be little reason to believe that among these classes the enforcement of a decree by imprisonment is regarded with the sentiments of repugnance and disgust with which it would be regarded by high-caste Hindus or modern Europeans.'

"And the same line of thought was taken by myself in a letter to the Government of India which I shall ask leave to read only two sentences of :—

'It may be added that the persons most affected by the proposed legislation will be the lower classes, who are very much in the habit of suing for the restitution of a runaway wife and are necessarily unrepresented in this correspondence. The classes from whom the officials and non-officials are drawn, whose views are represented, do not bring suits of this nature, but it is important that the Legislature should take especially tender care of the interest of those who have the most difficulty in making themselves heard.'

"It is because I believe that the classes who are less likely to be heard, and whose views are less likely to be represented by the correspondence which has been laid before the Council, would be materially injured by any legislation of this kind, that I feel on the whole, putting all advantages and all losses one against the other, that I am obliged to oppose the amendment. With regard to what the Legal Member suggested just now as the line he would possibly take up, that this remedy is comparatively a novel one, I would

remind him that the original remedy was the restoration of the wife forcibly to the husband. This was the old custom of India, and it was the custom of the Courts which I myself carried out when a young officer in Oudh, and it is practically still the custom of many of the Courts in many of our rural districts; and unless the lower classes can obtain possession of their wives or have the power of enforcing their return to them by the threat—I suppose it would seldom amount to more than a threat—of imprisonment, I am afraid very considerable injury would be done to their interests."

The Hon'ble SIR ALEXANDER MILLER said:—"I feel myself bound to support this amendment. In giving my reasons I will begin by stating the historical position which the question occupies. Up to the year 1857 such a thing as a suit for the restitution of conjugal rights was unknown to the common law either in India or in England. The existence of such a suit depended upon the ecclesiastical law, and the only way in which such a decree could be enforced was by excommunication. In the year 1857 matrimonial causes were transferred from the Ecclesiastical Courts to the newly established Court of matrimonial jurisdiction, commonly known as the Court of Divorce, and the eminent common law lawyer who was placed first at the head of that Court considered that all cases that came before him were to be enforced in the same way, in other words, that execution was to issue for contempt of Court upon disobedience of any of his decrees, no matter what the character of the suit in which the decree was made might be. How that came to be adopted in India I do not know, but all I do know is that on the question coming before the Privy Council on the question of Parsi marriages, that august body expressed a strong opinion that a suit for the restitution of conjugal rights was only applicable to Christian marriages. I do not know all the particulars. I have not looked into the case very carefully, and I cannot say whether that opinion really amounts to an actual decision or whether it was only a very solemn *obiter dictum*. In any case it was an opinion of the very highest weight, and it had the effect of materially altering the form in which the Parsi Marriage Act was passed in this country. That seems to have been the position in which the matter stood up to the year 1877, less than twenty years ago. As the Hon'ble Sir Griffith Evans has told you, on the amendment of the Civil Procedure Code in that year, my learned friend Mr. Whitley Stokes entirely on his own responsibility introduced a few words into section 260 which did not previously exist there, the result being that the discretion of the Court which had hitherto existed to enforce its own decree or not as it pleased was taken away, and incidentally a right was given to the plaintiff which had not previously belonged to him to have his decree enforced in a particular

manner. Under these circumstances, as far as I have been able to discover, almost the only case in which this particular form of suit has attracted any attention was the one known as 'Rukmabhai's case,' which came before the Government of India in the year 1888 or 1889, I think.

"I entirely agree with what the Hon'ble Sir Antony MacDonnell has said, that Rukmabhai's case is not to be taken as a fair specimen of the Hindu marriage law. On the contrary, I believe it to be just one of those cases which occasionally arise where the Hindu marriage law would have worked out fair and reasonable justice between the parties if left to itself, and the only thing which produced the scandal—which was a very serious scandal—which arose in the case was the application of this excrescence of English law on the top of the Hindu marriage law and opposed to its general principles. Under these circumstances the Government of India took the matter into consideration, and after very mature consideration they passed an Order in Council in the year 1890, when no one who is now a member of the Government was there, that this clause, in the modified form in which it was introduced in this Bill should be accepted and introduced on the first occasion of the revision of the Civil Procedure Code. So the matter rested till the year 1893, when this Bill was for other purposes about to be introduced, and on that occasion the matter was again discussed. The result of that discussion was that the clause in question was directed to be inserted in this Bill. It is true that after the Select Committee had rejected the clause the Government authorised me so far to acquiesce in their decision as not to attempt to reintroduce the clause by motion in Council, and the Council will observe that I have not given notice of any amendment.

"Now, I wish to point out that the opposition to this Bill arises in my opinion entirely from a misapprehension of a very important fact that there is in the law of India, what does not exist in the laws of England, a very sufficient method by which a man can get back a runaway wife. It is a suit which is known to the Hindu law as a suit for the delivery of a wife, and section 259 of the Code of Civil Procedure prescribes that in a case of a suit for the delivery of a wife, where an action is brought and a decree obtained, the plaintiff is entitled to have his decree executed by the woman being brought into Court and handed over to him there and then. That is a procedure which is entirely in accordance with Hindu practice and sentiment, which it is not proposed in the least to interfere with, and which will apply to every case in which there is a runaway wife, except a few exceptional cases where, there being no one else in the background, the woman herself refuses to return. Now, as far as I have

been able to discover, although I do not pretend to have made an exhaustive examination, the great bulk of the cases referred to have been really cases against third parties for the delivering up of a wife—cases in nature of a *habeas corpus*, in which the law provides that the wife shall be delivered up. I think that in point of fact it will be found that the necessity for the particular section scarcely exists at all, and the country got on very well without it down to 1877, and that the procedure which prevailed up to that time was found ample for the purpose—a procedure which it is not proposed to interfere with. Now, it was stated in reference to this by my hon'ble friend Babu Mohiny Mohun Roy that the Punjab Government is strongly against the proposal. The fact is that this proposal is now put in the form which commended itself to the Punjab Government. It is perfectly true that, as the clause was introduced into the Bill, the Punjab Government was opposed to it, but in the form in which it is put in this amendment it is in accordance, not in words but in substance, with the proposals made in the letter by the Punjab Government; and, if I may venture to say so, it is also in accordance with the letter which has been read by His Honour the Lieutenant-Governor of Bengal as coming from the Chief Commissioner of Assam, because what the Chief Commissioner of Assam says is that imprisonment should be the rule 'and should be departed from only on due cause being shown'. That is exactly what the amendment proposes, that imprisonment should be the rule which should only be departed from on due cause being shown. So that it is in accordance not only with the proposal of the Punjab Government and with the letter from Mr. Lyall which has been read by His Honour the Lieutenant-Governor, but I think it worthy of remark that every member who has spoken, with one exception, has expressed himself in favour of the principle of the amendment, and that the grounds which have been urged against the amendment, if they were well founded, would have shown themselves during the long interval between 1855 and 1877, when such decrees were made, but were not enforceable except at the discretion of the Court, and that no such difficulty appears to have ever arisen. I therefore earnestly hope that the Council will see its way to replace the law in the condition in which it was at the commencement of 1877, and to get rid of what, I am bound to maintain, is a modern excrescence introduced by accident, under what I cannot help thinking was a misapprehension on the part of my friend Mr. Whitley Stokes, and to leave the law to work for the future in the form in which it did work satisfactorily enough down to eighteen years ago."

The Hon'ble Mr. MEHTA said:—"I have only one word to offer with regard to an observation of the Hon'ble Sir Antony MacDonnell. The Hon'ble

Member said that I represented the most advanced opinion of the Bombay Presidency. I thought I had made it clear that I was only representing the conservative and orthodox view of the matter in the Presidency of Bombay, as well as in that of Madras and Bengal."

His Excellency THE PRESIDENT said:—"I should only like to say with regard to this point that the view which I personally hold has been very well expressed by Sir Antony MacDonnell. I have great sympathy with the feelings which have prompted this attempt to amend the law, and I should hope that the time will come, and perhaps at no very distant date, when that amendment can be carried out. But I have also to say on behalf of the Government that they had before them the Report of the Select Committee, which, as explained to the Council, gave the fullest opportunity for members of the religions concerned to express their opinion, and after full consideration the Government of India determined to accept the Report of the Select Committee which is now before the Council. Under these circumstances, I shall certainly oppose the amendment which is now before the Council."

The Council divided:—

Ayes.	*Noes.*
The Hon'ble Gangadhar Rao Madhav Chitnavis.	The Hon'ble A. S. Lethbridge.
The Hon'ble P. M. Mehta.	The Hon'ble H. E. M. James.
	The Hon'ble C. C. Stevens.
	The Hon'ble Sir F. W. R. Fryer.
	The Hon'ble Sir G. H. P. Evans.
	The Hon'ble Mohiny Mohun Roy.
	The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.
	The Hon'ble P. Playfair.
	The Hon'ble H. F. Clogstoun.
	The Hon'ble Baba Khem Singh Bedi.
	The Hon'ble Sir A. P. MacDonnell.
	The Hon'ble Sir J. Westland.
	The Hon'ble Sir C. B. Pritchard.
	The Hon'ble Lieutenant-General Sir H. Brackenbury.
	His Honour the Lieutenant-Governor.

The Hon'ble PRINCE SIR JAHAN KADR MEERZA MUHAMMAD WAHID ALI BAHADUR, the Hon'ble MAHÁRÁJÁ BAHÁDUR OF DURBHANGA, the Hon'ble SIR A. E. MILLER and His Excellency THE PRESIDENT did not vote

So the amendment was negatived.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill, as amended, be passed.

This Motion was put and agreed to.

ACT V OF 1861 (POLICE) AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL moved that the Report of the Select Committee on the Bill to amend Act V of 1859 (*an Act for the Regulation of Police*) be taken into consideration. He said:—"My Lord, it will be seen from the Report of the Select Committee that differences of opinion existed among its members, chiefly in reference to sections 4 and 5 of the Bill; for, as section 6 is consequential on sections 4 and 5, it need hardly be taken into account in summing up the points of difference. One member of the Select Committee in his dissent expresses dissatisfaction with section 10 of the Bill, but on that point I believe I am right in saying that he was in a minority of one. I notice that there are some amendments to section 10 on the agenda paper. But I shall not at this stage trouble the Council with any observations, except upon the two sections, 5 and 6, on which three members of the Select Committee have dissented from the Report of the majority.

"The Report of the Select Committee indicates the nature of the changes which have been introduced into the 4th and 5th sections of the Bill. The 4th section repeals section 15 of the Police Act and re-enacts it in an amended shape. Section 15 of the Police Act, V of 1861, runs as follows:—

'It shall be lawful for the Inspector-General of Police, with the sanction of the Local Government, to be notified by proclamation in the Government Gazette, and in such other manner as the Local Government shall direct, to employ any police-force in excess of the ordinary fixed complement to be quartered in any part of the general police-district which shall be found to be in a disturbed or dangerous state, or in any part of the general police-district in which, from the conduct of the inhabitants, he may deem it expedient to increase the number of police. The inhabitants of the part of the country described in the notification shall be charged with the cost of such additional police-force, and the Magistrate of the district, after enquiry, if necessary, shall assess the proportion in which the amount is to be paid by the inhabitants according to his judgment of their respective means.'

"Comparing the section which I have read from the existing law with the amended section in this Bill, it will be noticed by the Council that there are between the two sections certain points of agreement and certain points of difference. The sections agree in the following points: the tract or part of the country in question must have been found by the Local Government to be in a disturbed or dangerous state; there must be a proclamation to that effect published in the official Gazette; the Inspector-General of Police must have the consent of the Local Government to the strength of the police-force to be quartered in the proclaimed area; and the Magistrate must assess the cost of

such additional police on the inhabitants. These are the points on which the Bill agrees with the existing law. The Bill differs from the existing law on the following points: the notification proclaiming the area may be prior to, and not simultaneous with, the order to quarter additional police; the inhabitants of the proclaimed area are to be understood as including not only actual local residents, but the landlords and other owners of property who manage their property directly, and thus have immediate local influence and derive immediate benefit from the maintenance of order; the cost is to be distributed among the inhabitants, not according to their means generally, but according to their means accruing within the proclaimed area alone; and the Local Government may exempt any persons or section from liability to bear any portion of the cost of the additional police. Practically, the essential points of difference are, first, the extension we have given to the meaning of the word 'inhabitants', and secondly, the power of exemption.

"On the points on which the Bill agrees with section 15 of the existing law, I presume that no defence of the Bill is expected from me. Taking in order the points on which it differs, I do not anticipate that any objection will be raised to separating the proclamation from the action taken in virtue of it. As a general rule, no doubt, action will follow without delay on the issue of the proclamation. But there may be cases in which the mere issue of the proclamation will bring the turbulent parties to a due sense of their responsibilities, and perhaps, by forcing them to compose their quarrels, obviate the necessity of any further precautionary measures. At all events it cannot be denied that the amendment of the section on this point is in the direction of leniency so far as it goes.

"The next point is the extension of the term 'inhabitants' to mean not only actual residents but also persons directly controlling property, and therefore directly influencing the conduct of the people who reside, in the proclaimed tract.

"The Bill as drafted made the cost of additional police payable by the inhabitants of, or persons having interest in land in, the local area, or by any class of persons who in the Magistrate's opinion had caused or contributed to the disturbance which led to the quartering of the additional police. On carefully examining that provision, it appeared to the Select Committee to be too wide and also to be inconveniently framed. It has been amended so as to obviate an enquiry into the guilt of any section, so as to avoid even the appearance of holding those responsible who had no power to influence the inhabitants of the

proclaimed area one way or the other, for good or evil, and so as to place the power and responsibility with the Local Government and not on the Magistrate of the district. Thus a Bengal proprietor who has let the village in *putni*, or a proprietor in Bengal or any other province who has let a village on lease, or a mortgagee not in possession, will be exempt from responsibility, and thus an objection which had been urged against the Bill as drafted has been met and remedied. But the Bill as amended preserves the responsibility of the residents of the proclaimed area, and of absentees interested in immoveable property therein, provided that their interest is direct and immediate. The object is to impose responsibility on all who are in direct touch with the village and are therefore in a position to exercise direct influence over its affairs. All these people directly benefit from the maintenance of order in the village and *qui sentit commodum sentire debet et onus.*

"As the Bill now stands, the responsibility of the village proceeds on the same lines as, but is less strict and exhaustive than, the responsibility which rests on the barony in Ireland, or on the English hundred. In both of these, I understand, the proprietor, unless he comes to some understanding with his tenant, is responsible for the police-rate, and for every addition to it which either an increase in the police-force, owing to the turbulence of the inhabitants, or compensation paid for malicious injuries may entail.

"On the third point of difference between the existing law and the Bill, namely, the distribution of cost according to the means of the inhabitants accruing within the proclaimed area, I do not anticipate that there will be any opposition to the Report of the Select Committee if the main provisions be accepted. The change was introduced entirely in the interest of absentee owners of property, upon whom the demand will obviously be less if the measure of that demand be their property situated in the proclaimed area, and not that property *plus* their property situated outside it.

"The last point of difference is the power given to the Local Government—not, it will be observed, to the District Magistrate—to exempt certain persons or sections from liability to pay for the additional police. I went so very fully into the justification for this provision when the Bill was last before Council, that it will probably be considered unnecessary for me to go over the same ground again on this occasion. I shall reserve any additional observations it may be necessary for me to make until we come to the amendment, which is, I notice, to be moved upon the sub-section.

"Passing on to the second section,—the compensation section,—on which the Select Committee have differed, I need not detain the Council at any length with a repetition of the justification of this principle which I gave when this Bill was last before the Council. The objections that have been made since the Bill was last before the Council show nothing new. I wish to again repeat that the criminal law and a civil suit for damages afford practically no relief from injuries inflicted by a riotous mob. The perpetrators of those injuries are, by the nature of the case, usually unknown. If they are known, they are usually found to be bad characters with no means. To relegate the sufferers in such cases to the expense of a lawsuit would be to deny them any redress. Some objectors have urged that this provision will enable claimants to exaggerate losses and to implicate their rich neighbours in the hopes of spoil. But as the responsibility will be on the whole village, every inhabitant of which other than the sufferer is directly interested in reducing the value of the loss to the smallest dimensions, there will be very little chance of an excessive award; while, as I shall presently mention, I am prepared, on behalf of the Government, to accept the amendment proposed by the Hon'ble Sir Griffith Evans, which will reduce to a minimum the opportunities for bringing exaggerated claims under this head of the Bill. If this amendment be adopted, a claimant will have only one month from the date of the injury within which to make his application for compensation. Part of that month may be before the issue of the proclamation of the area as disturbed.

"I think, my Lord, I may assume that by referring the Bill to the Select Committee the Council approved of this principle. In Select Committee the principle of the original section has been maintained intact, but the procedure has been modified. It has been made clear that action under the section shall not be taken unless an application be made by an injured party; while the sanction of the Local Government has been made necessary to the taking of action by the District Magistrate on the petition. In this section, as well as in section 15, the responsibility for action is thus taken from the local officers and imposed on the Local Government, while power has been taken to make rules, under which a full enquiry may be made into the claims. I trust this important change may obviate the difficulties which some have felt on this part of the measure.

"I do not think, my Lord, that at this stage I need make any further remarks on what appeared to the great majority of the Select Committee the only contentious parts of the Bill; but it may expedite the progress of the Bill

and help to remove uncertainties if I at once say, on behalf of the Government, how we intend to meet some of the amendments which have been proposed.

"The Government is, I regret to say, unable to declare beforehand its acceptance of any of the other amendments of which notice has been given by the dissentient member of the Select Committee or by the Hon'ble Mr. Mehta, but it awaits the arguments by which these amendments may be supported in this Council to-day.

"There are, however, certain other amendments proposed on these sections of the Bill which the Government, after careful consideration, find to be in harmony with the principle of the Bill; while in some respects they are improvements. I refer to the amendments on the agenda paper which have been proposed by my hon'ble and learned friend Sir Griffith Evans. The Government has decided to accept these amendments, and this concession should, I venture personally to think, go a very great way to reconcile the most hostile critics of the measure.

"I now beg that the Report of the Select Committee be taken into consideration by the Council."

The Hon'ble MR. MEHTA moved as an amendment to the Hon'ble Sir Antony MacDonnell's motion that the Bill as amended by the Select Committee be published in the local official Gazettes of the Presidencies of Fort St. George and Bombay in English and in such other languages as the Local Governments think fit and be referred for opinion to those Governments, and that the Bill be recommitted to the Select Committee for further report after consideration of such opinions and representations as may be received in respect thereof. He said:—"My Lord, the necessity for the amendment which I move arises from the somewhat unexpected manner in which the Select Committee has suddenly proposed to modify a section in the present Act which was not originally dealt with in the Bill, namely, section 46 of the Act. That section empowers the Government of India to extend the whole of the Act to any presidency, province or place. The Select Committee now propose by a new section (section 15 of the amended Bill) to modify that section so as to enable Government to extend a part of the Act as well as the whole. Under the Bill as it was originally introduced, which did not in any way touch section 46, there was no practical probability of its proposed provisions affecting the Presidencies of Madras and Bombay. That such was the view entertained by the Government of India is manifest from the circumstance that while the Bill was sent for publication and opinion to the Provinces of Bengal, North-Western Provinces and Oudh,

Punjab, the Central Provinces, Burma, Assam and Coorg, and for opinion to Ajmere, British Baluchistan, Hyderabad, and the High Court of Calcutta, it was not so sent to Madras and Bombay. In both these Presidencies there are special Police Acts, dealing minutely with the constitution, organization and the discipline of the police-force. With regard to Madras, the district police of that Presidency is governed by the provisions of Act XXIV of 1859 of the Governor General in Council. While this Act has provisions in sections 13 and 14 for employment of additional police-officers on the application and at the cost of private individuals, and for the appointment of an additional force in the neighbourhood of any railway, canal or other public work, at the expense of any company carrying on such works, which closely correspond with sections 13 and 14 of the Police Act, V of 1861, there are no sections in it corresponding either with section 15 of the latter Act, or to the sections which are now proposed to be substituted for that section by the amending Bill before the Council for quartering additional police in disturbed or dangerous districts, or for the additional section proposed to be added for award of compensation to sufferers from misconduct of the inhabitants or persons interested in the land in those districts. Similarly, while section 49 of Act XXIV of 1859 provides for the regulation of public assemblies and processions and for the use of music in the streets on the occasion of Native festivals and ceremonies, there is no section in it corresponding to clauses (*2*) and (*3*) of section 30 and the whole of section 31A as proposed to be substituted or added by sections 10 and 11 of the amended Bill. In the Presidency of Bombay, the regulation and control of the district police has been from early times a matter of local enactment. Sir George Clerk first took up the subject in 1856, and when he returned a second time as Governor further developed his scheme and placed the police on a basis which was governed to some extent by the ideas embodied in the general Police Act of 1861 of the Government of India, which was not adopted in and applied to Bombay. In 1869 the matter was again dealt with fully in Bombay Act VII of 1869, which governed the law on the subject till the present Bombay District Police Act, 1890, was passed by the Local Legislature in the time of Lord Reay. The Act of 1867 was not, however, repealed in Sindh, where it is still in operation. Both the Acts of 1867 and 1890 have sections—sections 16 and 25, respectively—closely modelled on section 15 of the general Act V of 1861 for employment of additional police in local areas in a disturbed or dangerous state. But they are materially different from the sections proposed to be introduced in the same behalf by the Bill as originally introduced and also as amended by the Select Committee. Section 16 of the Act of 1867 provided that the cost of the additional police may be defrayed by a local rate

charged on the part of the country described in the notification, and the Collector, on the requisition of the Magistrate of the district, was empowered to levy the amount by such an assessment on the inhabitants thereof as the Collector should in his discretion think just. The Act of 1890 now provides by section 25, sub-section (2), that the cost of the additional police shall, if Government so direct, be defrayed either wholly or partly, by a rate charged on the inhabitants generally or on any particular section of the inhabitants of the local area. Neither of the two Acts contain any such power as is now proposed to be given by section 4 of the amended Bill to render absentee landowners and inamdars liable or 'to exempt any persons or class or section of the inhabitants (made liable in the proclaimed area) from liability to bear any portion of such cost.' With regard to the new sections in the amended Bill for award of compensation to sufferers from misconduct of the inhabitants or persons interested in land, there is absolutely nothing corresponding to them in either of the two Bombay Acts of 1867 or 1890. Again, sub-sections (2) and (3) of the new section 30 proposed to be substituted by section 10 of the amended Bill have nothing corresponding to them in the Bombay Acts. It will be thus seen that the Bill before the Council proposes important and material alterations and additions to the Police Acts prevailing in the Presidencies of Madras and Bombay. As the Bill was first introduced, there was no reasonable prospect of the new provisions threatening to invade these Presidencies, because it would not have been practicable, as I have pointed out above, though not illegal, to apply to them the entire Act, which alone section 46, untouched as it was by the original Bill, empowered the Government of India to do. But the Select Committee have suddenly thought it advisable to recommend that the net should be cast far and wide, so that the two Presidencies may also be secured within its meshes. It may not have been the conscious intention of the Select Committee to do so; but anyhow the two Presidencies are now made easily and directly liable to have the new provisions made applicable to them by virtue of the modification of section 46, embodied in section 15 of the Bill, whereby any one part of the Act may be extended to any presidency, province or place. There would now be no fear of serious dislocation or disarrangement of the machinery of police in these presidencies, as would inevitably be the case in extending the whole Act. It could only have been in view of their practical exclusion from the operation of the proposed legislation that the Bill was not referred to them for opinion and publication. Now that the prospect is drawn closer within measurable distance, I submit, my Lord, that it is only fair and reasonable that the opportunity which was given to the other presidencies and provinces and places should not be denied to these two great and important divisions.

"It might not, perhaps, have been necessary or desirable to press my motion if the Bill had emerged from the Select Committee really shorn of its most objectionable features. It is true that the Select Committee claim to have made important changes in some of the most obnoxious sections of the Bill. But, when closely examined, the change turns out to be only a theatrical transformation after all. Some paint and some powder have been no doubt used to soften the features, and new and flowing habiliments have been thrown over the gaunt spectre, but beneath the bland smile and the respectable attire the cloven foot is visible after all. The sections in the Bill as introduced boldly gave power to the executive to differentiate as they pleased; the amended Bill endeavours to carry out the same object by giving them power to exempt whomever they liked, by whisking them out by a backdoor. The Select Committee evidently seem to think that, as the public could not be persuaded to advance in the direction of the Bill by being pulled from the front, they had better try the Hibernian device of pulling by the tail from behind. In spite, however, of the explanations and arguments of the Hon'ble Member in charge of the Bill, into the details of which it would not be right to enter now, to my mind the amended Bill essentially remains what it has been well described to be in the representation of the European and Anglo-Indian Defence Association 'an unwise and impolitic measure calculated to work very grave and serious injustice, and certain to cause much disaffection.' This estimate of its character and tendency has been almost unanimously endorsed by the Indian as well as the Anglo-Indian Press of the whole country.

"My motion, if passed, will no doubt entail considerable delay. But I trust, my Lord, that the Hon'ble Member in charge of the Bill will not oppose it on that account. His justification for its main provisions has been largely placed by him in his desire to save the innocent from being punished with the guilty. But I may be allowed to hope that his passionate devotion to a high ideal of perfect justice will not lead him to try to achieve it by starting with an act of injustice to the two Presidencies which are entitled to be heard on a measure affecting some of their most important interests. It has not been urged that the measure is one of any pressing emergency. On the contrary, one may venture to say that it is eminently one of a character which it would be politic and desirable to remove from the present moment, till the sentiments and passions roused by recent events have in a great measure, if not entirely, subsided, so as to allow of a calm and dispassionate consideration."

The Hon'ble Sir ANTONY MACDONNELL said:—"My Lord, I was not prepared for a speech on the whole measure from the hon'ble mover of this

amendment. I shall restrict myself to the precise amendment. The Bill before this Council is a Bill to amend Act V of 1861. That Act under its 46th section takes effect in no province until extended to it by the Governor General in Council. The Act has never been extended to the Madras or Bombay Presidencies, and the Governments of these Presidencies have provided themselves with Police Acts more adapted to local circumstances than Act V of 1861 was held by them to be. For this reason it was not considered necessary to consult the Madras and Bombay Governments in regard to the amendment of an Act which has never been in force within their jurisdictions. It is the expectation of the Government of India that the Government of Madras, and possibly the Government of Bombay, will, on a suitable opportunity, review their Police Acts, and, if necessary, amend them in the chief points dealt with in this Bill, and on such other points as local circumstances may suggest. The matter is, we believe, now under the consideration of these Governments, and the Government of India does not now see reason to suppose that the operation of Act V of 1861 will differ very materially in extent from what it is at present. But if, owing to special circumstances or in particular tracts, the Government of Madras or Bombay applies to have the whole or any part of this Act extended, I find in the law no obstacle to meeting its wishes. The Bill has been well ventilated, and in regard to one of the most important provisions of it we have had the benefit of the Bombay Government's advice. I may, however, say the Government of India have at present no intention of extending Act V of 1861 to either the Madras or Bombay Presidency."

The Hon'ble MAHÁRÁJÁ OF AJUDHIÁ said:—"My Lord, the Bill as at first introduced into the Council contained many objectionable provisions affecting to a great extent the people of the country. Some of these objectionable features have, no doubt, been taken off by the amendments and suggestions proposed by the Select Committee, and regarding others it appears from to-day's list of business that some of the hon'ble members are going to propose certain amendments which, if carried, will remove a good deal of severity from the measures we find in the original Bill. But, as this piece of legislation is an important one, to my mind it seems to be the proper course that the Bill as amended by the Select Committee should be republished in the official Gazette, so that the public might have sufficient opportunity to consider its provisions and to express their opinion thereon, and its being passed into law should be postponed for the present.

"That this would be a step more consonant to the public opinion I am further strengthened to submit from two telegrams sent to me by the Chairman

of two public meetings, one held at Allahabad and the other held at Lucknow, containing a request that the Bill should not be passed into law at once, but its consideration should be postponed to a future time."

The Hon'ble MOHINY MOHUN ROY said:—"I have received a telegram from Pandit Bishumbharnath of Allahabad which I should, with Your Excellency's permission, like to read to the Council. It runs thus:—

'As Chairman of a public meeting of citizens, Allahabad, held against the Police Bill, I request you would be good enough to have sections 4, 5 and 10 withdrawn, or passing of Bill deferred. In the opinion of the meeting the said sections are highly objectionable and likely to give rise to much dissatisfaction.'"

The Hon'ble Mr. CLOGSTOUN said:—"It is to be regretted, I think, that this Bill was not published in the Gazettes of the Madras and Bombay Presidencies to which section 45 of the Bill gives the Governor General in Council powers to extend it, but the reason doubtless was that there is no immediate intention to extend the Act to those presidencies.

"The Hon'ble Mr. Mehta has, I think, described correctly the provisions of the Madras Police Act, but he has omitted to refer to another Madras Act which embodies all the important principles of the Bill now under consideration. The Presidency of Madras has happily escaped hitherto for the most part the serious religious disputes which have ranged the followers of different religions against each other in Bombay and in the Northern Provinces of India. One district of the Madras Presidency, however,—I allude to the Malabar District—has suffered largely from fanatical outbreaks, and it was found necessary so far back as 1859 to give the Executive Government in Madras the powers which it is intended by this Bill to confer on the Governments of the other Provinces of India with the exception of Madras and Bombay.

"The powers in question have been repeatedly exercised during the past thirty-five years by the Government of Madras for the protection of its Hindu subjects from fanatical attacks on the part of the Moplas, a class of Muhammadans of a kindly nature, celebrated ordinarily for their thrift, industry and enterprise, but subject to recurring outbreaks of fanaticism leading them to the perpetration of the most terrible outrages against the religion and the persons of their Hindu compatriots.

"The Act I refer to is the Mopla Outrages Act, No. XX of 1859 (Madras), and I will read to the Council two of its sections—one describing the offences against which the Act is directed, and the other prescribing the penalties,

among which is the levy from the whole class of the Moplas in the offending villages of a fine which may be in part awarded as compensation to the Hindus or others who have suffered from the Mopla outrages.

"Section 3 of the Act, which describes the offences, is as follows:—

'Any Mopla who murders or attempts to murder any person or who takes part in any outrage directed by Moplas against any persons wherein murder is committed or is attempted to be committed, or is likely to be committed; and any person who shall procure or promote the commission of any such crime as aforesaid, or shall incite or encourage any other person or persons to commit the same, or who, after having committed or having been accessory to any such crime as aforesaid, shall forcibly resist any person or persons having lawful authority to apprehend him; or who shall join or assist, or incite or encourage other persons to join or assist, in such resistance shall, on conviction thereof, be liable not only to the punishment provided by law for the offence of which he may be convicted, but also to the forfeiture of all his property of whatever kind to Government by the sentence of the Court by which he is tried.'

"Section 9 of the Act prescribes the following penalties:—

'Whenever any such outrage as is specified in section 3 of this Act, the same being punishable under the Act, shall, after such proclamation as aforesaid, have been committed by any Mopla or Moplas, it shall be lawful for the Magistrate, with the sanction of the Governor in Council, to levy such sum of money as the Governor in Council shall authorize from all the Moplas within the amsham or the several amshams to which the perpetrator or perpetrators or anyone of such perpetrators of such outrages shall be found to belong, or wherein any such perpetrator shall have been resident at the time of the commission of the outrage, and also within the amsham in which the outrage shall have been committed, and the said Magistrate shall assess the proportions in which the said sum shall be payable upon the several heads of families of Moplas within such amsham or amshams, according to his judgment of their respective means; and the said Magistrate shall appropriate the sum so levied as follows, that is to say, in the first place, to the compensation of the parties aggrieved by such outrages, including therein compensation to the family of any person dying by any such outrage, for the pecuniary loss occasioned or likely to be occasioned by such death, and subject to such compensation, to the use of the Government.'

"No charge of undue bias in favour of one religion or the other has ever been brought against the Government of Madras, and the same reliance may safely be placed on the other Executive Governments in the country."

The Hon'ble MR. CHITNAVIS said:—"I beg to support, my Lord, the amendment proposed by the Hon'ble Mr. Mehta. In supporting this motion I beg to say that I have only yesterday received telegrams from the President, Mahajan Sabha, Madras, and Pandit Bishumbharnath, President, Public Meet-

ing, Allahabad, and I have this day received a telegram from the President, District Association, Cuddapah, asking me to request Your Excellency's Government to postpone the passing of the Police Bill."

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA said :—"I also support the Hon'ble Member's motion."

The amendment was put and negatived.

The Motion that the Report of the Select Committee on the Bill be taken into consideration was then put and agreed to.

The Hon'ble SIR ANTONY MACDONNELL moved that the following amendments be made in the Bill as amended by the Select Committee, namely :—

1. That in sub-section (*1*) of section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, the words "class or section" be inserted between the words "any" and "of" in line 10.

2. That in sub-section (*2*) of the same section the words "or other officer authorised by the Local Government in this behalf" be inserted after the word "Police" in line 2.

3. That in sub-section (*4*) of the same section the words "of such inhabitants" in the last line be transposed so as to follow the word "area."

He said :—"The object of the first amendment is to station a punitive police if a class or section of any large proportion of inhabitants of any village are turbulent. I do not think that the proposal is in any way a contentious one, and therefore I will not detain the Council with any further observations on this point. The reason for the second amendment is that there are certain administrations such as Baluchistan and Ajmere in which there is no Inspector-General of Police, and it is necessary that the Local Government should have the power of investing particular officers with the functions of an Inspector-General of Police. It may also be desirable that the Local Government should have the power of investing the Commissioner of a Division with the same functions. It is a matter of administration and I do not think there will be any objection to this. The third amendment is more or less verbal, and is made with the object of rendering the sense of the section more perspicuous."

The amendments were put and agreed to.

[*Sir Griffith Evans; Sir Antony MacDonnell; Mr. Mehta.*] [28TH FEBRUARY,

The Hon'ble SIR GRIFFITH EVANS moved that the following be substituted for sub-section (5) of section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, namely:—

'It shall be lawful for the Local Government by order to exempt any persons or class or section of such inhabitants from liability to bear any portion of such cost.'

He said:—"As the Bill was originally framed, a power of deciding who were to pay was given to the Magistrate, and very strong objection was taken to this in many quarters. I need not go into these objections at any length, inasmuch as the amendment has been accepted by the Government of India. In the Select Committee a change was made, and it ran in this way: 'It shall be left to every Magistrate of a district, with the sanction of the Local Government, to exempt,' etc. This amendment is no doubt a step in the right direction. I thought the matter of exemption was so grave, and that it was so desirable that the entire responsibility should be put upon the highest possible officer, one with the greatest experience, and that he should exercise his independent judgment upon the matter and not merely give his sanction, that it would be better that the whole responsibility should fall upon the shoulders of the Local Government, because it was probable that it would proceed upon some definite principle and would recognize the dangers and difficulties which would arise from injudicious exemption. This amendment is a further safeguard, and, as the amendment is accepted by the Government, I do not anticipate any objection to it."

The Hon'ble SIR ANTONY MACDONNELL said:—"I propose on behalf of the Government to accept this amendment. I do not propose on this occasion to enter into a defence of this principle of exemption. That will come under discussion on the amendment of the Hon'ble Mr. Mehta. I will therefore abstain from saying anything further now except that on behalf of the Government I accept this amendment."

The Hon'ble MR. MEHTA said:—"I do not propose to oppose or support the Hon'ble Sir Griffith Evans' amendment on the point. It seems to me that the words 'the Local Government,' if substituted, will not alter matters appreciably, as it will be remembered that the original words in the Bill were not simply 'the District Magistrate,' but 'the District Magistrate with the sanction of the Local Government.' In either case, the Local Government will act on the

initiative and report of the District Magistrate. My objections to the section would apply equally to the section as it stood and to the section as it is sought to be amended."

The amendment was put and agreed to.

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS moved that the following be substituted for sub-section (5) of section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, namely :—

"(5) It shall be lawful for the Local Government—

(a) to exempt any persons or class or section of such inhabitants from liability to bear any portion of such costs, provided that such persons, class or section do not belong to, or constitute or have any complicity with, any of the principal parties or classes who have given rise to or are engaged in the disturbance aforesaid ;

(b) to revise the order of exemption either of its own motion, or on application made within one month of the date of such order by any person or on behalf of any class or section of inhabitants as aforesaid."

He said :—"My Lord, in moving the amendment standing against my name, I beg to observe that it is this part of section 4 of the Bill which has chiefly given to it the opposition it has met with from all sections of the people. The opposition arises from three different points of view, and I give the opinions of the public as I find them.

"First, it is held that it is manifestly unjust that a power of differentiation between the guilty, or at any rate the suspected, and the innocent sections of a people should be given to the executive authorities, and that the people should be adjudged this way or that without being judicially tried. It has been said that the system of quartering additional police is rather a preventive than a punitive measure. Much criticism has already been passed both within and outside this Council chamber upon this phase of the question, and without dilating upon it at great length I beg leave to submit that while I can quite see what the Hon'ble Mover of the Bill really means, I am not at the same time convinced that the people feel it but as a purely punitive measure ; and in fact it has a much more punitive effect upon them than a sentence of imprisonment, because it can be imposed at any moment at the pleasure of the executive, because it is necessarily imposed upon all, innocent and guilty, and because, for these reasons, it has the character of martial law in some respects. The people therefore, my Lord, take it as a purely punitive

measure, and regard any attempt at differentiation without a judicial trial as unfair. But either the Government considers that judicial trial is impossible in cases contemplated by this section of the Bill, or that it would take away from the hands of the executive that summary power of dealing with them which it is evidently meant they should be armed with.

"Another point of view from which the opposition to this section of the Bill arises is that any attempt at differentiation strikes at the very root of the principle on which additional police is quartered in any disturbed area. It is when the ordinary law breaks down and the inhabitants of a locality refuse to perform their respective civic duties to help Government in the detection of criminals that the necessity of quartering an additional police is made out. If it be possible in any case to differentiate between the innocent and the guilty, why should any additional police be quartered there at all ?

"A third point of view from which this section of the Bill has been opposed is that, the time having arrived when both the Government and the people feel keenly the absurdity and injustice of mixing up the innocent with the guilty, the only just and safe remedy for it is not to attempt at differentiation, for reasons already suggested above, but to abolish the system of quartering additional police altogether. My Lord, I am aware that during recent disturbances, when additional police was quartered in certain localities, the people clamoured that this practice of punishing the innocent with the guilty was a most unfair arrangement. But, my Lord, when they said so they evidently did not mean that the system of quartering additional police should be maintained and an attempt should be made at differentiation, for as I have already said that it is from the impossibility of this differentiation that the necessity of an additional police is said to be made out, but what they probably meant was that the system should be abolished altogether. My Lord, this Act V, for the regulation of Police, was passed in the year 1861, that is, only four years after 1857, when the country was plunged in one of the most unfortunate and perilous disasters. We can well imagine what was the state of society for a few years after that event, and what precautions the Government had necessarily to take in order to strengthen its position and avert any similar calamity in future. Laws framed at a time like that were necessarily made a little too harsh. But thirty-three years have passed since then during which the loyalty of all sections of the people to the Throne has not swerved one inch for one day, and if racial disturbances have of late somewhat interrupted the peace which has settled in the country since then, they are racial disturbances only,—'the extravagances of honest minds,' as the Hon'ble Mover in another capacity once put it,—and are not such as to

require a confirmation of the laws made immediately after the Mutiny, that is, a disturbance which implied disloyalty to the Throne. It is indeed considered to be a confirmation of those laws when clauses like that under discussion are brought in, and I believe, my Lord, such a confirmation is regarded rather an anachronism at this stage of British rule in India, specially owing to the fact that only last year the Government took care to increase the responsibility of individuals, and specially landholders, for helping the authorities in the suppression of riots and unlawful assemblies by giving them timely information of such things and also of the intention of committing such things.

"My Lord, I am conscious of the high sense of justice which impelled the Hon'ble Mover of the Bill in introducing a provision like that under discussion. I can see very well that in doing so he has been guided by a policy worthy of the Government he belongs to, a policy,—as the Right Hon'ble Mr. Fowler expressed very recently,—'to uphold that rigid, stern, unbending impartiality in the administration of the law which knows no distinction of race or class or creed.' I see also that, with the change of circumstances in the country, various races are now living side by side with each other, and that when two of them quarrel the others may stand clearly aloof, and it would be quite unfair to include them with those who would be liable to bear the cost of the additional police. My Lord, I quite agree as to the justness of this argument, but I am not convinced that the clause under discussion, though it aims at the remedy, will always work in the right direction, or that the evils that may result from a working of the proposed law will not be much greater than the good sought to be attained thereby.

"My Lord, I hope I have now shown the various points from which the section under discussion is opposed; and I should think it would have been much better in deference to public feeling to either abolish the system of quartering additional police altogether, if a feeling of right and wrong call for it—as of course it must—or to ignore that feeling and to let the law work as it has done hitherto. It appears to me, however, that the Government is not prepared to adopt either of these two courses, and I thus consider it futile to press either of them too far. Thus, my Lord, I beg to move an amendment which may serve to some small extent as only a practical solution of the question. I see that the first object of my amendment, to vest the power of exemption in the Local Government instead of in the Magistrate, has been served by an amendment moved by the Hon'ble Sir Griffith Evans, and accepted by the Government. In regard to the second object of my amendment, that neither of the principal parties themselves or any one belonging to them, that is, included in their class, should be exempted, I beg humbly to submit that it would dispel all fear of either

side being favoured and all possibility of its being alleged that either was favoured. Some blame generally attaches to both parties in respect of disturbances of the kind that would be likely to necessitate the quartering of additional police, and it would thus not be fair to exempt either of the parties as a class. As to selecting individuals from both the classes for exemption, it is open to objection that such individual differentiation could not be properly made without due judicial inquiry and trial. The safest course would in my opinion be to exempt no member of either of the two communities concerned in the quarrel. The following is the opinion of Mr. Forbes, the Commissioner of the Patna Division, based on practical experiences. He says :—

'In many cases it is expedient in the interests of the public peace that not only the agitating class, but also the class against whom the agitation is set on foot, should contribute. During the late anti-kine-killing agitation in this division, a question arose as to whether in particular instances the Muhammadans, against whom the agitation was raised, should or should not be assessed jointly with the Hindus who raised it? I decided after full consideration that both parties should pay their share of the cost, on the ground that if the Hindus were alone assessed the Muhammadans might in their excited mood take advantage of the fact in an unfair manner. The more offence they could give in such a quiet occult manner as not to get themselves into trouble with the authorities, the better, from their point of view, for them. If the Hindus could be galled into committing a disturbance, the Hindus alone would be punished. If the Hindus, through fear of consequences put up with the affront, the Muhammadans would score a point all the same. But the result of the decision referred to was in the end to induce the Muhammadans to take special care to give as little offence as possible to the religious feelings of the Hindus.'

"I am inclined, my Lord, to attach great weight to Mr. Forbes' arguments and to press them a little further than even he would seem disposed to do. I would be inclined, on the grounds suggested by him, to make it a rule that neither of the parties quarrelling with each other should on any account be exempted, either as a class or individually, and I have accordingly added the proviso embodied in my amendment."

His Excellency THE PRESIDENT said :—"I should like to point out to the Hon'ble Member that the first words of his amendment have been accepted, and therefore I think the proper form would be that the remaining words should be put as an addition to that amendment. It is merely a matter of form."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said that he would put the remaining words as an addition to his amendment as suggested by His Excellency.

The Hon'ble SIR ANTONY MACDONNELL said :—" The Hon'ble Member has travelled a long way from his amendment and has favoured us with a disquisition on the general question of additional police. I shall limit myself to dealing with his amendment. While sympathising with the Hon'ble Member's intentions, the Government are unable to accept this amendment. The Hon'ble Mover's amendment recognises the advantages of the principle of exemption, but it would, in practice, have the effect of whittling away to nothing the measure of the principle. In so far as the hon'ble gentleman would exclude from the operation of the principle persons, classes and sections who have taken active part in the disturbance or were guilty of complicity therewith, we consider him quite right; but he is not content with this; he goes further, and would exclude also the passive sufferers and every class and section which even remotely belong to any of the classes or sections which have given rise to the disturbance. Now, my Lord, that may lead us very far indeed. I am not sure that it may not lead us into intricate speculations as the origin, remote or proximate, of the disturbance. I am not sure that it may not exclude from hope of exemption a landlord owning a share of the village who has nothing to do with the disturbance. I am not sure that it may not exclude a well-defined section of the villagers who had been attacked without provocation on their part and played the passive rôle of being beaten. Indeed, it is difficult to say whom this amendment would not exclude from the operation of the clause.

" It may be taken as certain that the power of exemption will only be exercised in exceptional cases and that the Local Government would not exempt any section which took a belligerent part in the disturbance, nor any interests connected with the belligerent parties. No exemption would be made at all unless in the exceptional cases when a class or section was obviously free from blame in connection with the disturbance or the causes which led to the disturbance. But the point is one in which the discretion of the Local Government ought not to be fettered, and on which we think that exercise of that discretion cannot with advantage be guided by such a provision as that now proposed. The Council really must trust the Local Government to give effect to the obvious intention of the Legislature, and to administer affairs with prudence for the general good. The Government of a Province is entitled to our full confidence and may not, with benefit or decency, be regarded by this Council with mistrust.

"The second clause of the amendment is unnecessary. The order of the Local Government will be an executive order, which may be revised at any time without legislative authority. For these reasons, my Lord, the Government opposes the amendment.

"Finally, I would venture to suggest to my hon'ble friend the mover that in view of the explanations which I have now given he should consider whether it would not be desirable for him to withdraw the amendment."

The Hon'ble SIR ALEXANDER MILLER said:—"When I first read this amendment I confess I thought that there was a great deal to be said for it, and was rather in favour of accepting it; but when I came to consider it more closely I found it might probably do the very thing which we have been struggling in this Bill to avoid; it might impose a portion of the costs made necessary by disturbances on the very persons whose sole participation in the disturbance was that they were the victims. Now, as I think the most beneficial part of this Bill is the proposal to make it possible to exempt the victims from paying for their own calamity, I am opposed to this proviso so far as it provides that persons who are only indirectly engaged in the disturbances as being connected with parties to the fight shall not be exempted. I think it sufficient to say that I cannot imagine that any Local Government exercising its power of discretion should exempt persons who were really responsible for the fighting, and I should very strongly deprecate so tying the hands of the Local Government as to prevent them from exempting persons who, although they may have a knowledge of or be connected with the parties engaged in a disturbance, have themselves had nothing to do with it except as being victims of the outrage."

The Hon'ble MR. CHITNAVIS said:—"My Lord, on account of some technical omission I made in not moving the explanation, which immediately follows sub-section (5), to be dropped, I beg, with Your Excellency's kind permission, to withdraw the amendment under discussion."

The proposal to withdraw the amendment was put and agreed to.

The Hon'ble MR. MEHTA moved that sub-section (5) of section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, be omitted. He said:—"My Lord, it is no doubt true, as I have already acknowledged, that the Select Committee has decked out this section in different habiliments from those which adorned it in the Bill as originally introduced. They have even done something more. They have

pulled out the sting from the head. Only they have now quietly put it in the tail. They have deleted the arbitrary power of differentiation which it was first proposed to be vested in the District Magistrate, and then quietly re-introduced it at the bottom of the section under the disguise of a power of exemption; and they have done this with a vengeance. The District Magistrate can now exempt persons under sub-section (5) for any and no reason whatever as he may be swayed by his wisdom or his idiosyncracy, his caution or his conceit, his impartiality or his prejudice. I am aware that under Sir Griffith Evans' amendment it will be now the Local Government, but it really only removes the matter one step farther, because after all the Local Government will act on the report of the District Magistrate. My Lord, I have cordially recognised elsewhere on many occasions the great qualities which generally distinguish the members of the most distinguished service in the world, as they love to describe themselves, though I do not always think it either relevant or proper to sing perpetual hallelujahs in its honour whenever I may have occasion to speak of or refer to it. If I may be pardoned for indulging in so much personality, I will take the liberty of adding that I have even done it both by word and deed as far as I could do it in my small and restricted sphere of action. But I still maintain that no body of men should be entrusted with either the power of differentiation or the power of exemption as is now sought to be conferred on executive officers, who, with all their culture and all their training, cannot claim immunity from the common lot of human weakness and human frailty. In his speech on the occasion when the Bill was last before the Council, the Hon'ble Member in charge said :—

'The objections are suggested by the suspicions which the opponents of this Bill seem to entertain regarding the District Magistrate and his capacity for impartially holding the balance between parties in contentious circumstances or troublesome times. My Lord, I do not deny that Magistrates occasionally commit errors just as Judges do: but our Magistrates and our Judges are drawn from the same class of public servants; and I say without fear of contradiction that the natural capacity of our Magistrates and their honest desire to do their duty impartially and fairly are not less than those of Judges, as I should be sorry to say they are greater.'

"It is a wonder to me, my Lord, how the hon'ble gentleman, whose reputation for distinguished ability is not confined to these provinces, should so completely miss the point of the objection. The slightest reflection will show his that the objection is not to the individual, but to the method. It is not that there is any comparison made between executive and judicial officers as to their respective abilities as official individuals. The objection is based upon the method which either officer is required to employ in arriving at a conclusion. I

have no doubt that there are equally able men in the executive as in the judicial service though, indeed, among themselves, I believe, they think somewhat differently. Call him what you will, Magistrate or Judge, the objection will apply to him as soon as you entrust him with the power to set at naught all judicial form in performing a task like that of differentiation and exemption. But I trust I shall not be understood to urge that I should have no objection to the provisions for this purpose, if only they were required to be performed in judicial form. I am quite at one with the Hon'ble Member when he pointed out that 'an enquiry into individual cases for the purpose of exemption from the assessment is out of the question; and still more impracticable is an enquiry into degrees of guilt.' In fact, the task of exemption is not practicable either by summary or judicial procedure. In either way, to do a little justice you would have to run the risk of doing a great deal more injustice. The task which the Hon'ble Member has set himself in his desire for a nice perfection of justice to impose by this Bill is in reality an impossible one.

"Equally fallacious, and withal somewhat inconsistent besides, is his further plea that 'it is a measure not for the punishment but the prevention of crime.' I say inconsistent, because, if the object be so, then why worry oneself with nice provisions for accurate discrimination between innocence and guilt and with futile precautions for exempting the innocent? Surely all police is preventive, and the burden of it falls upon the innocent and the guilty alike. Nobody has yet proposed that the cost of the general police should be levied only from the inmates of jails or that peaceful and virtuous citizens should be allowed to claim exemption from the common burden. But the Hon'ble Member's argument is, moreover, altogether fallacious. So far as the quartering of the additional police in disturbed or dangerous districts is concerned, it is certainly a measure for prevention of crime, but the moment it proceeds to impose the burden of the cost upon the disturbers of the peace, it is no less surely a measure of punishment, though, of course, like all measures of punishment, it indirectly has also prevention for one of its main objects. Its popular designation of a punitive post is undoubtedly correct. But it seems to me that the argument as to the object being punishment or prevention is entirely beside the mark. The plain issue is that, whatever may be the object, whether it is practicable and expedient to differentiate or exempt in the apportionment of the cost. The contention of those opposed to the section is that it is an object which is neither attainable in practice nor expedient in policy. When the Hon'ble Member urged that 'this Council should not proceed on any assumption other than that the laws it makes will be prudently and fairly and effectively administered,' he forgot, what has been well pointed out, that the

science of politics bears in one respect a close analogy to the science of mechanics. The mathematician proceeds on the supposition that the machinery is such as no load will bend or break. If the engineer who has to lift a great mass of real granite by the instrumentality of real timber and real hemp should absolutely rely upon mathematical propositions and should make no allowance for the imperfection of his materials, his whole apparatus of beams, wheels and ropes would soon come down in ruin. What the engineer is to the mathematician, the active statesman is to the contemplative statesman, and the Hon'ble Member will pardon me for saying that he is acting like the contemplative statesman who does not realise the necessary imperfections of the human implements who have to work and carry out the laws which this Council may make, and imagines that the executive machinery is such as no load will bend or break.

"The second innovation which the section proposes to make in the existing law consists in the attempt to include among inhabitants of an area, and as such liable to be assessed, all persons who by their agents or servants hold immoveable property therein, or who by themselves, their agents or servants collect rents from tenants in such area, notwithstanding that they do not actually reside there."

The Hon'ble SIR ANTONY MACDONNELL:—"My Lord, I should wish to speak to a point of order. The question of 'inhabitants' is not included, as I understand it, in the amendment of the Hon'ble Member. The Hon'ble Member's amendment is that sub-section (*5*) of section 15 of Act V of 1861 as proposed to be substituted by section 4 of the Bill as amended by the Select Committee be omitted, and the question of exemption is a separate point.

"It is an important matter, and it would seriously inconvenience me in replying to the Hon'ble Member if I have to reply upon two distinct points at once."

His Excellency THE PRESIDENT:—"I think it is a separate amendment."

The Hon'ble MR. MEHTA:—"Very well, my Lord, I will reserve my detailed observations on that point till afterwards.

"All the objections urged above to the power of exemption apply with even greater force to this proposal, inasmuch as it opens up a vaster vista for the mischievous play of rumour and suspicion. I do not know what the Select Committee really mean by saying that in thus extending the definition of inhabitants they follow the principle of the English law on the subject. If they mean that

the police-rate in England is chargeable on immoveable holdings, that may be correct, but then the illustration is scarcely to the point at issue regarding liability for a punitive force. However that may be, it is sought to conciliate absentee landlords by pointing out in the Report that the power to exempt persons has been inserted with the object of enabling the Magistrate to exempt individual holders of property in the area. I have always thought that the political genius of the English people was conservative and practical; and never to lay down any proposition of wider extent than the particular case for which it is necessary to provide was one of the principles which have generally guided English legislation. But, if the power to exempt 'persons' could enable the Magistrate to exempt individual holders of property, it could equally enable him to exempt persons not holders of property at all, and thus the measure becomes a measure capable of dealing with individuals, whether landlords or not, though the Hon'ble Member in charge has always strennously maintained that it was not the intention of the Government to give any power to deal with individuals either with the view of exemption or punishment, except in the case of absentee landlords. The section is, indeed, unjustifiable from whatever point of view you look at it, and to my mind nothing so hopelessly condemns it as the circumstance that an Hon'ble Member who is justly distinguished throughout all India for the highest capacity and the most cultured liberality of thought and judgment should be unable to support it by any arguments which, on the most ordinary examination, do not crumble into a tangle of fallacies and misconceptions, *e.g.*, like his laboured defence of the preventive as against the punitive character of the additional police.

"On the last occasion, my Lord, I deliberately abstained from referring, except very briefly, to the considerations which stamp this measure as gravely impolitic and singularly ill-timed. It would be futile to discuss these considerations unless they were discussed fully. It would be, however, most undesirable to revive feelings which we should all strive to set at rest. The task has besides to a certain extent been ably performed by the organs of the public Press; and I trust that Government will still reconsider their position in view of the singular unanimity with which nearly every Anglo-Indian paper of note, in common with the Indian Press, has condemned this measure as unwise and impolitic. That it is not impossible for executive officers to err seriously in their estimate of parties responsible for disturbances has been signally shown in the judicial results of the Poona riot cases, with the final rejection by the High Court of the appeal made by Government. It would be deplorable to multiply occasions when such errors might be repeated, and the grave impolicy of this measure lies

in creating them for the contemplative purpose of striving after a sentimental perfection of justice. The Knights of the Round Table rushed to the quest of the Holy Grail without taking account of human passions and frailties, and we know the ending. It may be a pure tale of romance, but the great truth which underlies it is one which we can always remember with profit."

The Hon'ble SIR ANTONY MACDONNELL said:—"My Lord, the Government is altogether unable to accept this amendment. The hon'ble gentleman says this measure is condemned by all sections of the Native Press. I do not read the signs of the time in this way. It is true that a large section of the Native Press now expresses opposition, but the great Muhammadan body has expressed no such opposition; and I would beg the Council to remember that this power to exempt in special cases was almost universally admitted by Native opinion to be desirable and well-intentioned, although, in the shape of the original draft, it was in the opinion of many likely to be hard to work and likely to fail in practice. The Select Committee have carefully considered these objections, and have, as I think, met them successfully. The responsibility of all the inhabitants of the proclaimed area for preventible misconduct committed in it is upheld; it is no longer the Magistrate who orders the exemption from the liability which that misconduct has entailed, but the Local Government; there is no longer any stigma of guilt attached to any particular section, for I can hardly imagine that any one can consider that a declaration of *A's* innocence connotes a verdict of guilty against all and several of the rest of the alphabet. I admit that this power of excluding from liability a section manifestly free from complicity in turbulence goes a step further in the localisation of responsibility than does the English law on which our proposals have otherwise been fashioned. But the circumstances of this country, in the multiplicity of interests, nationalities, creeds and sects with which we have to deal, differ greatly from conditions in England. This power will in India be most useful. It will, as I have shown when moving the commitment of the Bill to a Select Committee, make powerfully in favour of order if prudently exercised, and the Local Government may be trusted to exercise it with prudence, and only on proper occasions. The Council will remember that it is not a power now proposed for the first time to be taken in India; it is in operation in the Bombay Presidency; and I beg once more to quote the words of the Bombay Government as to its effect:—

'When there is any difficulty in determining whether only a portion of the community should be required to defray the cost of the additional police, the whole population would usually be included. Where liability is fixed on particular portions, it is because careful local enquiry and the circumstances of the crime or disturbances clearly

point to certain castes or groups of persons as particularly implicated. That in each instance innocent persons may be included is a necessary evil; but in the opinion of the Governor in Council the clause restricting the incidence of the rate, where manifestly innocent people can be distinguished and excluded, is most useful in its practical application. Care and discrimination, as well as a knowledge of the locality, are necessary in order to ensure that the distinction between the guilty and innocent may be fairly drawn; but the Governor in Council does not consider that the difficulty, which must occasionally occur in tracing crime to its origin, and which may necessitate, in such cases, the levy of the rate from the whole community, can be held to outweigh the advantages of a provision enabling Government, when the facts are clear, to direct that the rate in payment of additional police shall be assessed upon that section of the community whose misdeeds have necessitated the strengthening of the force in a particular locality.'

"The hon'ble mover argues that this reservation of power to exempt converts into a purely punitive measure a Bill which the Government supports as a measure of prevention. I think the value of that argument will be more clearly appreciated by the Council if we reduce it from generalities to a concrete case. Take, as an illustration, the Rangoon instance which I mentioned when the Bill was last before Council, and from which I notice all the critics of the measure have fought very shy. Applied to that case, the Hon'ble Mr. Mehta's argument is that, by imposing the cost of additional police on the turbulent Hindus and Muhammadans only, the Government would have taken a punitive step which it ought not to take without a judicial adjudication. It was manifest that neither the Burmese nor the Chinese nor the Europeans, to mention no other sects and nationalities, had anything to do with that series of fierce riots; but according to this argument they must all be responsible, unless you have a judicial investigation, otherwise the section becomes punitive in its action, and this, it is alleged, would be indefensible, as no executive authority should be able to punish. My Lord, I noticed this argument by anticipation when addressing the Council on the last occasion that the Bill was before it. My words were these:

> 'The object of the Bill is not the punishment but the prevention of crime * * *. If the Bill involves the imposition of a cess * * and is so far punitive, that is not the object of the Bill, but an incident—a wholesome incident—of its operation which for one reason, regard for the rights of the general tax-payer, requires.'

"I adhere to that statement. The object in quartering additional police is not to punish the individual rioters,—that we leave to the operation of the substantive law,—but to prevent a recrudescence of rioting among the multitude. The law now in force in England, and in Northern India, declares it to be unfair that the cost of such additional police should fall on the general tax-payer, and provides that it shall fall on the inhabitants of the disturbed locality. In that

limitation there is recognised the principle of local responsibility. What we propose to do is to go a little further in the direction of localisation of responsibility; and this we effect by exempting the section which is manifestly orderly and has no connection with the disturbances. We hold ourselves justified in this by the peculiar circumstances of this country, which differentiate the interests of classes and sections of the people far more than they are differentiated in Europe. That by this further localisation of responsibility the punitive incidence of this measure will be somewhat increased on the turbulent sections of the local community is, of course, obvious. But that is not the object at which we aim, although it is not without its own wholesome effect. The primary object at which we aim is to exempt from this punitive incidence those who are manifestly not to blame, and thereby to encourage the well-disposed in the maintenance of order. If there emerge a secondary effect, if we also can by this means do something to deter the turbulent from disorder, then so much the better. We are well aware that the exercise of this power of exemption will need to be conducted with prudence; but on this aspect of the case it is not necessary that I should repeat what I said on a previous occasion. The matter appeals to a different standard and involves administrative considerations which are not immediately before the Council.

"In conclusion, my Lord, I would ask the representatives of the landed interest in the Council to consider in what position they will be placed should the Council accept this amendment but reject Babu Mohiny Mohun Roy's motion on sub-section (3) and the explanatory clause. If the responsibility of the absentee landlord is to be maintained, the effect of this motion, if carried, would be directly prejudicial to the landlord's interest. As the Bill now stands, a means of relief is afforded to the landlord from sharing in the responsibility for misconduct with which he was unconnected and could not control. If this motion be carried, he will lose his chance of exemption. The hon'ble mover of this amendment will make the absentee landlord 'stew in the juice' he had no hand in preparing. How do the representatives of the landlord interest in this Council like that prospect? How do they relish the idea of having all hope and all means of escape cut off? It seems to me that they would be well advised to reject the Grecian gift of this proposal, and on this point at all events to vote with the Government. Their interests are here obviously identical with the interests which the Government is promoting."

The Hon'ble SIR FREDERICK FRYER said:—"My Lord, with reference to the amendment moved by the Hon'ble Mr. Mehta, who proposes that sub-

section (5) of section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, be omitted, I consider this power of exemption, which is only to be exercised by the Local Government, is one which it is very necessary to take. It will only be exercised in very exceptional cases, as the ordinary rule will be that the cost of additional police will be levied from all the inhabitants of the proclaimed area as is the case under the present law. In those exceptional cases to which alone sub-section (5) will be applied, I cannot conceive why persons or any class or section of the inhabitants, who have had nothing to do with the disturbance or misconduct which have rendered necessary the imposition of additional police, should be called upon to pay a share of the cost of such additional police. It is said that to make distinctions will intensify race hatred and will enable the police to levy blackmail from innocent persons. It does not appear to me that either of these results need be anticipated, because the power of exemption will be exercised with very great circumspection and only when there are persons who have clearly and unmistakeably taken no part in the lawlessness which has led to the imposition of additional police. In many instances it is perfectly well known who the offenders are. Take the case of the Rangoon riots just mentioned by the Hon'ble Sir Antony MacDonnell; could there be any doubt who the offenders were in that case, and on what principle of justice could the cost of additional police be charged to those sections of the inhabitants who took no part in the riots and indeed suffered considerably from them? I give this instance because it is one with which I am familiar, but many similar instances could easily be quoted.

"The power to grant exemptions, I consider, is amply safeguarded by rendering a reference to the Local Government necessary before any exemption can be given.

"The Local Government will not grant any exemption unless very good reason is shown for it and, even if there were any danger that Magistrates would use the power in a one-sided way and in such a manner as to produce on the public mind the effect of a victory for one side or the other, which I for one do not believe, this danger is, as I have said, removed by the necessity for a reference to the Local Government. It has been said by the Calcutta Chamber of Commerce that the duty of discriminating between the guilty and

the innocent ought not to be placed on the Magistrate in times of excitement and disturbance; but the excitement does not extend to the Magistrate, and still less does it extend to the Local Government. The Hon'ble Mr. Mehta has said that the power of exemption ought not to be given even as the result of a judicial enquiry. A judicial enquiry into the degree of culpability of the inhabitants would, I hold in any case, be most undesirable. The enquiry must in the nature of things be an executive one, and, as the Hon'ble Member in charge of the Bill has pointed out, the issue is not one between executive and judicial procedure, but one as to whether the power proposed is to be taken at all or not. Speaking from long experience, I desire to say emphatically that in my opinion the power ought to be taken; and experience gained in Bombay, where the power has been taken, has proved how valuable it is as an instrument for the preservation of peace. For these reasons I shall vote against the amendment."

The Hon'ble SIR GRIFFITH EVANS said:—"The principle upon which the old section is founded is a very old and sound one. The old section provided that the cost of the extra police caused by disturbance should fall upon all the inhabitants. This was very like the old principle of the hundreds of England, when the hundred was made liable for any robbery which took place in daylight, and for various other matters. The principle was that all were interested in the preservation of peace, and, although the tax fell quite as much upon the innocent as upon the guilty, I think it was for the benefit of the public that all should have a strong pecuniary interest in the preservation of peace. It has worked well, and it is a principle which we have followed in India when we found frontier villagers breaking telegraph wires and all that sort of thing. I myself should be exceedingly loth upon the mere hope of avoiding injustice to recommend any departure from so ancient a principle, and one which has practically worked towards the maintenance of peace and order, and tends to make persons who are afraid of the tax falling upon them give information and take steps to put the Government in a position to prevent disturbances; yet there are no doubt arguments which have been adduced in favour of the power of exemption which have very great weight. They are really these. Although the liability is an initial liability upon all the inhabitants, although there is no exemption allowed in England, it is said that the position is very different out here. England with its homogeneous population is one place, and this Indian community with its diversity of races and religions, many of them hostile to each other, is a different place, and it is said that it is not safe to depend upon the fact that the principle of exemption has not been adopted in England. There is no doubt considerable force in this argument, and then again it has been said that this principle of

exemption is radically different from the original proposal in the Bill as introduced, because it requires nothing of a judicial enquiry into guilt or innocence. Although the Bill as it was drawn originally threw upon the Magistrate the onus of finding out who were guilty and who were the innocent, and who were excluded in the disturbance, and it even went so far as to say that nobody was to pay anything at all unless the Magistrate said he was to blame—though the old Bill was open to every variety of objection—we are now going back to the old principle which fixed the liability on the whole district, not as a matter of culpability, but as a responsibility which is fixed upon them for the public good, and this question as to whether there ought to be any exemptions is a totally different one altogether from that raised by the original proposal. There is not necessarily any enquiry into guilt or innocence in the case of exemption.

"One most clear instance of that was the instance which the Hon'ble Member referred to—the case of the Rangoon riots. We need no further testimony except the admitted facts in order to satisfy us that neither the Chinese, Christians, Jews nor Burmese had anything whatever to do with the religious riot between the Hindu and the Muhammadan. You do not want any evidence. Would it not be absurd to have a Subordinate Judge or a High Court Judge to decide the question whether these people had anything to do with the riot? Therefore there is no doubt that there are many cases in India in which exemption could be granted by the authorities without any sort of judicial enquiry into guilt or innocence. But more than that. There is another point which does not depend really upon guilt or innocence—exemption I mean of the landowners who may be brought in by the explanation. Here there is no necessity for an enquiry into the guilt or innocence. It might clearly appear from admitted or evident facts that the absentee landlord could not have had anything to do with it, or that he had shown such zeal in giving timely information or in assisting to stop a riot that the Government exempted him as a reward for his conduct. That, again, is a perfectly rational thing to do, not involving any judicial or other enquiry into guilt or innocence. I do not take the view taken by Sir Antony MacDonnell that exemption means that *A* is innocent. It very often means that *A* has deserved well of the Government. It therefore appears to me, it is not fair to say, in regard to a change like this made by the Select Committee, that it is theatrical. It is to my mind a very real and a very beneficent change. We have again clearly established the liability fixed by law and not by enquiry, and all we have done is to give the power of exemption to the Local Government. But it has been said that there is no difference between the Local Government and the Magistrate, that is to say, between the Lieutenant-Governor or Chief Commissioner, or Governor of

Madras or Bombay, and an ordinary Magistrate. It is said that the ordinary Magistrate who was down in the heat of the strife sends up his report, and the superior official must see with his eyes and judge with his judgment. Is that really so? The Lieutenant-Governor must be a man of age and experience and responsibility; he lives in a very much calmer and serener atmosphere, and is more likely to enquire into the political results of exemption and to act upon sound principles. If it is to be said that he must see with the eyes of the Magistrate, I don't know where you are to stop, and you may as well say that he is to see with the eyes of the chaukidar. Where are you to stop if you are to adopt a principle like that? We all know the Magistrate is not the same thing as the Local Government, which is to a very great extent removed from the heat of the turmoil and strife, and that the change obviates many of the objections first taken. In effect, the matter of exemption stands thus: that there is a very strong case made for giving a trial to this principle of exemption, first, because it will obviate injustice in many cases; and, second, because it will act as a further deterrent to evil-doers and also stimulate persons who are desirous of obtaining exemptions to show zeal in giving information and assistance. When all has been said it goes back to the question of opinion whether it is worth while to risk trying this novelty in this part of India in reliance on the alleged success of a similar experiment in Bombay. It may give satisfaction, but it is regarded by many people with grave suspicion. The Government of India have, after consulting a large number of officers, resolved that it is desirable in the interests both of justice and of the preservation of law and order to attempt this experiment. I would not recommend it myself, though I admit there is much to be said for it. I think we have placed upon it all possible safeguards we could. Safeguarded as it is, I do not propose to oppose the grant of this power to the Government."

The Hon'ble MOHINY MOHUN ROY said:—"It seems that it was within the contemplation of the Hon'ble Mover of the amendment that sub-section (*5*) and explanation in section 4 should go out together. He was prevented from speaking on the explanation, because it was not specified in his notice of amendments. It is not our interest to divide the Council upon the single point of exemption. We cannot safely split section 4 into parts. We should rather present before Council a bundle of sticks than a number of single sticks to be easily broken by the Hon'ble Mover in charge."

The Hon'ble MR. MEHTA said:—"I wish to offer in reply only one remark which will apply equally to the repeated observations of Sir Antony MacDonnell with regard to the experience of the Bombay Government and to those of Sir

Griffith Evans as to the immunity of the Local Government from being led astray. I wished, my Lord, not to be led into a discussion of the action of the Bombay Government, or, indeed, to discuss in detail the lessons to be derived from the action of the executive during the recent disturbances, but as the Hon'ble Member has harped so often upon the experience of the Bombay Government, I must say, my Lord, that that experience has been judicially demonstrated not to be of an encouraging character and to point the moral entirely the other way. The experience of the Poona riots, to which I alluded but briefly, conclusively shows that, with the best of intentions and what are called the most careful enquiries of the executive officers, they hopelessly went wrong in their estimate and moral conviction regarding the liabilities and the respective parts taken by the parties concerned in those riots. And equally did the Bombay Government go wrong acting upon the so-called careful enquiries and opinions of its executive officers. This has been established by a series of judicial decisions, the appeal against which by the Bombay Government has been recently rejected by the High Court. The experience of the Bombay Government only shows how liable executive officers are to make serious blunders, the result of which, as in the Bombay Presidency, is to create deep exasperation among a large and important community."

The Council divided :—

Ayes.	*Noes.*
The Hon'ble Gangadhar Rao Madhav Chitnavis.	The Hon'ble A. S. Lethbridge.
The Hon'ble P. M. Mehta.	The Hon'ble H. E. M. James.
The Hon'ble Baba Khem Singh Bedi.	The Hon'ble C. C. Stevens.
The Hon'ble Mahárájá Bahádur of Durbhanga.	The Hon'ble Sir W. R. Fryer.
	The Hon'ble Sir G. H P. Evans.
	The Hon'ble P. Playfair.
	The Hon'ble H. F. Clogstoun.
	The Hon'ble Sir A. P. MacDonnell.
	The Hon'ble Sir J. Westland.
	The Hon'ble Sir C. B. Pritchard.
	The Hon'ble Lieutenant-General Sir H. Brackenbury.
	The Hon'ble Sir A. E. Miller.
	His Honour the Lieutenant-Governor.

The Hon'ble MOHINY MOHUN ROY, the Hon'ble PRINCE SIR JAHAN KADR MEERZA MUHAMMAD WAHID ALI BAHÁDUR and the Hon'ble MAHÁRÁJÁ PARTAB NARAYAN SINGH OF AJUDHIÁ did not vote.

So the amendment was negatived.

The Hon'ble SIR ANTONY MACDONNELL moved that the following be inserted between sub-section (*5*) and the explanation as sub-section (*6*) of section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, namely :—

"(*6*) Every proclamation issued under sub-section (*1*) of this section shall state the period for which it is to remain in force, but it may be withdrawn at any time or continued from time to time for a further period or periods as the Local Government may in each case think fit to direct."

He said :—"The amendment is entirely a non-contentious one, and its object is to make clear the procedure to be taken under the Act. At the present time the practice is that when a proclamation issues under section 15 it prescribes the period for which it is to remain in force and the Government of a province does extend the period of the proclamation from time to time. All that we propose to do is to recognise in the law what has been and now is the existing practice."

The amendment was put and agreed to.

The Hon'ble SIR ANTONY MACDONNELL moved that in the explanation to section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, the words "raiyats or occupiers" be substituted for the word "tenants." He said :—"This is to some extent a verbal correction and to some extent a substantial correction. The word 'tenants' in the Bengal Tenancy Act has a particular significance. It means not only the actual cultivator of the soil, but the tenure-holder. Our object in this Bill is that the absentee landlord shall be brought in, that is to say, the person who is in immediate receipt of the rents of the land and between whom and the actual cultivator no middleman intervenes. We want to avoid that, and we propose to insert the word 'raiyats.' There may also be a tenant who happens to be not a cultivator but an artisan or to belong to some other calling. We want to make him also responsible, and we propose with this object to introduce the word 'occupier.'"

The amendment was put and agreed to.

The Hon'ble MOHINY MOHUN ROY said :—"My Lord, I propose to move only amendment No. 13, which includes the previous amendment No. 12. My Motion is that section 4 of the Bill be omitted. It makes large changes in the existing law, and seems to have been conceived in a patriarchal spirit. No matter whether the people of India need them or not, no matte.

whether they like them or not, the Executive Government thinks the changes are good for them, and ought, therefore, to be thrust upon them. 'Good intentions' seem to be their chief merit. This, however, is not appreciated by my countrymen at the present moment, and scant credit is given even for 'good intentions.' There is now a general chorus of condemnation in which all Native papers and all Native associations and public bodies and several European associations have joined. It appears that the full significance of the changes sought to be made by the Bill was not realized by the public until its reference to Select Committee, when attention was drawn to it by the speeches of my hon'ble friends the Mahárájá of Durbhanga and Mr. Mehta. I confess I did not, until then, know much about the Bill, which had been introduced before my appointment to this Council. I have since had ample opportunity of studying and considering its provisions in Select Committee. After prolonged discussion in that Committee, in the course of which all the items of the Bill were fully threshed out, it became apparent that regarding certain items, namely, those contained in section 4 and another section, an agreement was not possible between the official and non-official members. The matter had assumed a seriously contentious shape, and now awaits decision by Your Excellency in Council.

"The case for the Bill is in able hands, and will be fully placed before you. I shall endeavour to state the case on the other side as concisely and as plainly as I am able. Shortly after the memorable Mutiny of 1857-58, three Acts, which were simultaneously under preparation, were passed by the Indian Legislature, as parts of a general scheme of governing the country by laws. These were Act XLV of 1860 (the Indian Penal Code), Act V of 1861 (the Police Act) and Act XXV of 1861 (the Code of Criminal Procedure). The Police Act of 1861 made the following provision in section 15, regarding tracts or local areas 'which should be found to be in a disturbed or dangerous state':—

'It shall be lawful for the Inspector-General of Police, with the sanction of the Local Government, to be notified by proclamation in the Government Gazette, and in such other manner as the Local Government shall direct, to employ any police-force in excess of the ordinary fixed complement to be quartered in any part of the general police-district in which, from the conduct of the inhabitants, he may deem it expedient to increase the number of police. The inhabitants of the part of the country described in the notification shall be charged with the cost of such additional police-force, and the Magistrate of this district, after enquiry, if necessary, shall assess the proportion in which the amount is to be paid by the inhabitants according to his judgment of their respective means.'

"This section 15 has continued to be the law down to the present moment, and is the existing law regarding local areas 'in a disturbed or dangerous

state.' The Executive Government now demands that regarding such local areas it ought to have larger powers, and the following among others:—

first, to exempt any persons or class or section of such inhabitants from liability to bear any portion of the cost of additional police;

secondly, to pay compensation to inhabitants injured in person or property, to assess and levy such compensation, and to exempt any person or class or section from liability to pay the same;

thirdly, to exercise all or any of the above powers, according to its own ideas of justice, unhampered by any rules of evidence, or by any appeal to, or revision by the High Courts.

"The Executive Government demands also that the arena of taxation be increased by bringing in landholders who are not inhabitants of the disturbed area, and that the definition of the word 'inhabitants' be widened so as to include them.

"I do not for a moment deny that the legislation demanded by the Executive Government was dictated by 'good intentions.' Nor can it be denied, on the other hand, that since 1861 the country has been well governed with the aid of the modest powers conferred upon it by the Police Act of that year. In regard to this point, the position of the Executive Government cannot be other than this: 'Yes, we cannot deny that we have governed the country well during these thirty years. But if you give us additional powers, you will see we shall do much better.' This brings me at once to the first objection against the Bill, namely, are these large changes in the law at all necessary?

"No case of necessity has been made out by the Executive Government. Among the many District Magistrates and other executive officers who have sent in their opinions there is not one who shows that the existing law is inadequate and that good government is not possible without additional powers. Those among them who approve of the Bill simply say what amounts to no more than this, namely,—'If we get these additional powers, it will be a very good thing for us.' It ought always to be borne in mind that by whatever name the Bill may be called, or in whatever guise it may be placed before the public, it is nothing less than coercive legislation.

"Section 15 of Act V of 1861 was modestly coercive. The object of the present Bill is to make coercion more stringent and effective by enabling the Executive Government to impose heavy fines in the shape of costs and compensations upon persons or classes whom it may deem blameworthy. Surely the Executive Government would not be entitled to any legislation for exten-

sion of coercion, unless a clear case of necessity was established. The Hon'ble Member in charge mentioned a case of riot which had taken place at Rangoon in British Burma. Now, it is hardly a case in point; Rangoon is the seat of a Local Government, and has a military force and reserve police-force stationed in it. Surely, no Local Government can in any reason think of proclaiming a place where a reserve police-force is stationed or at hand. Do not the people of India pay for such reserve police? Why should they be taxed again when it is put to use? I am a native of India, and on behalf of my fellow-countrymen put it to you also, whether it is fair to class them with the heterogeneous population of the half-pacific province of Burma, or with the lawless tribes of the border land on the Punjab frontier. Assuming that the Hon'ble Member makes out that stringent coercive legislation is necessary to keep these in order, it does not at all follow that it is also necessary for the loyal and peaceful people of India. The Executive Government must give them a bad name before it can force on them such coercive legislation.

"The opinion of Colonel Bowie, an executive officer of high standing and of long and varied experience as Magistrate, and the Inspector-General of Police, fully support my position. He says:—

'I would protest with the greatest earnestness against any such enactment. I believe it to be wholly unnecessary, and I feel sure that its effects would, if it ever were acted on, prove in the end most pernicious.'

"Several other executive officers and candid friends of the Executive Government have expressed the same views, namely, Mr. R. C. Dutta, Commissioner of the Burdwan Division, Mr. Vincent, Magistrate of Burdwan, Mr. Grouse, Magistrate of Beerbhoom, Mr. Allen, Magistrate of Midnapore, and Mr. Windsor, Deputy Commissioner of Manbhoom. I am also a candid friend of the Executive Government and of the Hon'ble Member in charge. I put it to them: You have got the Civil and Criminal Courts, you have got the ordinary police and reserve police at your command, and military battalions at your back for the ordinary government of the country. You have got sufficient power and additional police under the old Police Act of 1861 for emergencies. Haven't you got enough and to spare?

"Many of the district officers echo a sentiment which seems to be perfectly natural, and expressed by the poet as follows:—

'O it is excellent
To have the strength of a giant.'

"But human nature often forgets that 'it is tyrannous to use it like a giant.' It follows therefore that responsibility is not so much on those who wish to have arbitrary power as on those who give it without clear necessity.

"I proceed now to show that the demand of the Executive Government for the powers set out in its Bill is equally untenable on the merits. I stated at the outset they were of a patriarchal character. Their existence or enactment might very well be justified, if the effect of a proclamation under the Police Act were, like that of the proclamation of martial law, to suspend and supersede all laws and Courts over and in the proclaimed area. The new legislation seems to be quite incompatible with the co-existence of law or Court. As a test let us take a case of guilty persons who, by forming unlawful assemblies and committing riots and affrays, have caused a local area to be 'in a disturbed or dangerous state.' The District Magistrate under the new law fines them heavily by making them pay the costs of additional police and compensations for injuries to person and property. If it ended here, and these payments saved them from being proceeded against in the criminal courts for the same acts or occurrences, there might be no great objection to the new law. But if these men were to be punished again in the Criminal Courts, the new law would operate as a great wrong and signal injustice. It would be adding conderably to the punishment prescribed by the Penal Code, and to the trials and tribulations of these unfortunate men. This would be contrary to all principles of humane criminal jurisprudence.

"Let us take another instance: a converse case of innocent men who are deemed guilty by the District Magistrate and heavily mulcted in costs and compensation. They are afterwards prosecuted in a Criminal Court and found innocent. Though found innocent, they find themselves without any remedy. There is no provision in the new law for reimbursing them in any way. Cases of this kind will happen as often as not, and the result will naturally be deep discontent and wide-spread disaffection towards the Government. Miscarriages of justice take place also in the Criminal and Civil Courts. But so long as there are appeals or revisions the unsuccessful suitor is fully occupied with them. When in the last resort the High Court passes an unjust decision, or what he believes to be an unjust decision, he relieves his mind by cursing and abusing the Judges. In this respect the several High Courts are great safety-valves of the State. They absorb all the 'curses, not loud but deep,' and the discontent and dissatisfaction of a large number of men who would otherwise become disaffected towards the State.

"I should think, as a matter of common-sense policy, that the Executive Government would do well to leave trials of and judgments on men to our Courts, and, like 'angels, fear to tread' or trench upon any ground within their province. To assess and collect contributions from all the inhabitants of a local area under the old Police Act is an executive function. But to find who among them are innocent and who guilty for purposes of exemption under the new law, is not an executive function. Here the executive authorities will be treading or trenching upon dangerous ground within the province of the Courts. 'Its effects would,' as remarked by Colonel Bowie, and as I have shown above, 'prove in the end most pernicious.' The Hon'ble Member in charge observed more than once:—

'The object of this Bill, as I have already said, is not the punishment but the prevention of crime. I cannot too strongly insist upon that difference.'

"But does not the difference altogether vanish when you once take upon yourself to find who are to be exempted? The exemption of some means laying heavier upon the others. Is there any practical difference between this heavier imposition and punishment for past misconduct? It will be impossible to make people understand that the burden of paying costs and compensations which had been laid heavy upon them and from which their neighbours had been exempted, was not by way of punishment.

"In regard to the expediency of making exemptions at all, there is a considerable difference of opinion. Mr. Forbes, Commissioner of the Patna Division, says:—

'There is a further objection based on wider grounds to the law laying down that only such-and-such persons or classes are liable to assessment, and that such-and-such others shall not be assessed. In many cases it is expedient in the interests of the public peace that not only the agitating class, but also the class against whom the agitation is set on foot, should contribute. During the anti-kine-killing agitation in this division, a question arose as to whether in particular instances the Muhammadans, against whom the agitation was raised, should or should not be assessed jointly with the Hindus who raised it. I decided, after full consideration, that both parties should pay their share of the cost, on the ground that, if the Hindus were alone assessed, the Muhammadans might, in their excited mood, take advantage of the fact in an unfair manner. The more offence they could give in such a quiet occult manner as not to get themselves into trouble with the authorities, the better, from their point of view, for them. If the Hindus could be galled into committing a disturbance, the Hindus alone would be punished. If the Hindus, through fear of consequences, put up with the affront, the Muhammadans would score a point all the same. But the result of the decision referred to was in the end to induce the Muhammadans to take special care to give as little offence as possible to the

religious feelings of the Hindus; and at the *Bakr Id* there was no perceptible increase in the number of customary kine sacrifices, as there undoubtedly would have been had a contrary policy been followed. And in several instances, when the feelings of either party got the better of their self-control, both sides immediately came in to the Magistrate with a joint petition for forgiveness.'

"His Honour the Lieutenant-Governor of Bengal speaks of Mr. Forbes as an officer 'who has special experience of the operation of section 15 of the present law and whose opinion is entitled to much weight.' I invite the particular attention of Your Excellency in Council to that opinion. It is an opinion based upon practical experience and not upon theories or fads. It may be good in theory to exempt innocent persons; but in practice the difficulty of differentiating the innocent and guilty without a proper trial will be found to be immense. There is, in fact, a large variety of reasons, practical and political, why the Executive Government should not assume the anomalous and invidious power of judging without trial. It should rather assume for its motto a nobler rule of conduct which has been inculcated by high authority, namely, 'Judge not, that ye be not judged.'

"The Hon'ble Member in charge has cited the English Statute 49 & 50 Vict., cap. 38, as lending some countenance to the proposed legislation. I have carefully examined and studied this Statute. The preamble shows that by law 'the inhabitants of the hundred or other area in which property is damaged by riotous assemblies are liable to pay compensation for such damage.' Now, the same people who are liable by common law to pay such occasional compensation, are the payers of the police-rates. The Act, therefore, provided that compensation should ordinarily be paid out of the police-rate, but where the police-rate was limited 'an addition to that rate should, if necessary, be levied for the purpose of raising the sum required to pay riots' compensation'. No persons or section or class of inhabitants were exempted from liability to pay the police-rate or additional rate for riots' damages. All the inhabitants of the hundred are liable to pay the police-rate; as all the inhabitants of a village in Bengal are liable to pay the chaukidari-tax, which seems to be very similar in nature and incidence to the English police-rates. The word 'inhabitants' bears its ordinary meaning in the English Statute and does not include 'landholders' who are not inhabitants. It were greatly to be wished that the Executive Government had framed its Bill upon the lines of the English Statute. I should have then accepted it without objection. The only alteration in Act V of 1861 which would be justified by the English Act would be the addition of a clause to section 15, making the inhabitants of the local area liable to pay compensation

for damage to property caused by riotous assemblies. Anything beyond this would be contrary to its policy and principles. Exemptions of classes or sections of inhabitants from liability to pay rates and compensations, and making persons other than inhabitants liable to pay such rates and compensations, would carry with it the idea of punishment, and should not find place in a Police Act. A Police Act should be a protective and preventive law, and not punitive law. The English Act clearly indicates this line of demarcation. If your object be to punish, you have got the Penal Code to proceed under. If the present provisions of the Penal Code be not sufficient for your purpose, you can ask them to be made more stringent. But it is against all principles of legislation to put into a Police Bill things which are of the Penal Code.

"The Hon'ble Member in charge cited also section 25 of the Bombay Police Act of 1890 in support of the Bill. The Bombay Act does lend some countenance to the exemption clauses of the Bill. But in this respect it goes beyond the lines and principle of the English Statute, and cannot therefore be accepted as any authority of weight. In other respects it is on the lines and principles of the English Statute, and, backed by the same, is very strong authority against the proposed legislation. It leaves the poor word 'inhabitants' alone, and does not stretch it on the rack to inculpate and include 'non-resident landholder.'

"This brings me to the 'explanation' in section 4 of the Bill, which is as follows :—

'*Explanation.*—For the purposes of this section "inhabitants" shall include persons who themselves or by their agents or servants occupy or hold land or other immoveable property within such area, and landlords who themselves or by their agents or servants collect rents direct from tenants in such area, notwithstanding that they do not actually reside therein.'

"This little thing hidden in a corner of a section of the Bill is really its sting, and is as invidious a departure from the old law as any of the other provisions. Act V of 1861 has been law now upwards of thirty-two years. No one has ever complained or asked that non-resident landowners should be included among 'inhabitants' of a local area, and made to contribute to the cost of additional police. The English Statute of 49 & 50 Vict. and the Bombay Police Act of 1890 and their spirit and principles are all against any change of the old law in this direction. This I have fully shewn above. The change appears to have originated in an idea that the local authorities should be able to assess 'the non-resident zamindar who stirs up strife or sends agents to rack-

rent or oppress and so causes strife without incurring any danger himself.' This idea, which implies an intent to punish, ought never to enter into the mind of the Legislature in framing a Police Act. The line of demarcation between a Police Act, which should contain only preventive and protective provisions and a Penal Code which contains punitive provisions, I have just pointed out. The framers of the Bill do not appear to have sufficiently kept in view this line of demarcation, and to have been influenced by considerations which involve a confusion of ideas.

"Now, assuming that there are black sheep amongst non-resident landholders, that fact does not justify the punishment of the whole body by imposing upon them a new tax. Let the 'stirrers of strife' be brought to justice under the law. Surely, it cannot be just to punish a large body of men for the supposed faults of a few. In answer to certain remarks of the Mahárájá of Durbhanga, the Hon'ble Member in charge stated as follows:—

'I can assure my hon'ble friend that nothing is further from my mind than to take up any position which would be hostile to one of the most important interests in the country. It is not so much the case of the zamindar, whose interests should be as much bound up in the peace and contentment of his raiyats, as those of the Government itself that I am contemplating, as the cases of farmers who take leases of villages and lands for short periods of time, and make use of their opportunities for the purpose of forcibly extracting as much money as they can out of the people.'

"If in the explanation appended to section 4 of the Bill he had put in only 'temporary farmers' and 'stirrers of strife,' we could have understood his meaning and reasoning. But he has taken care to bring in the whole body of landholders. This, we have very just reason for complaining, is an act of signal injustice, if not of hostility, towards them.

"In the late unfortunate disputes between Hindus and Muhammadans which gave rise to serious disturbances, and which probably suggested this Police Bill, the landholders as a class stood even between their Hindu and Muhammadan tenantry. Their own interests would effectually prevent them from siding with the one class or the other. No instance of their taking sides has been pointed out. The landholders see that the Bill has made them liable to pay additional taxes in the shape of rates and compensation, but they cannot see the reason why. If the Executive Government persist in passing this Bill, will they not be told and readily believe—Government is not thy friend, nor the Government's law?

"I shall conclude by quoting a paragraph of letter No. 223 of the Bengal Chamber of Commerce, dated 20th February last, which seems to be quite in unison with my views and reads like a summary of my case :—

'It seems to the Committee that sections 154, 155 and 156 of the Indian Penal Code sufficiently provide for riots and disturbance connected with land. Again sections 13, 14 and 15 of Act V of 1861 give ample power to Magistrates and the police for the preservation of order and the punishment of disorder in cases where riots, disturbances or disorders may arise from other causes than those connected with land. And if in England the expense is to be borne by the police-rate of a police-district or part of a police-district, the meaning sought to be put upon the term "inhabitant" is strained, and the principle enunciated in section 15 of the Act of 1861 is more consonant with the principle of English law than the scheme set out in the amended Bill.'

The Hon'ble SIR ANTONY MACDONNELL said :—"The first remark I have to make upon the speech of the Hon'ble Mover of the amendment is that it ought to have been delivered on the motion to refer the Bill to a Select Committee. The Hon'ble Mover takes exception to the principle of the Bill. This is not a time when, in accordance with the ordinary rules of practice in this Council, a matter of that radical importance ought to be considered. However, as the whole policy of the Bill has been canvassed by the Hon'ble Member, I shall strive, as far as I can, to follow him in his speech, which he will excuse me if I say is more of a discursive than of an argumentative character. The thread of the Hon'ble Member's discourse is that this Bill ought not to be produced because, after the Mutiny, three Acts were passed by the Council, namely, the Indian Penal Code, the Criminal Procedure Code, and the Civil Procedure Code, and, as we have governed the country well since the Mutiny with these three laws, the Hon'ble Member sees in existing facts no reason why we should ask for further powers. In these days of harsh and carping criticism upon the Government, I am glad to find such an admission as that coming from a gentleman who has had a large experience of our Courts and mufassal administration. I am glad to find in this Council an admission that the Government has administered this country well for thirty years. But this country has during that time made great progress, and with that progress we have had difficulties forced upon us, and for these difficulties we have been in the course of time called upon to provide fresh means of administration. There can be no question that the administration of this country is more difficult now than it was some years ago, and I do not think that it is a reasonable proposition to lay down that the administrative equipment which suited India thirty years ago should be suited to the circumstances by which we are to-day surrounded. The hon'ble gentleman states that this Bill is of a coercive

and not of a preventive nature. I can only address to this Council arguments; I can only state to them facts; I cannot force any Member of this Council to accept my arguments or to believe the fact which I state; but I thought that I had made it perfectly clear to every impartial person that a Bill which deals with the prevention and not with the punishment of crime is a measure of prevention. When we wish to punish crime we appeal to the substantive provisions of the laws which have been enacted for the punishment of crime. Take an instance which the Hon'ble Member's own experience of zamindari matters will show him is an instance which might occur in ordinary every-day practice. Two zamindars are quarrelling in regard to the rents they should collect from raiyats. The Magistrate of the district gets notice of this, and he is aware that both of those zamindars are engaging clubmen by which to enforce their claims. He takes immediate action: he stations there a force of punitive police as the Hon'ble Member would call it, but as I prefer to call it an additional and preventive police. What is the effect of his action? If that action had not been taken, we should have had a crop of cases in the Criminal Courts, but by taking that action we prevent a recurrence of violence and save the parties from the consequences thereof. What is this but the prevention of crime? The Hon'ble Member states that this Bill trenches upon the jurisdiction of the Courts. I agree with him in a way, for it will prevent some cases coming into the Criminal Courts, and so far interferes with the action of the Criminal Courts. But surely that is not an argument which will appeal to the Hon'ble Member if he were exercising an independent judgment upon this question. He says that this Bill is coercive while the Act of 1861 is less coercive. Let us examine this. The Act of 1861 enabled the Government to impose the cost of additional police upon a proclaimed tract and to recover it from the people of that tract, This Bill does the same, but with a difference. In this particular point what difference does the present Bill introduce into the existing law? This Bill introduces this difference, that instead of imposing the cost of police upon the inhabitants it imposes it to a certain extent upon the landlord who benefits by the maintenance of law and order. The Hon'ble Member says that that innovation is not acceptable to the people of this country; but is that reasonable? If on a particular village Rs. 100 is assessed under the old Act as it stands, and if under the provisions we are now introducing we reduce the amount to Rs. 90 on the raiyats, and place the remaining Rs. 10 upon the landlord, is it consonant with reason that the inhabitants of the village will be dissatisfied with a law that relieves them from a portion of the cost? My Lord, this opposition to the Bill comes from an interested but limited section—from those owners of property who, for the first time under this Act, will be brought to bear the respon-

sibility which their position imposes upon them. It is an axiom which is known and accepted by all English-speaking men, that 'property has its duties as well as its rights'; but my hon'ble friend would make the axiom run thus 'property has rights but no duties'. The Hon'ble Member stated that the question of exemption reduces this Bill into one of a purely punitive character. That is a point which I had occasion to notice in one of the Hon'ble Mr. Mehta's amendments, and I do not think I ought now to detain the Council on that subject. No arguments which I can bring to bear now will convince the Hon'ble Member, but, at all events, I think I may appeal to impartial Members of this Council to say that, where the object is to prevent the commission of crime, the cost incurred cannot be described as necessarily of a punitive character. In the conclusion of his speech the hon'ble gentleman referred to the question of the extension of the meaning of the word 'inhabitants' so as to include the landlords who have direct control over the village. In my opening remarks I briefly referred to the grounds on which I justified that provision of the Bill. I stated that my object was to impose responsibility upon all who are in direct touch with a proclaimed local area. The maintenance of the peace in a village is obviously in the interests of all law-abiding landlords, and it is clear that those who derive advantages from the maintenance of the peace should also contribute to the cost. By the ancient and common law of this country zamindars were responsible for the police of their villages; of that responsibility they were relieved in 1793. But this responsibility of which they were thus relieved was for the normal police of the district, and not for the police employed on such rare and exceptional occasions as those contemplated by this Bill. In regard to the employment of police on rare and exceptional occasions the zamindar enjoys no exemption. But, says the hon'ble gentleman, 'You have in your police reserves power to meet all these emergencies.' I am astonished to find a statement like that emanating from a gentleman who has such large and varied experience of our Courts and Mufassal practice. I should have thought that it was an understood thing that the police of this country was for financial reasons kept down to a point scarcely sufficient to enable it to meet the normal calls upon it. We know from past experience that we have waves of religious fanaticism passing over the country. We may have at any time a refusal on the part of the people to comply with their legal obligations. Are such emergencies as these to be dealt with by the normal strength of the force? Certainly not. In point of fact, the reserves of police employed are a small body at the head-quarters of the district which are used for guards and escorts, and similar purposes. It is true we are trying to give these reserves a more efficient character, but it is entirely impossible to say that we can expand them so as to meet all emergencies of this description. In this matter we adapt

our means to circumstances, and we do not employ as an ordinary normal incident of the administration a larger force than is necessary for the immediate purposes in hand.

"My Lord, among the papers which have been referred to by the Hon'ble Member there is a letter which, coming from a body for which I entertain great respect, I think I ought not to pass over without comment. I mean the letter of the Bengal Chamber of Commerce dated the 20th instant. There is no body on this side of India for whom I entertain a more sincere respect than the Bengal Chamber of Commerce. I have been often connected with the Government of India or Bengal for well nigh fifteen years. In that period I have seen many communications from the Chamber of Commerce, and I hardly remember to have seen one which, if it did not illumine the subject in hand, did not at all events treat it in sensible and business-like and instructive fashion. But this letter is an exception to the rule. It makes four statements which are pertinent to the question before us. It states four things—*first*, it says that sections 154 to 156 of the Indian Penal Code sufficiently provide for riots and disturbances connected with land; *second*, that sections 13, 14 and 15 of the Police Act, V of 1861, give ample power to the Magistrate and the police to preserve order and to punish disorder in other cases than those connected with land; *third*, that the meaning we give to the word 'inhabitant' in section 15 of the Bill is strained and not in consonance with the principle of English law on the subject; and, *fourth*, the letter expresses disapproval of a project of law which they say does not enable the Magistrate to discriminate in times of excitement between the innocent and the guilty.

"Now, my Lord, every one of these four statements is either inaccurate or beside the question we are discussing. As to the reference to the Penal Code, I would say that when a crime regarding land has been committed no doubt we can punish the offender if we catch him; but our object here is not to punish an offender but to prevent the commission of an offence. If I were disposed to wander from the point at issue, I might indeed assure the Council—and here I have the support of my hon'ble and learned friend—that even for the punishment of crime section 154 of the Penal Code is an utterly broken reed; but that is not the question here. The question here is not the punishment, but the prevention, of crime. Next, the reference made by the Chamber to the Police Act is half irrelevant and half inaccurate. It is irrelevant in so far that the sections cited give no power of punishment at all; while, in so far as it states that the Bill is unnecessary, the Chamber is in direct conflict with all the Local Governments consulted on a matter peculiarly within their ken. The

Council has heard the opinion expressed in this Council to-day by the Hon'ble Sir Griffith Evans, and I think they will be of opinion that it supports the provisions of the Bill.

"Lastly, and most wonderful of all, the Chamber of Commerce, in referring to the Magistrate's part under this Bill, disapprove of a provision of the Bill which finds no place at all in the Bill we are discussing. From all this I am led to infer that the amended Bill was by inadvertence not placed before the Chamber at all. As I have said, the Bengal Chamber of Commerce holds a deservedly high position in the mercantile world of India; its utterances usually carry weight, and it is not fair that its utterance on this occasion should go out to the world without some comment from the Government of India to show that in this particular matter its opinion has been given under, as I think, a misapprehension of the questions before the Council."

The Hon'ble MR. STEVENS said:—"On the motion to refer this Bill to a Select Committee I ventured to promise my cordial support to its general provisions. In details it appeared, however, to be susceptible of improvement—in some points, of substantial improvement; in others, of advantageous changes of expression which might more clearly define the intention of the Government, and might remove such objections as had arisen from misapprehension of that intention. The section which is now under consideration is one of those which have attracted most criticism and have been the object of most amendments, both verbal and substantial; but in its present shape, as amended at the instance of the Hon'ble Sir Griffith Evans, it seems to me to be our duty to pass it.

"I have formed this opinion because the provisions of the section appear to be sound and just in principle. They have been found by experience to be efficacious; they do not at present exist in those tracts to which Act V of 1861 is applicable, and they contain such safeguards as should satisfy the most timid that the risk of putting them into practice will be reduced to the smallest possible.

"Now, what is the guiding principle of the section? The case, I take it, stands thus:—The police-force in any district in this country is ordinarily kept at the lowest strength and cost which are compatible with the discharge of the ordinary functions of a police in times of no unusual excitement. That a very small force in comparison with the number of the people suffices for this purpose is (I may remark by the way) due to the peaceful and law-abiding character of the great bulk of the population. But occasions of special irritation

and excitement do sometimes happen which are distinctly limited to particular localities. When this condition exists, it is necessary for the peace of the country that the police should be strengthened. At whose expense should this be done? Clearly at the cost, not of the general revenues of the whole territory subject to Your Excellency's Government, but of the disturbed locality itself. In this disturbed locality again it may be impossible to distinguish broadly between the several parties, so as to make it clear that the responsibility lies with one, and does not lie with another, of these parties. Under such circumstances it is evident that no distinction as to pecuniary obligations ought to be attempted. But there are again cases in which either only particular classes of the community are concerned in the quarrel, or one section is plainly the aggressor. In these cases it seems only consonant with justice and common sense that the burden should be imposed on those immediately concerned, or on those whose wrong-doing and intention to do further wrong are apparent.

"The Hon'ble Member in charge of the Bill, in his speech on the last occasion, illustrated the necessity for this measure by the case of the riots in Rangoon. In all the subsequent criticisms which I have read—and I have read all that I could find—I have seen no attempt whatever to question the propriety of the conclusion that in such conditions the cost of the police should be levied from the contending parties, and not from the uninterested classes to whom disorder could only bring mischief. I venture to add from my own experience a case of another kind. A certain zamindar had endeavoured to establish a claim to a village which was held by another. He obtained but a slight footing in the village; at length, either exasperated by his failure, or intending to overawe the villagers, he organized an attack upon the other party by forces converging from three directions, and plundered the rival cutchery and the houses of the raiyats, and distributed their property in different parts of the district. As to the main facts there was no question, and I cannot conceive that any one will say that, in circumstances like these, the victims should be made to pay for their protection equally and indiscriminately with the aggressors.

"My Lord, another argument which the Hon'ble Member in charge of the Bill brought forward in its support the other day was taken from the experience which has been gained of the working of the analogous provisions of the Bombay Act, IV of 1890. This argument also has been ignored by the critics. Perhaps I should apologize to the Hon'ble Members from the Bombay Presidency for trespassing on their territories, but I have thought it right to look for myself into the debates connected with the passing of the law in question.

"Section 16 of Act VII of 1867, which was the law previously in force, allowed the Government, by notification and in such other manner as might to it seem fit, to direct the employment of any police-force in excess of the ordinary fixed complement quartered in any part of the Presidency which should be found to be in a disturbed or dangerous state, or any part thereof in which, from the conduct of the inhabitants, Government might deem it expedient to increase the number of the police. The cost of this additional police might wholly or in part be defrayed by a local rate, and the Collector, on the requisition of the Magistrate of the district, was bound to levy the amount of such an assessment on the inhabitants thereof as the Collector might in his discretion think just.

"Section 25 of the Act of 1890 permitted the employment of additional police in any local area which might appear to the Government to be in a disturbed or dangerous state, 'or in which the conduct of the inhabitants or of any particular section of the inhabitants' might render it expedient temporarily to increase the strength of the police. The Government was empowered to defray the cost 'either wholly or partly by a rate charged on the inhabitants generally, or on any particular section of the inhabitants of the local area' to which the notification applied. Here there is no ambiguity or doubt. The new law gave the Government a distinct power to discriminate between the parties, and to decide, if it thought proper, which of them should bear the expense of the additional precautions. Looking to the amount of criticism with which the section now under discussion has been assailed, I thought that the records of the Bombay Council would supply an armoury from which weapons of argument might be taken by both sides in the current controversy. The Hon'ble Members of this Council will be astonished to learn that I have failed to find a single reference to the point now before us, though there were animated debates on many points—from the relations of the Inspector-General and the District Magistrates to the police, down to the destruction of dogs, muzzled or unmuzzled. The change which we are discussing was accepted as a matter of common sense and of course. It has been left to Bengal to conjure up visions of dangers too serious to be looked in the face, and of insuperable difficulties.

"Attempts have been made, my Lord, to impale this measure on the horns of a dilemma. We are asked to declare whether it is 'punitive' or 'preventive,' either answer being regarded as fatal to us. I do not see that those who recommend it are bound in any way to discover a single comprehensive adjective which shall at once define and describe the procedure. What we do is to suggest that certain difficulties should be met by a certain course of action. If this course

of action commends itself to the Council, the verbal question is of no importance. As a fact, probably no single adjective can be found. It seems enough to say that the main purpose is to prevent crime and to promote peace; and that, if an incidental effect will be to punish those who have misconducted themselves, no one ought to regret it.

"Some attempts have been made to contrast the judicial with the executive; but the high judicial authorities themselves, who have been consulted on this Bill, seem to acknowledge with singular unanimity the propriety of giving the Executive Government the power which it seeks. The Recorder and the Judicial Commissioners of Upper and Lower Burma and Judicial Commissioners of Oudh and the Central Provinces accept this section. The Judges of the Punjab Chief Court offer no suggestion. The Judges of the North-Western Provinces High Court expressly and unanimously approve of the amendment of the law, and the Judges of the High Court in Calcutta, though they have dealt very cautiously with section 5 of the Act as originally drafted, have no observations to offer on section 4. The only high judicial officer I can discover to have been even doubtful is the Judicial Commissioner of the Hyderabad Assigned Districts, and his difficulties appear to me to be disposed of by the amendments which have been made in the draft Bill.

"The argument that the present law sufficiently meets the necessity of the Executive Government can only be met by a denial. The present law does not provide any power of discrimination; and it stands to reason that Your Excellency's Government, with its vast knowledge of facts, and its almost unlimited responsibilities, would never have embarked upon this legislation without profound conviction of the necessity for such a power.

"To those who would urge that this power should not be granted lest it should be misused, I would reply that the chance of misuse is very small. It has never been intended, so far as I have understood, that this section should be hastily and indiscriminately worked. From my own personal knowledge of every office under the Local Government (except the Inspector-Generalship) which is concerned with the imposition of additional police, I can say with confidence that, even under the existing law, proposals for additional police are scrutinized with great care. No good Magistrate recommends it without reluctance, for he hesitates to admit the failure of his ordinary resources; the Commissioner, the Inspector-General of Police and the Government consider the case successively with an ever diminishing local or departmental bias, and very rarely, if ever, can it be possible that a special force is unjustly imposed. And

it is significant that the opponents of this Bill have not, so far as I have seen, attempted to strengthen their position by alleging instances of indiscretion or injustice in working the law as it stands. It may well be conceded, I think, that the Local Governments will be equally conscientious and careful in the future; and that they will not be unaware of the dangers attending misuse of their power. To those, if any, who have less confidence than I have on this subject, there is much cause for comfort in the publicity with which administration is now carried on. The Press is free, speech is free, the right of interpellation in the Councils has been granted; and, if the means of obtaining publicity in this country are not sufficient, there are the newspapers in England, and an increasing number of members of Parliament who make the affairs of India their special charge.

"I will occupy no more of Your Lordship's time with words of my own, but desire to quote a few words from a Native paper, the *Indian Nation*:—

'It is possible to imagine cases, and we believe some have already been quoted in Council, in which the guilty party is manifestly a small, or, at any rate, a well-defined section. In such cases to tax the whole of the resident community would be obviously not a measure of justice, unless indeed the community offers itself to be taxed. In a place where a fight is confined to butchers alone, it would not be right to tax others than butchers. When a fight is confined to Muhammadans alone, Shias and Sunnis, it would not be right to tax Hindus and Christians. When a fight is confined to two rival zamindars alone, it would not be right to tax men who belong to the party of neither zamindar and have shown no disposition to break the peace. In all cases, however, when the breakers of the law are not a class that can be rigidly marked out from others, or are not a class notoriously guilty and alone guilty according to the universal judgment and knowledge of the local population, the safest thing would be to tax all the inhabitants.'

"It seems to me, my Lord, that this passage accurately represents the policy of the Bill, and is an admirable example of the spirit in which it should be accepted."

"The Hon'ble SIR FREDERICK FRYER said:—"My Lord, with reference to the Hon'ble Mohiny Mohun Roy's statement that there was no necessity to employ additional police to maintain peace in the town of Rangoon after the riots, I wish to observe that the whole force of reserve police in the town at the time of the riots was about 120 men, of whom some 60 were wounded during the riots. After the riots the town was guarded by the European regiment, but Europeans could not be indefinitely kept out in the streets during the hot weather and so additional police had to be employed.

"It seems to me that a great deal of the opposition which this Bill has aroused is due to misapprehension. The Bill is no more coercive than is the present law. The Government can employ additional police and charge its cost to a disturbed locality without any alteration in the law, and all that the present Bill does is to allow the Government to exempt those who have not contributed to a disturbance from paying for the cost of maintaining additional police to keep the peace which they have done nothing to break, and to make those who receive protection, though they may be non-resident landowners, liable to pay for it under certain circumstances

"I venture to think that there will be more discontent if the Bill is thrown out than if it is passed."

The Hon'ble SIR GRIFFITH EVANS said:—"The debate upon this amendment, which is an amendment to omit section 4 of the Bill, has travelled over a very wide ground and is really a debate upon the general policy of the Bill. I do not propose in speaking to this amendment to travel over the same ground. This is an amendment to leave out the new section 15 of the Police Act which was section 4 of the Bill as originally introduced. Now, the only two main points in the amended section, as has been pointed out, are, first, the introduction of the power of exemption; and, secondly, the inclusion of the non-resident zamindars under the name of inhabitants. As regards the power of exemption, it has been very fully discussed on the amendment by the Hon'ble Mr. Mehta to leave outt hat power in the section. But as a great deal has been said about this power of exemption, I wish to add one or two words before passing on from it. Much has been said in regard to the opinion of that exceeding well-informed officer, Mr. Forbes; but it has been forgotten altogether by the proposer of the amendment that Mr. Forbes wound up by saying that his objection really was to throwing upon the Magistrates the duty of finding out and deciding upon guilt or innocence, and that he himself proposed a system of exemption which is almost the same as that proposed by the Select Committee. That proposal of Mr. Forbes which was put as an amendment to the end of his minute was taken up by the Lieutenant-Governor in the report of the Bengal Government and favourably considered as being the correct solution. That solution of Mr. Forbes has been in fact accepted with the further improvement of giving the power of exemption to the Local Government. The next thing I wish to observe is that it has been said that an exemption must be punitive and that therefore there ought to be a judicial investigation before punishment, because you cannot exempt one man without increasing the burden of the others; that is all very well as a matter of word

chopping, but, if you look the thing in the face, it is true of every single public burden. There is one burden with which we are all very familiar, and that is the burden of serving as jurors or assessors. Section 320 of the Criminal Procedure Code provides that all the male inhabitants of a district, between the ages of 21 and 60, shall be liable to serve as jurors or assessors with certain exceptions. Then follows a list of exceptions, and the last exception is of such persons as the Local Government may exempt. Of course, it would be all very well if we were a mere debating society to argue that you ought not to allow such a thing as that; that, if the Local Government exempts a man from serving upon a jury, it throws a greater burden upon others, and that therefore you ought to send for a Munsif or Subordinate Judge to decide whether the exemption should be granted; but that is not a practical view of the case and it would be absolutely ridiculous to do anything of the kind.

"So too with regard to these exemptions. If these exemptions are to be honestly and *bonâ fide* worked, and not as a sort of juggling performance by which it is intended under the guise of one set of words to achieve a result appropriate to another set of words: if, as a matter of fact, the Local Government will recognise that they have got nothing to do with enquiries into guilt or innocence, that they are only to see where it is clearly right to exempt or where an exemption may be given as a reward, as the exemption from the jury might be, then in that case there is no doubt that a great many of the arguments used against the power of exemption fall to the ground. I say this in justice to those who desire to have this exemption system tried. I have myself said as regards my own opinion that, notwithstanding there is a great deal to be said for it, I should hesitate to advise its introduction because it is open to abuse and error, and it is better to stick to the old usage and to what has worked well than to go in for a novelty. But it is not open to the particular remarks which have been made upon it by those who oppose it, and it is very difficult to say that it is not a fair experiment to try, having regard to the fact that in certain cases justice seems to demand that we should make the experiment. Therefore, I leave that point by saying that, while I myself would not have introduced it, being averse to introducing new things into India without strong necessity, I recognise there is a great deal in it, and I hope the safeguards introduced will prevent its being abused. No doubt all human action is liable to error, and there is a possibility of error even in the case of the High Courts, the decisions of which are not unfrequently reversed by the Privy Council.

"I now turn to the real question which is before the Council in this amendment, and that is the question of the explanation of the word 'inhabitant' as including 'non-resident' zamindar. As regards this, when the original Bill came before the Council, the definition was much too wide. It included all classes of proprietors; it made zamindars liable who let out their lands in patni, who had no influence in the estate. This has been cut down, and the liability now is on the zamindar who directly collects rents from the raiyats. As regards this, I will first take the question of the legal change. The legal change is not at all a violent one. It was decided long ago in Bombay, where under the Charter of the old Supreme Court every inhabitant was made liable to the jurisdiction of that Court, that, when a man lived at Baroda and had an agent in Bombay who carried on business there, he was an inhabitant of Bombay and liable to the jurisdiction of the Court there. The same thing has been held over and over again in a series of cases with regard to the Charter of the Supreme Court of Calcutta. I merely mention this in order to show that the word 'inhabitants' is in all cases not necessarily restricted to those who are actually dwelling in the place. There may be constructive inhabitants. The real question is as regards the merits of the case. Now, as regards the merits, this is the position. The zamindar, so long as he collects the rents direct, is really the most influential person in the village or district. Beyond all possibility of doubt or question the power of the zamindar is, I am happy to say, still very great, and I hope it will always remain so. But, if owing to any hasty legislation against them these great zamindaris should be broken up and fall into the hands of the banias and mahajans, it will be an evil day for the Government of India when the influence of the zamindars is broken, for in the main these classes have always been in favour of law and order and have been a support to the Government. But though this is the broad outline of the picture which ought never to be forgotten, yet all the details are not equally fair. All who are familiar with litigation in Bengal know perfectly well the signs which precede a big case in the Civil Courts. The case may be for an alluvial formation or a disputed boundary or disputed title. We are all perfectly familiar with the signs: first, it will begin in the Criminal Courts with riots and attempts by each side to fix the occurrence upon the other; these are all moves to establish possession in order that one side may be driven to file a suit in a Civil Court. This stage is terminated ordinarily by a proceeding under section 145, Criminal Procedure Code, in order to determine who is in possession, and to retain him until ousted in due course by law. A decision is then given, and there is generally an application to the High Court, which not unfrequently quashes the whole proceedings owing to some

irregularity, and the whole thing begins over again. This may go on for several years, and at the end of that time one party is driven into filing a suit as plaintiff in a Civil Court and accepting the burden of proving his case. During the whole of that time no one can seriously doubt that the cause of these disturbances is the quarrel between two zamindars, and that, if the quarrel came to an end by an agreement, peace would be absolutely restored at once. But it is said that sections 154 to 156 of the Penal Code amply provide for the punishment of zamindars in cases in which riots take place in their lands or where riots take place for their benefit, or where they do not take speedy steps to suppress or prevent the riots. But how does it stand in reality? Cases under these sections are very rare and convictions still rarer. So much so that these sections may be said to have become almost a dead-letter. The reason is not far to seek. It has been found by experience that it is impossible to bring home either to the zamindar or his agent that knowledge that a particular riot was going to take place which is necessary in order to sustain a criminal charge. It is impossible to bring home this, though all know that but for the quarrel between the two zamindars the riot would not have taken place. But this is quite a different thing from proving that the zamindar knew of the riot. Therefore, as a matter of fact, these sections do not act in the way it is suggested that they ought to act and in the way in which it was no doubt hoped they would act. In these cases it is quite plain that the zamindar ought to be deemed an inhabitant for the purpose of this section, that is, to bear the cost of the extra police required on account of the disturbances.

"The next class I speak of is agrarian disputes between the zamindars and raiyats. In regard to this I wish to observe that the relations between the zamindars and raiyats are generally friendly. You will find that those who are privileged to go behind the scenes can still see the ancient Zamindari Courts, which are supposed to be extinct for a century by many people, still at work, and working harmoniously. These Courts are viewed with great disfavour by a great many over-zealous officers, while more prudent officers shut their eyes because they tend to keep things quiet and to dispose of petty civil and criminal business: they have no sanction except ancient custom and convenience.

"But when a quarrel arises between the zamindar and raiyat all this is changed. Sometimes it is that a zamindar wants an increase to his rent; he may be right, he may be wrong. But thereupon if the raiyats object they proceed to starve him out, and, if he is a poor zamindar, they refuse to pay him any rent at all, and often set up absolutely false cases. They deny the existing

rents and admit only half or a quarter. The counsel of Government officials to these poor zamindars is 'go to law; here are our Courts ready for you and they will decide the matter.' But the poor man is well aware that the Government will not wait for one single hour for the Government revenue, and while the grass is growing the steed is starving, and he may be sold out long before the dispute is decided. At other times hungry mukhtars or other mischievous persons go round and tell the raiyats that the Government is going to make some new law, and that their rents are going to be lowered or that they will not have to pay rents at all. They are ignorant people, they stop paying rents, form no-rent combinations and proceed to beat the peons and the amins whom the zamindar sends down to collect the rents or appraise the crops. Such disputes sometimes lead to great agrarian disturbances. Then there is another class of cases, that of the religious riots, and here, too, I think the zamindar ought to be included, because, looking at him as a very great influence and able to exercise great power, one cannot help seeing he is a greater power on the side of law and order or disorder than anybody else, and that it is most desirable that he should have a pecuniary interest in maintaining the peace of the district. The zamindars have greater knowledge of what is going on in their zamindaries than the Government official and can do much in the way of conciliation if they choose. But if their aid is sought by Government in these matters they should be treated with consideration.

"It is for these reasons—on account of the fact that the zamindar is the most influential person in the district, whether actually living in that district or not—it is on account of his power and influence that I think that the cause of peace and order will be secured by giving him a pecuniary interest in seeing that the peace is not disturbed and that this can be done without injustice if there is power to exempt."

The Hon'ble MAHÁRÁJÁ OF AJUDHIÁ said:—"I would not like to detain the Council with any very lengthy remarks, but I think some observations are due from me as a representative of a class which has got large landed interest in the country, and who will be particularly affected by the sections 4, 5, and 10. I will therefore confine my remarks to these only.

"It appears that 'absentee' landlords would come under the definition of the term 'inhabitants' who will be liable to bear the cost of placing the additional police-force. This may be sound in theory, but I am not sure that in practice it may result in inflicting hardship on the 'absentee' landlord. The Bill does not lay down any procedure as to upon what data 'absentee' landlords might be considered implicated in a riot or disturbance, and in many

cases it will often happen that they will not have the benefit of the powers of exemption conferred upon the local authorities.

"The absence of any preliminary judicial enquiry before the exercise of such power is also a very objectionable feature in the Bill. For, my Lord, it has, I think, been already repeated more than once, both within and outside the Council Chamber, that it makes a great deal of difference between levying the cost of additional police from the entire inhabitants and the exclusion of a portion of them from such costs on the ground of their innocence. An exemption of some persons or a class of persons naturally casts a slur upon those who are not exempted. If among the unexempted persons there are some who are not guilty, the very fact of their being unexempted will raise a presumption that they are not innocent.

"My Lord, I fully appreciate the great sense of justice and equity by which the hon'ble mover of the Bill has been guided in introducing the exemption of classes. No motives can be higher than those by which he has been guided. But I am afraid that the powers thus conferred will, in some cases, be not properly exercised, and errors of judgment will be committed, errors from which very serious consequences might ensue to the persons concerned. I have taken the liberty of submitting these remarks for the consideration of Your Excellency and the Hon'ble Members as I am supported by officials like Magistrates of Districts, Commissioners of Divisions, Inspector-General of Police and several important associations of the country, including the Anglo-Indian Defence Association, the Bengal Chamber of Commerce and the Indian Tea Association, the last three Associations generally representing the voice of a great number of the European community who, as they will not immediately be affected by the provisions in question, cannot reasonably be suspected of any bias in the matter.

"As regards the power to be conferred on Magistrates to award damages, I beg to submit that the result of this will be that the executive authorities will be invested with powers which should only be exercised by the Civil Courts.

"In the section regarding the regulation of processions and assemblies some very stringent provisions have been introduced which on certain occasions, I believe, in the hands of the police might tend to interfere unnecessarily with the religious customs and ceremonies of the people.

"My Lord, I do not think it necessary to go into further details, as the provisions of these sections have been discussed by the Hon'ble Members and

by the entire Press of the country, Indian and Anglo-Indian. I beg, therefore, to support the Motion that these sections should be withdrawn from the Bill."

The Hon'ble MR. PLAYFAIR said:—"My Lord, the speech delivered by the Hon'ble Member in charge of the Home-Department, when he moved that this Bill be referred to a Select Committee, reminded me of the remarks in which an eminent critic once described the Duke of Wellington's style of debating as 'slicing the argument into two or three parts and helping himself to the best.' He laid emphatic stress upon the principle associated with the introduction of this measure, which he has repeated to-day, that it was intended to be preventive of trouble and a deterrent to the restless. In short, that it is a measure that implies exceptional reasons for its application, and, therefore, it may be presumed it should be an enactment the provisions of which will not be frequently put in force. But the Hon'ble Member did not dissipate from the minds of some of the Members of Your Excellency's Council the apprehension that the measure was a dangerous innovation, even though, as the Hon'ble Sir Griffith Evans has to-day remarked, something of the kind might have been worked in the mufassal of Bombay.

"I should still prefer to adhere to the present system, the principle of which is to make the whole disturbed district liable, and give all the inhabitants a common interest in the preservation of the peace without introducing the new element of exemption. For I understand that the policy of the Government is, as it has always been, to make laws that it may be able to treat its people as a great lord ought to do, rather than that the people might learn from such laws to treat the Government like a great lord. I am not unmindful, however, that events have recently happened which may justify the Government in asking for increased powers to deal with disturbed districts. The Hon'ble Sir Antony MacDonnell has stated to-day that the circumstances of the country require this measure. Considering this, and looking at the restrictions and safeguards which have been introduced, and in particular to the amendment which places the power of exemption in the hands of the Local Government and not of the Magistrate, I do not think I should be justified in opposing the passing of section 15 as amended.

"I thank the Hon'ble Sir Antony MacDonnell for the high eulogium he has passed upon the judgment and authority of the Bengal Chamber of Commerce, and for the expression of respect to which he considers its opinions are justly due on all subjects affecting the Government, as well as the commercial interests of this Empire. With reference to the letter from the Chamber of

Commerce to which the Hon'ble Member has referred, I have to point out that this is a criticism upon the Bill as it emerged from the hands of the Select Committee. The Chamber had not before it the amendments proposed by my hon'ble friend Sir Griffith Evans and accepted by Your Excellency's Government, and I am hopeful that the alterations disclosed to-day, which substitute the Local Government for the District Magistrate, will be approved of by the Chamber. And I can give the Government the most complete assurance that, when the Government requires support to carry out the good government of this Empire and to preserve law and order, the assistance of the Bengal Chamber of Commerce will not be wanting."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said :—"My Lord, I believe the necessity of the exemption clause was specially felt by including in the definition of the word 'inhabitants,' absentee landowners and householders. This extension of the meaning of the word was hardly necessary and would in some cases, I am afraid, work injustice. In fact, the law has been made so complex by this extension of meaning, and so many difficulties brought in, that it is almost impossible that the law, as it is proposed to be amended by the Bill, would be equitably administered."

The Hon'ble MR. MEHTA said :—"I have already said what I had to say on this section in moving my amendment. The Hon'ble Member in charge of the Bill tells us that he has furnished us with arguments; he could not furnish us with brains—I beg the Hon'ble Member's pardon, I mean the capacity to appreciate and understand his arguments. But how does his case stand? He gave out all his arguments when he moved for a Select Committee, and not only the Indian Press, but nearly the whole of the Anglo-Indian Press, the Anglo-Indian Defence Association, and last but not least the Bengal Chamber of Commerce, they have all failed to be convinced by his arguments and have pronounced the Bill unwise and impolitic. If the Hon'ble Member will pardon me for doing so, will he allow me to remind him of a bit from the greatest of dramatists—Shakespeare—who makes Cassio insist that he was sober and it was the others who were drunk. His arguments and those of the other official Hon'ble Members all harp upon the excellence of the objects and intentions with which this Bill is introduced. My Lord, nobody has questioned that the object and intentions with which the Government of India has brought in this Bill are most excellent. I certainly do not question them for one moment. But the question is not, whether your objects and intentions are excellent, but whether the measures by which those objects and

those intentions are sought to be carried out are calculated to do so, and whether, in carrying some of them out, you are not adopting measures which will not create mischief in other numerous directions. We say it is the latter which the Bill is calculated to do. It is all very well to talk of careful enquiries and prudent administration. But let us try for a moment to realize what these things mean in actual practice and in detailed action. I speak from a somewhat long experience of nearly every district of the Bombay Presidency in the course of professional employment, and I say that the District Magistrate is largely dependent--I do not say entirely—on the enquiries and information of his assistant, who in his turn is dependent on the lower officers. They no doubt make some enquiries of their own, but they are largely controlled by those of the lower officers, police and others. Now I do not wish to say that all these lower officers are bad and unreliable; many of them make excellent officers. But still the fact is that on important occasions they are likely to be swayed by influences in which interest, prejudice and partiality may largely enter. This opens an immense door to abuse and oppression. The higher officers are not often in a position to discriminate between the reliance to be placed on these lower officers and are often carried away by the initial taint. This is why we say that the task of exempting and discriminating should not be undertaken at all."

The Hon'ble SIR JAMES WESTLAND said:—"It seems to me that the direct purpose of this section has got somewhat lost sight of in the remarks of the Hon'ble Member who last spoke. When the mover of the amendment spoke he travelled over a large amount of ground, but immediately after that we had a speech from my hon'ble friend Sir Frederick Fryer in which he pointed out that the questions really before the Council were purely the question of exemtion and the question of including landholders as 'inhabitants.' So also the Hon'ble Mr. Mehta in his speech directs his attention to the employment of a punitive police-force, but the question of stationing a special police-force and charging it upon the inhabitants is no new question. It is not a question that need have arisen at all upon the present Bill. Even if the amendment were carried, that power would still exist to the Government, so that it is now beside th epurpose to question whether the employment of a punitive police-force is just or unjust. I think I can hardly pass over without some remark the observations of the Hon'ble Member as to the extent to which Magistrates, Lieutenant-Governors and other officials who have the misfortune to administer the Government on the executive side are absolutely dependent upon the lowest of the low for their information. I have done some work of that kind myself, and I see here a distinguished officer, the Hon'ble Mr. James, who was Collector of a dis-

trict, the Hon'ble Sir Frederick Fryer also, who lately officiated as Chief Commissioner of Burma, the Hon'ble Mr. Stevens, who was also a Collector of a district, and the Hon'ble Sir Charles Elliott, who is at present Lieutenant-Governor. These officers have told you some of their experiences, and it is preposterous to be asked to believe that for the experience and knowledge upon which they have based the administration of their governments and districts they are entirely dependent upon information from the very lowest sources. If the Hon'ble Mr. Mehta were going to propose that absolutely no steps were to be taken in this country to prevent riots when they occur, I could understand the appositeness of his contention. It would be perfectly reasonable under such circumstances to argue that you cannot get trustworthy information; when a riot has taken place, do not bother yourself about it, do not try to prevent it, and do not attempt to arrest any person or bring him to justice. That would be a just conclusion from his statement that no information, worthy of being acted on, can be gained. I do not wish to call in question the efficiency of judicial enquiry, but, if I were trying to ascertain a fact in this country, I would certainly prefer to go and find out from the people themselves what had taken place. I am perfectly aware that by judicial investigations, calmly conducted, trustworthy conclusions can be reached in the same way as those arrived at by executive officers. Both are based on the reception of evidence; but it seems to me absurd to say that an executive officer making an enquiry, as enquiries under this Bill will be made, upon the spot, is in vastly greater danger of coming to an erroneous conclusion than a judicial officer stationed at a remote distance gathering up evidence which was possibly carefully prepared during the course of some months before it was presented to him. I am, however, far from saying anything to depreciate the judicial administration of this country, of which I have the highest opinion; but preventive operations are one thing and judicial investigations are another. To alter slightly the well-known English adage of a 'bird in the hand,' I believe that in the case of a riot a policeman on the spot is worth any day two High Court Judges sitting on a bench at a remote distance. I certainly thoroughly agree that the Magistrate and every other person ought to be responsible for the power that he administers, but I cannot base upon that theory the conclusion that every power ought to be taken away from him because it is possible that he may administer it wrongly. Before leaving the subject I wish to make one remark upon the question of landholders' responsibility, though it is only to draw attention to a point which is, no doubt, well-known to the Hon'ble Members of this Council. It should be borne in mind that the existing law of the country imposes upon the landholders a distinct duty both in keeping the peace and in giving information of the possibility

of riots occurring. It seems to me that, so long as these special responsibilities are laid upon landholders in the Statute-book, we are not going beyond the principle of the law in saying that they, in common with other inhabitants of a country which is disturbed, are to bear their share in the responsibility for that disturbance. As my hon'ble friend Sir Griffith Evans pointed out, the landholder has really an immense power both in obtaining information about the state of public feeling and in allaying outbreaks, when they do occur and he ought to have some responsibility for its due exercise.

"As regards the power of exemption, from liability, which I pointed out is the essential question raised by the amendment moved by the Hon'ble Mohiny Mohun Roy, I cannot help thinking that the power which it is proposed to give Government is one which, when it is used, will obviously be used in the direction of justice, and the proposal to confer this power it ought not to be objected to, for it is manifestly an improvement upon the law as it at present stands."

The Hon'ble SIR ALEXANDER MILLER said:—"What I have to say on this motion can be condensed into three or four short sentences. It seems to me clear that if this motion is carried and the existing law remains unaltered the Local Government will from time to time find itself in the position of being compelled by law to throw upon certain persons a burden they ought not to bear, and to exclude other persons who ought to bear a share of that burden; whereas if the amendment is carried, it will be put in the position of saying that the persons who are really victims, and those are the people for whom I have the greatest sympathy in this matter, shall not, in addition to the injury they have already suffered, have to pay a part of the cost, and also that persons who are clearly interested in maintaining the peace of the district, and who by personal absence are evading that duty, shall not merely on that account get off the responsibility which they have fairly incurred. That would, I think, be sufficient to dispose of the whole matter, but that it has been suggested and pressed over and over again that the question of such an exemption or such an inclusion should be made the subject of judicial enquiry. There is, perhaps, no person in this room or in this country who has a stronger appreciation of the value of a judicial enquiry on every occasion when it is necessary to go into matters in difference between individuals or to determine the individual rights of contending persons than I have; but I am quite satisfied that on a question of this kind, which is a question of whether the peace of a district is to be maintained, and whether on the broad facts of the case, certain individuals and certain classes are or are not the persons in fault for breaking the peace, examination on the spot by the person whose duty it is to maintain order is much more effective, more immediate, and more likely to

be right than any enquiry which can be made afterwards by the regular process of a Court of law, and after the parties concerned have had an opportunity of fabricating evidence. Under these circumstances I heartily support the Bill as it stands."

The Hon'ble MOHINY MOHUN ROY said:—"Landholders pay a police-rate which has been incorporated with the land-revenue and is realised as such. I consider it my duty to remind the Executive Government and Your Excellency in Council of this fact, which has been lost sight of.

"Landholders pay also a village police-rate in common with the inhabitants of the village under the Chaukidari Act for his cutchery or place of collection in proportion to the property protected. If the cost of additional police were thrown upon the village police-rates in the manner of the English Statute, there would be very little opposition. But to assess him according to his means within the local area, means his rental in the local area. This seems to be perfectly unjust."

The Council divided:—

Ayes.	*Noes.*
The Hon'ble Mohiny Mohun Roy.	The Hon'ble A. S. Lethbridge.
The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.	The Hon'ble H. E. M. James.
The Hon'ble Gangadhar Rao Madhav Chitnavis.	The Hon'ble C. C. Stevens.
The Hon'ble P. M. Mehta.	The Hon'ble Sir F. W. R. Fryer.
The Hon'ble Mahárájá Bahádur of Durbhanga.	The Hon'ble Sir G. H. P. Evans.
	Tho Hon'ble P. Playfair.
	The Hon'ble H. F. Clogstoun.
	The Hon'ble Sir A. P. MacDonnell.
	The Hon'ble Sir J. Westland.
	The Hon'ble Sir C. B. Pritchard.
	The Hon'ble Lieutenant-General Sir H. Brackenbury.
	The Hon'ble Sir A. E. Miller.
	His Honour the Lieutenant-Governor.

The Hon'ble PRINCE SIR JAHAN KADR MEERZA MUHAMMAD WAHID ALI BAHÁDUR did not vote.

So the amendment was negatived.

The Hon'ble Sir ANTONY MACDONNELL moved that in sub-section (*1*) of section 15A of Act V of 1861 as proposed to be inserted by section 5 of the Bill as amended by the Select Committee, the words "has been" in line 3 be omitted and the words "is in force" be inserted after the word "section" in line 4: that the words "who claims to have suffered" be substituted for the words "who has suffered," and that the words "of the injury" be substituted for the word "thereof." He said—"The object of the first amendment, namely, the omission of the words 'has been' and the insertion of the words 'is in force,' is to make it clear that no application for compensation shall be made unless in an area in regard to which a proclamation has been notified, and in which the proclamation is at the time subsisting. The other two amendments are verbal."

The amendments were put and agreed to.

The Hon'ble SIR GRIFFITH EVANS said:—"With Your Excellency's permission I propose to move the whole of the next amendments which are set down in my name, in one motion. The first is that in section 15A (*1*) of Act V of 1861, as proposed to be inserted by section 5 of the Bill as amended by the Select Committee, for the words 'six months' the words 'one month or such shorter period as may be prescribed' be substituted. Having regard to the novelty of the section and the difficulties which may arise in carrying out a new procedure like this, and also having regard to the power of exemption, and considering there is great danger in allowing the lengthened period; bearing in mind that these claims must be supported by oral evidence, possibly a great deal of it utterly false; and bearing in mind that there is no clear procedure laid down and the difficulties which may arise from false and exaggerated claims, it was thought it would not be safe to allow the six months. I have therefore proposed one month. This will very much limit the operation of the section. Under ordinary circumstances we know that extra police are not quartered upon districts because merely of some single riot taking place. The ordinary procedure is, if there is a riot, there is a trial of the rioters, who are sent to prison, and there is nothing more heard of it. But if the riots go on, and if after a full enquiry into it there is reason to expect that the riots will continue, an order for the proclamation is made and an extra police quartered. It is very rarely indeed that these proceedings take place within a month, and the effect of this amendment will be that in most cases the sufferers will only be able to claim compensation in respect of riots which occur after the proclamation. It is open to this objection, that it is rather hard that they should not get compensation for the

former riots which led to the proclamation. But it must be remembered that this is a very novel section and one which I would like to see working on as small a scale as possible. There will be of course certain cases, such as the riots in the North-Western Provinces, in which it would be apparent to all that the country was in a serious state of disturbance which was not likely to settle down soon, and in particular cases of great gravity of that kind the proclamation might be made in a few days, and in that case they would be able to put in their claims within a month and get compensation for the riot which had caused the proclamation. As riots rarely occur after proclamation the result will be that this section can seldom be used.

"The next amendment is that the following proviso be inserted after clause (*c*) of sub-section (*2*) of section 15A of Act V of 1861, as proposed to be inserted by section 5 of the Bill as amended by the Select Committee, namely:—

'Provided that the Magistrate shall not make any declaration or assessment under this sub-section unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.'

"The object of this is again to cut down the operation of the section. It is intended to apply the analogy of the English section which limits the compensation to cases of riots and tumults where from the nature of the case it is impossible to find out who committed the injury. These are proper cases for compensation of this kind, and this amendment limits the clause to cases of that class.

"The next amendment gives the power of exemption to the Local Government. It is that the following be substituted for sub-section (*3*) of section 15A of Act V of 1861, as proposed to be inserted by section 5 of the Bill as amended by the Select Committee, namely:—

'It shall be lawful for the Local Government by order to exempt any persons or class or section of such inhabitants from liability to pay any portion of such compensation.'

"The reason for this I have already stated in moving a similar amendment to section 15.

"The last amendment is that the following be added as sub-sections (*4*) and (*5*) of section 15A of Act V of 1861, as proposed to be inserted by section 5 of

the Bill as amended by the Select Committee, and that sub-section (4) be numbered (6):—

'(4) Every declaration or assessment made or order passed by the Magistrate of the district under sub-section (2) shall be subject to revision by the Commissioner of the Division or the Local Government, but save as aforesaid shall be final.

'(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.'

"These amendments are, I think, manifest improvements."

The Hon'ble SIR ANTONY MACDONNELL:—"As I have already stated, all these amendments have been accepted. We accepted one month instead of six months for the reasons stated by the Hon'ble Sir Griffith Evans, and also for the reason that by section 15 as it now stands we disassociate the issue of the proclamation from the order stationing the police. It will be easier under this new procedure to have the proclamation issued than before. The second amendment the Government accepted because from the section as at present worded it is apparent that the hurt or damage or loss of property must have been caused by the inhabitants or class or section of the inhabitants; that is to say, the injury must have been caused by an illegal assembly; so that there is not much difference between this amendment and the Bill as it stands. The other points speak for themselves and I have got no remarks to make upon them."

The amendments were put and agreed to.

The Hon'ble MOHINY MOHUN ROY asked for leave to withdraw his motion that sub-section (4) of section 15A of Act V of 1861, as proposed to be inserted by section 5 of the Bill as amended by the Select Committee, be omitted.

Leave was granted.

The Hon'ble MR. MEHTA moved that section 5 of the Bill as amended by the Select Committee be omitted. He said:—"I may be permitted respectfully but firmly to say that I find it difficult to believe that the Government have fully realised the gravity of the step that they ask the Council to take in putting on the Statute-book a provision so extraordinary as that embodied in this section. What is sought by this section to do is to empower the Magistrate of the district, or rather the officer who in other respects is Magistrate of the district, to grant compensation for

damages by riots to whomever he thinks fit, and from whomever he thinks proper, without trial or judicial enquiry. This is a procedure so repugnant to all systems of enlightened legislation that the Hon'ble Member in charge of the Bill has felt compelled to cite analogy and precedent. He could find none within the length and breadth of the Indian Continent; so with a courage which is almost startling in its utter fearlessness he crosses over the seas to the land, above all others, of free Englishmen. 'The clause,' says the Hon'ble Member, 'is adopted from the English Statute 49 & 50 Vict., cap. 38, and is merely an adaptation of an ancient and existing principle of English law to the circumstances of this country.' My Lord, it is a remarkable fact that when rights and privileges corresponding to those prevailing in England are claimed for this country, it is immediately discovered that the circumstances and historic associations of the two countries are ever so different. But when it is a question of imposing burdens and disabilities, the closest analogy is as patent as daylight. I do not for a moment mean to question that there might not be occasions when both these propositions might not be found to be perfectly true. But, recognising the limitations of the human judgment, it is very desirable that such assertions should be closely scrutinised. Now, my Lord, when the Hon'ble Member drew out an English Statute for analogy, I confess that for the moment it took my breath away, and made me feel extremely foolish and crestfallen about my ignorance. But equally strong was the reaction and the amazement when, on referring to the Statute, I found that the Hon'ble Member's analogy was as perfect as the definition which was once given of a crab, namely, that a crab is a red fish which walks backwards. We know the criticism upon that definition—that it was perfectly correct, except that the crab was not a fish, that it was not red, and that it did not walk backwards. Similarly, the Hon'ble Member's analogy is quite perfect, except, firstly, the English Statute deals only with counties, boroughs and towns which maintain a separate police-force of their own, and not, as the proposed section does, with districts where the police is maintained and paid by Local Governments out of Provincial funds. Secondly, the police authority referred to in the Statute is as different from the District Magistrate of the section as a European from an Asiatic; the designation technically stands in the Statute for the Common Council of the City of London, for the Mayor, Aldermen, and burgesses of boroughs, and justices in general or quarter-sessions assembled in the case of counties. Thirdly, the Statute provides for no compulsory award of compensation against these bodies; it only enables parties to lay their claims before them under certain limitations. But, above all, section 4 of the Statute is the most instructive. The local bodies representing the inhabitants of the district

may refuse to entertain the claim, and then, says the section, the only remedy is to bring an action against them to recover the claim for compensation. It is difficult to see how anybody could have discovered an analogy between the English Statute and the legislation now proposed, so diametrically opposed are they in their objects, their principles and their operation. The English Statute, recognizing the liability for the inefficiency of the police of those liable to maintain it, provides only for a mode of settlement out of Court if that were possible; it does not dream of compelling the award of compensation without the safeguards of a judicial enquiry.

"Leaving analogy and precedent alone, the Hon'ble Member in charge of the Bill is not more happy in his attempt to justify it on its own merits. The criticism on it which I find in a petition made by the Indian Relief Society (Paper No. 14) seems to me to be absolutely conclusive and just. In his speech on the last occasion the Hon'ble Member said:—

'The actual perpetrators of the injury committed by a riotous crowd are usually unknown; and, even if they were known, they are often bad characters and men of straw, while the sufferers are, as a rule, poor men, who cannot pay the costs of a civil suit. To relegate them in such circumstances to the uncertain issues and expense of a lawsuit is to give them no redress.'

"Referring to this, the petition of the Society says:—

'The Committee are unable to discover the true meaning of this. Does it mean that, the actual perpetrators being unknowable, other persons near at hand are to be assessed to pay damages, or they when discovered, being men of straw, their rich neighbours are to be mulcted in damages by order of the executive?'

"To understand the full force of this criticism, it must be borne in mind that the Hon'ble Member in this as in the preceding section is not contemplating the imposition of the burden upon the inhabitants generally, but upon them, *minus* the inhabitants exempted for unknown reasons by the executive, one of them perhaps being that the exempted persons are innocent. The argument of the Hon'ble Member really amounts to this, that the guilty should be assessed, but they are either unknown or men of straw, therefore give us power to assess people not proved guilty as being guilty and rich. My Lord, it seems to me that this proposal is brought before the Council without being fully considered or thought out. It is absolutely unprecedented in any system of enlightened administration, and it is still more absolutely condemned by the public voice of the whole country, to which is now added the emphatic protest forwarded by the Bengal Chamber of Commerce."

The Hon'ble SIR ANTONY MACDONNELL said:—"I have addressed the Council so frequently to-day that, following what is I believe a Parliamentary precedent, I am leaving the defence of this matter in the hands of my hon'ble friend Mr. Stevens."

The Hon'ble MR. STEVENS said:—"My Lord, it does not appear that this section of the Bill requires a very laboured defence. If a man's house has been destroyed, and his property plundered, or if the bread-winner of a family has been killed by an infuriated and hostile mob, I cannot conceive on what principle of justice compensation to the sufferers at the expense of the aggressors ought to be denied to them. Nor do I think that any even among the opponents of this section would venture to put forward this proposition in a bald and simple form. The contrary is so manifestly just and reasonable that, so long as we have no legal provision affording a remedy for a grievance of this intolerable kind, our Statute-book must be admitted to be gravely defective, and it is our duty to supply the need to the best of our ability. The section now under discussion is an attempt to fulfil this obligation.

"The first objection is that the section is out of place in a Police Bill. Even if there was any force in this argument, it would be simply technical, and would be at once met by preparing a very short separate Bill. But it is entitled to no weight. The form, as well as the matter of the section, indicates very manifestly the intimate connection of its subject with that of section 4. And, if a precedent is required, it is to be found immediately in the English Statute 49 & 50 Vict., cap. 38, which became law on the 25th June, 1886. It is here directed that claims shall be made to the police authority of the district, and that, if the claimant under that Act is aggrieved by the refusal or failure of the police authority, he may bring an action against that police authority. Compensation as well as all costs payable by the police authority or incidental to the execution of this Act, to be paid out of the moneys held by the police authority on account of the police-force, and the amount required to meet the necessary expenditure is to be raised as part of the police-rate. There is ample justification in this precedent for including the provisions for compensation in the present Bill.

"Another objection is that there is no precedent for such legislation at all. In the face of the well-known facts that by the English law the inhabitants of the hundred or other area in which property is damaged by persons 'riotously and tumultuously assembled together' are liable to pay compensation for such damage, and that this law was added to in 1886 by the Statute which I have

quoted, it cannot be argued either that there is no precedent, or that the English law has been allowed to become obsolete.

"It is urged again that no procedure for the conduct of enquiries is provided for, and further that such enquiries are of a judicial and not an executive nature; but the Government has always had power to frame directions for the due execution of the Police Act; and the executive orders passed by or under the authority of the Government of Bengal, at least, have attained—I might almost say—more than respectable bulk. But the sixth amendment, which has been proposed by the Hon'ble Sir Griffith Evans, and which has been accepted by the Hon'ble Member in charge of the Bill, has made it still more clear that it will be the duty of the Government to frame rules of procedure. Bearing in mind the varying circumstances under which it may be necessary to work this section, it seems clear that no attempt should be made to stereotype a system of procedure by law.

"Under the English law enquiries in compensation cases are not judicial, but are made by the police authority which, if satisfied as to the claim, is bound to fix such compensation as to that authority appears just. No system of procedure is laid down by the law, but the Secretary of State makes regulations respecting the time, manner and conditions within, in, and under which claims must be made. These regulations may provide for the particulars to be stated in the claims, for its verification by proof, and for the police authority obtaining information and assistance for determining the claims. The whole matter is dealt with as essentially executive in its nature.

"There is one point of difference between the English Act and the present Bill. The former makes the inhabitants of a certain locality liable to pay the compensation, while the latter gives power by exemptions to relieve innocent persons from the burden. The principle at the root of the law in England appears to be that while the justice of awarding compensation to the injured is beyond dispute, that obligation should not be thrown on the community generally, but is to be confined to those who were interested in committing the outrage, or who by their proximity might have had it in their power to take measures for its prevention. In this country, the population is usually divided into clearly different sections, representing differences in race or religion, or arising from the peculiarity of the land-systems or from other causes; and it seems evident that, whenever damage can be clearly traced to one section, it is not just that other

sections should pay. In the case in which there are two well-defined parties—the aggressors and the sufferers—it needs little argument to show the absurdity of taxing the sufferers to pay compensation for the injuries which they themselves have suffered.

"I ought to apologise to those learned members of this Council who are versed in the English law for venturing to offer to this Council these considerations in which it is introduced. I have thought that, perhaps, I might with advantage, as a layman, enter into details which they, as lawyers, would be disposed to take for granted. If I have committed any inaccuracy, I hope they will correct me.

"The only remaining point with which it seems necessary for me to deal is the argument which I have seen advanced, that the present law affords all the remedy which is requisite. To this there is the very obvious answer that the Courts are open only to those who are able to put the machinery in motion in the ordinary and regular way. Compensation could be awarded by the Civil Courts only if evidence against individuals is forthcoming. A man whose house is about to be attacked by a dangerous mob is not likely to wait until he can identify the offenders with the view of bringing a civil action for damages against them at his leisure. His first object is not unlikely to be to secure his own personal safety; and, if he should take this view of the immediate necessities of his case, he is extremely unlikely to be able to fix the responsibility for his losses on individuals. The truth is that, precisely because in times of trouble and turbulence the ordinary processes of law fail, it is necessary to supplement them by action suitable to such times.

"I am not aware that the Indian Civil Courts are able to afford a plaintiff greater facilities for obtaining damages than the English Courts are, yet it is found necessary in England to provide the means of compensating by executive action those injured by 'persons riotously and tumultuously assembled together.' Even in cases in which compensation might be awarded by the Courts after expensive and protracted enquiries, it is evidently an advantage both to the injured person and to the peace of the community that the more summary processes of executive action should be open.

"When the Council was discussing section 4, I offered for consideration a brief account of the opinions of the principal judicial authorities; it will, perhaps, be convenient for me to summarise also those which relate to section 5.

The Recorder of Rangoon and both the Judicial Commissioners in Burma report in its favour. The Judicial Commissioner of Oudh also supports it. The report of the Judicial Commissioner of the Central Provinces is not before us, but he with other officers is said to be generally in favour of the provisions of the Bill; and it was presumed that he is in favour of this section in particular, since the Chief Commissioner criticises at length the somewhat adverse opinions of certain other officers, and it is not likely that he would leave unnoticed a similar opinion expressed by the chief judicial officer of his Province. The objections of the Judicial Commissioner of the Hyderabad Assigned Districts have been already met. The Chief Court of the Punjab offers no remarks. In the North-Western Provinces all the Judges (but one) of the High Court are in favour of the principle of compensation, and make no objection to the machinery by which it is proposed to award and to pay it. The one dissentient voice is that of the Hon'ble Mr. Justice Banerjee, who objects, first, that the subject of compensation has nothing to do with the regulation of the police; secondly, that the law, as it exists, affords to individual sufferers sufficient remedy against those who have caused them injury by a civil action for damages; and, thirdly, that the measure is likely to keep up, rather than allay, ill-feeling between members of different communities. The first two of these objections I have already dealt with; the last is, I think, one of individual cases. The Local Government has to decide in each instance whether the law should be applied or not; and wherever it may appear that the application would be mischievous and unduly hazardous it is only reasonable to presume that the discretion will be rightly and wisely exercised. In speaking on section 4 I remarked incidentally that the Judges of the High Court in Bengal had dealt very cautiously with section 5, but it must be remembered that their comments apply to the section as first drafted. They say that it would confer in certain circumstances on the Magistrate of the district powers of an anomalous and extraordinary character. Notwithstanding this the Judges were not prepared to advise against conferring even these powers upon the Magistrate in cases in which the Government may determine that it is absolutely necessary in the interests of public order and public safety that he should be so armed. They, however, suggested that the section should be so cast as to require that the powers should be exercised only after the issue of a proclamation limiting the period of its currency and limiting the area to a tract for which a special police had been sanctioned. Modifications have now been made in substantial accordance with these suggestions.

"Two learned Judges, Mr. Justice Ghose and Mr. Justice Banerjee, however, went further and doubted whether such provisions should be enacted at all. Their objections are that no procedure is provided, nor is the offence

defined, nor is there any limit to the fine. The first two of these objections have been met, while the answer to the third is that the fine is necessarily limited to the amount of damage done. It is for the aggressors themselves to fix this limit.

"The Judges go on to say that such provisions are exceptional (which is on all hands admitted) and should not find a place in an enactment applicable to the whole of British India, and relating to a subject with which their connection is but remote and accidental. I have endeavoured to show that the connection is really close, and that it is acknowledged in England. If this Bill becomes law, it will be applicable to the whole of British India only in the sense that the Governor General in Council may apply it, or a part of it, to any province or part of British India, while the operation of the section now under discussion is limited to the particular disturbed tract of the Local Government.

"The remaining suggestion of importance is that the award of compensation should be open to question in the Civil Court. To allow a person who has to pay compensation to question the order in the Civil Court would, I venture to think, be inconsistent with the whole theory of this measure. It is the *claimant* (as I have shown) for whom the English law provides a remedy by action against the police authority.

"I have now shown that the highest judicial authorities are, with three exceptions, either decidedly in favour of this provision, or at the least do not advise against its enactment. The suggestions which they have made have been almost entirely accepted, and there can be little doubt that the section in its present shape would have met with a more definite and complete acceptance.

"In conclusion, my Lord, I propose to vote for the section because it seems to me just and in general accordance with long established precedent, and because it will, I hope, be a material discouragement to wilful or reckless breaches of the peace."

The Hon'ble SIR FREDERICK FRYER said:—"My Lord, the main objection made to section 5 of the Bill by which compensation may be awarded to persons who have suffered from the disturbances or misconduct described in the previous section is that it is a new departure, which it does not appear to be, as it follows a well-established principle of English law, and I wish to point

out that we need not go so far afield as England to look for the principle, as it is found in section 24 of the Punjab Frontier Crimes Regulation, under which any village-community or part of a village-community the members of which, after due enquiry, are found to be guilty of colluding with or harbouring or failing to take all reasonable means to prevent the escape of criminals or combining to suppress evidence in criminal cases may be fined, and the fine may, under section 47, be awarded in compensation to the injured party. The same holds good under section 25 when any person is dangerously or fatally wounded by unlawful attack or the body is found of a person believed to have been unlawfully killed. In Burma, too, the same principle is found in sections 14 and 15 of the Lower Burma Villages Act and in sections 9 and 10 of the Upper Burma Villages Regulation. The law in the Punjab and Burma is not identical with that which it is now proposed to enact, but the principle is the same.

"Then it is said that under this section Magistrates are empowered to encroach upon the undoubted functions of the Civil Courts, though the Civil Courts cannot deal at all with cases which this section is intended to cover, which are cases in which the actual offenders have not been discovered or are men of no substance who are not in a position to pay compensation. If the sufferers are able to recover compensation from the actual offenders in the Civil Courts, they are in no way bound to have recourse to the remedy provided by this section.

"The same safeguards are proposed to be applied to this section as to section 4 of the Bill, and the section as amended on the motion of the Hon'ble Sir Griffith Evans will have a very limited application, as compensation will now scarcely ever be claimable except for an injury which takes place after the issue of a proclamation. I cannot recollect any instance in which a proclamation has been issued within one month from the date of a disturbance."

The Hon'ble SIR GRIFFITH EVANS said:—"This is no doubt a novel section, and it is one on which much dispute has arisen. The principle upon which it proceeds appears to be that, first of all, where there is damage done by a riot or tumult, it is generally impossible to find out who did it. There may be exceptions, but as a rule it is impossible to find out. At the same time it has always been the rule in England, apart from the recent Riots Damages Act of 1886, that compensation ought to be given by the locality in some form or other to the person injured, and the Act that existed before the Act of 1886 was an Act of Geo. IV, under which there was an action brought against the county or hundred,

but in cases under £30 the matter was tried by the Magistrates and the Magistrates disposed of it. Now, in this country no one has been in the habit of paying the inhabitants where they have been injured by a riot, but they have the consolation of knowing that their losses from this cause have been very much less under our rule than under the rule of our predecessors, and therefore, not having been accustomed to receive any redress in this case, they have accepted the position with true philosophy, as if there had been some convulsion of nature. However, in consequence of the recent great wave of rioting passing over the country, the matter appears to have come under consideration, and the question was whether the Government should endeavour to effect two objects, that is, to give compensation in the cases where injury had been inflicted by rioters and also give a pecuniary interest to the inhabitants of the district to prevent the district from getting into a disturbed state. Now, it is to be observed that no scheme has been framed like the English scheme for giving compensation generally for damage done by riots and tumults. Under this Act such compensation can only be given where the district has been proclaimed, and, as I explained to the Council, the mere fact of a riot taking place does not necessitate the proclamation of the district at all. This is not the English scheme, but is a modified scheme only applicable to the exceptional cases of proclaimed districts. Now, the real question which arises under these circumstances is whether you can effect these excellent objects without doing more harm than good. That is a very serious consideration. A great deal depends upon the machinery. If it had been proposed by this machinery to give general compensation for damage done by riots, I should have said this was a most inadequate machinery; but there is this to be said for it, that it will operate only very exceptionally. It will operate only in cases as a rule where riots have taken place in proclaimed districts, and these are very exceptional cases.

"Now, with regard to the machinery, it has been improved by putting in a provision in regard to the Local Government and a power to make rules. But it is no doubt open to the remark that whereas, under the English system, the interest of the district against which the claim was made was sufficiently represented by the investigating Magistrates who were ratepayers, the same cannot be said in India, and it will be necessary to frame rules as to who may appear and oppose the proof. The novelties of this section and the difficulties connected with its working have led me to introduce amendments which prevent its being worked except in a very few exceptional cases. But there are a few cases in which it may be desirable to have this section at hand to compensate sufferers and to bring further pressure on disorderly classes in

very aggravated cases. In such cases it is all-important that the procedure should be speedy and final, and it is no doubt true that an investigating Magistrate proceeding to the spot shortly after a riot will have a better chance of arriving at a true estimate of the damage done than a Civil Court proceeding upon oral evidence most of which may be concocted, and sitting at a distant place long after the occurrence.

"There is no doubt a very large body of opinion in favour of the measure. I hope this will be treated as a very exceptional power and that the working of it will be carefully watched over."

The Hon'ble MR. PLAYFAIR said:—"The few remarks I have to make on section 5 are in continuation of what I said on section 4. The Government ask for a special power to give compensation in disturbed districts on the grounds not only of justice to the sufferers but of the deterrent effect on intending rioters and their allies. The amendments of section 5A proposed by the Hon'ble Sir Griffith Evans and accepted by Government have greatly diminished the sphere of its operation and the danger of abuse, and I think in this limited form the power may be granted with a minimum of risk for use in exceptional cases. In abstaining from opposing the passing of this section and this Bill as amended I am influenced by the fact that many of the objections to the Bill in its original form have been removed and the consideration that when the Government, after what has occurred, ask us for increased powers to deal with disturbed districts, we ought not to refuse them unless the powers asked for are manifestly injurious or excessive. I trust that these powers so far as they are new will be exercised with caution."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said:—"My Lord, the amendment which my hon'ble friend moves is that section 5 of the Bill, which provides for compensation being paid to persons injured in course of a disturbance, either in respect of person or property, may be struck out of the Bill. It seems rather a drastic amendment to move that an entire section be struck out of a Bill which the Government have had before it for some months, upon which a very large number of officials have been consulted, and which has passed through a Select Committee who have considered carefully all shades of opinion recorded in reference to it, both officially and non-officially. But if the amendment is so drastic the fact shows only that there is a great diversity of opinion on the subject. On the one hand, it is urged that it is necessary that persons injured in a disturbed area in regard to which a proclamation has been issued by the Local Government should be compensated for

any injuries they may have suffered; on the other hand, it is argued that, fair as that may be, an Act 'for the regulation of police' has nothing to do with it. My Lord, I wish I could trace the origin of a section so much disputed as this. But the Bill has been so materially altered that the Statement of Objects and Reasons helps us but a very short way in this direction. 'It is proposed by section 5,' says the Statement of Objects and Reasons, 'that in some cases, where an additional police-force is not imposed, those who would be liable for its maintenance should pay compensation to persons injured.' By the original draft of the Bill as it was first presented, the payment of compensation was therefore restricted to those only who would not have to pay the cost of any additional police. This only went to prove the humane object of the Hon'ble Mover. But the Bill, as it stands to-day, provides for compensation being paid whether or not the inhabitants have to bear the cost of an additional police at the same time. This alteration has arisen from the contention that the question of damages should be considered quite apart from the question of the cost of an additional police—a contention in which I so perfectly agree that had it stood as it did originally I would have rather incurred the disapprobation of my countrymen for harshness by moving for the necessary alteration, than allowed the question of reparation to injured persons to be subordinated to that of reparation to Government, so to say, in the shape of the cost of additional police. In vain, therefore, my Lord, I seek for the origin of the section in the Statement of Objects and Reasons. I am, therefore, inclined to believe that the recent disturbances in the country between the Hindus and the Muhammadans may have had something to do with it—a belief in which I am confirmed by the fact that the Police Act was passed thirty-three years ago, and that it has never until now been suggested that provisions should be made therein for the payment of damages to persons injured, and the existing civil and criminal laws have always been considered sufficient for such purposes, and that it is the recent experiences of the Government which have proved to it the inefficiency of the existing laws. Indeed, the following extract from a letter of the Government of the North-West Provinces, dated as far back as 18th September, 1893, to the Government of India, seems to throw considerable light on the origin of this section. The North-West Provinces Government says :—

'At Azamgarh the Lieutenant-Governor received several petitions from Muhammadans, praying that compensation might be awarded to them for the injuries they had sustained, and it appears obviously right that such persons should be compensated at the expense of those who are responsible for the mischief. In this connection it would, Sir Charles Crosthwaite thinks, be well to provide that, instead of or in addition to the quartering of additional police at their cost, the landowners or inhabitants should be liable

to fine to such amount as the Local Government might direct, the fine to be imposed in addition to the cost of the police when the misconduct of the landowners and inhabitants had caused loss to any person, and to be applied to compensating the injured person; the fine to be instead of police when the landowners or the inhabitants had been guilty of misconduct deserving punishment, but not such as to render the quartering of police desirable. The class of cases which this provision is intended to meet is that, for example, in which the inhabitants of a village turn out and assault Muhammadan cattle-drivers and bar the road. The village may be unable to bear the cost of a police-guard for any lengthy period, while it is very inconvenient to enlist additional officers and constables for a short period. A moderate fine on the village would be a most appropriate and effectual punishment.'

"My Lord, I think it probable that these and similar experiences of recent years may have induced the Government to consider the expediency of making in the Police Act a provision for compensation like that under discussion. I am sincerely sorry that, when the Muhammadans of Azamgarh petitioned the Lieutenant-Governor for compensation, His Honour did not see his way to complying with their prayers, just as I would have been sorry if some Hindus or some other class had petitioned for redress and had not met with it at His Honour's hands. To refer to another example cited by the North-West Government, if the inhabitants of a village turn out and assault Muhammadan cattle-drivers and bar the road, a moderate fine on the villagers by way of compensation would be a most appropriate and effectual punishment. Of course, in this latter instance also I can see quite clearly that both sections of the community, Hindus and Muhammadans, might be benefitted by a provision for compensation, for these cattle-drivers might be as often Hindus as Muhammadans, and the villagers turning out to assault them might not always be Hindus.

"I, therefore, perfectly agree with the Government of the North-Western Provinces as to the justice and propriety of compensating those who have suffered in any way at the expense of those who have caused the suffering. But the question is whether the law of damages already existing is not sufficient to meet even cases like those which have been brought to light by the recent experiences of the Government, particularly as would appear in the North Western Provinces.

"My Lord, I would not put myself forward as an authority qualified to pronounce an opinion on the question of the efficiency or inefficiency of the existing law. But the Government have taken the trouble of consulting a large number of persons who, from their education, their position, their office, or their

knowledge of the country, might be expected to give an opinion deserving of attention from this Council. Thus I have had before me a very large number of such opinions, and I would implore the Council to decide the point in the light of those opinions. In the first place, then, those who are in favour of the compensation provision have generally disposed of the question by saying that it is a very good provision and that it is very urgently required. Few of them have taken the trouble to show how it is urgently required or how the existing law is inefficient. I regret, therefore, that I am deprived of the opportunity of quoting their arguments on these heads for the consideration of this Council. Generally speaking, however, their arguments are the same as those put forth by the North-Western Provinces Government in reference to the objection taken by Mr. Justice Banerji of the Allahabad High Court to the compensation section. This is what Mr. Justice Banerji says in reference to it:—

'Section 15A seems to me to be out of place in an Act for the regulation of police, enacted, as the preamble to Act V of 1861 recites, "to reorganize the police and to make it a more efficient instrument for the prevention and detection of crimes." The proposed section has nothing to do with the organization or re-organization of the police. It is a piece of substantive legislation, and I fail to see what connection it has with the regulation of police.

'If the policy of the proposed section is open to question, it seems to me to be extremely doubtful whether such legislation should be undertaken; the law as it exists affords to individual sufferers sufficient remedy against those who have caused them injury by a civil action for damages. It seems to me that it will be too drastic to make a whole community pay compensation to members of another community for the acts of individuals. Such a measure, I fear, is likely to embitter the feelings of one community against another, and is calculated to keep up rather than allay ill-feeling between members of different communities. Individual sufferers should, I think, be left to their ordinary remedies.'

"In reply to these remarks the Government of the North-West Provinces says:—

'With due deference to the opinion of the learned Judge, Sir Charles Crosthwaite does not think that the civil law is always a sufficient protection to the sufferers in cases of riot. The perpetrators of the damage are often unknown, and, even if they are known, the delays, uncertain issue and expense of a law suit tend to give them practical immunity.'

"My Lord, I attach some importance to the concluding words of His Honour, as almost the same words were used by the Hon'ble Mover of the Bill on the day the Bill was referred to the Select Committee as arguments

in favour of the compensation section. It is said that in a riot the perpetrators of a damage are unknown, and so no civil suit can be brought against them. My Lord, if they are unknown, it follows that the order of the Magistrate awarding compensation to the sufferers would not touch so much those who had really caused the damages as those who had not. It will, perhaps, be contended that in making the entire community liable the chance of including the really guilty would certainly be very great. That is to say, my Lord, for the mere chance of making the really guilty pay, their number being, perhaps, two, three, half-a-dozen, or say, a dozen only, for the mere chance of enfolding these dozen men, an entire community of hundreds of confessedly innocent persons is to be taxed. Will such a course, I would ask, be consistent with the principle that it is better that ten guilty persons should escape than one innocent person should be punished, with which it is believed in this country the British sense of justice and British legislation is permeated? Will such a course, my Lord, be consistent with the benefit of doubt given by British laws even to the meanest criminal? Does it not, in fact, reverse that principle, by penalising, not those only whose guilt is established, but all whose innocence is not established? If the perpetrators of the damage are unknown, it is a misfortune for the sufferers; but it cannot constitute a reason for making hundreds of innocent persons responsible, any more than, when a murderer is unknown, it is reasonable to hang another man in his place. Then, my Lord, it is argued that, even if the perpetrators of the damage are known, they are often men of straw. This is one of the arguments which the Hon'ble Mover of the Bill used on the occasion referred to above. Of course the Hon'ble Mover did not mean to say, as the Indian Relief Society have suggested, that, because the perpetrators were men of straw, therefore their rich neighbours were to be mulcted in damages. What the Hon'ble Mover evidently meant was that very often there are rich people in the background who instigate these men of straw while they themselves remain concealed, and there can be no harm, therefore, in including these rich neighbours amongst the persons responsible for the injuries done by their tools. But where is the certainty, my Lord, that every rich man is an instigator, and that innocent men, rich and poor alike, will not suffer for the faults of others?

"It is argued that civil suits cause delays. I am under the impression, my Lord, that the Judges and Munsifs are the most hard-worked class of officials in the country. I am at the same time aware that a civil suit is, generally speaking, not so quickly disposed of as a criminal suit. So far as this delay is avoidable, my Lord, it may furnish good ground for improving the procedure

of the Civil Courts, but whether it is avoidable or not, it cannot furnish a ground for substituting a procedure which involves the risk of punishing the innocent along with the guilty.

"Then, again, it is argued that a civil suit is expensive and its issues are uncertain. As regards expense, my Lord, I think there is not one law for the rich and another for the poor, as Sir Barnes Peacock puts it. If a poor man has suffered injuries, he can claim damages according to the law already existing, and his poverty can be no reason for fresh legislation by which the first principles of law to punish the guilty, and guilty only, would be violated. Besides, if litigation be costly for the sufferers, and certainly it is very costly in this country for all classes, I hope the Government may see their way, if not in the face of the present financial difficulties, at least at some future time, to reduce the charges for court-fee stamps, etc., and thus earn the gratitude of all sections of the people. Moreover, if any of the sufferers from damages are really so poor that they cannot obtain justice simply owing to their inability to bear the costs of a suit, there is no reason why the Government should not allow them to sue in *formâ pauperis*. So far with regard to the argument of a civil suit being expensive. As regards the issues of a civil suit being uncertain, I believe the uncertainty is a quality which attaches equally to civil and criminal suits, and that, just as in the case of delay, the uncertainty of a suit does not imply injustice in a greater degree than the summary decision of a case by the executive according to their impressions implies justice. I believe, my Lord, that every suit, civil or criminal, whether before a judicial or before an executive authority, whether in this country or in any other, must from the nature of the case be uncertain, so long as the Judge does not try it with his mind already made up as to the merits of the case before hearing it.

"I hope, my Lord, I have now answered the arguments put forth generally by the supporters of the compensation section to prove that the existing law of damages is inefficient. I will, however, beg leave to quote from the opinions of some of the highest authorities in the country, both executive and judicial, who, as I said above, have had ample opportunities of knowing how far the existing law is defective, or otherwise, and what amount of mischief the proposed provision for compensation is liable to produce. I have already quoted the opinion of Mr. Justice Banerji of the Allahabad High Court. The Judges of the Calcutta High Count characterise the powers of awarding damages proposed to be given to the Magistrates as 'anomalous and extraordinary,' and 'in supersession of the ordinary law,' and are not apparently confident that it is

absolutely necessary for the Government to arm the Magistrate with such powers. The Hon'ble Judges are certainly far from being strong in their recommendation that the section should be embodied in Act V of 1861, and two of them, the Hon'ble Mr. Justice Ghose and the Hon'ble Mr. Justice Banerjee, are strong in their condemnation of the proposal. Such are the opinions of the highest judicial authorities in the land, and I should have questioned the propriety of retaining the section after such serious objections have been taken to it by them. The question takes, however, a still more serious form when we find that the very executive officers whom it is proposed to arm with these powers, and who, rightly or wrongly, it is sometimes complained in the Press are always anxious to have large powers conferred upon them—it is a serious matter, I say, when these executive officers themselves condemn the section as utterly unfit to find a place in the Police Act. This is what Mr. Windsor, the Officiating Deputy Commissioner of Manbhum, says :—

'I am inclined to think that section 5 goes too far in placing in the hands of the District Magistrate the power to assess loss or damage caused to sufferers from the commission of death or grievous hurt or damage to property, and also the power to determine summarily what persons should pay this compensation. It seems to me that this section is in fact a reversion from the system of justice administered by the Courts of law to the older method which existed prior to the establishment of these Courts. If this section is required, it is a confession that our Courts, both criminal and civil, are incompetent to fulfil the purposes for which they exist. The remedy appears to me to lie in a reform in the procedure of the Courts, rather in empowering the executive authorities to perform acts which appertain to the Courts of law.'

"This is again what the Magistrate of Balasore writes of this section :—

'The principle of awarding compensation to persons suffering from the misconduct of the inhabitants of a particular locality, or of persons having interest in land in such locality, is theoretically very sound and just, but I am not sure whether it may not give rise to great injustice and hardship in practice. In the first place, it is extremely difficult to assess the pecuniary compensation payable for death or grievous hurt, and in the second place it will be a matter of equal difficulty to fix upon the persons to whose misconduct such death or grievous hurt should be held to be attributable. Even in cases in which offenders are convicted and punished for causing death or grievous hurt, the Judge rarely finds it practicable to award compensation to the sufferers, and the difficulty will be much greater in the cases comtemplated by this section, in which there will be much uncertainty as to the persons who should be held responsible for causing the injury for which compensation should be granted.'

"My Lord, I would draw particular attention to the nature of the difficulties pointed out by the Magistrate of Balasore as likely to be entailed by the practi-

cal working of this section; they are serious practical difficulties, and claim our consideration as practical men.

"My Lord, I do not wish to take up the time of the Council by quoting further at length from the opinions of officials who have condemned the compensation section as likely to be productive of great mischief. I will only refer to the opinions of the Officiating Commissioner of the Burdwan Division and of the Magistrates whose opinions he had invited. They are all executive officers. I would also refer to the strong protest made against it by Colonel Bowie, Commissioner of the Nerbudda Division, who has been one of the oldest and most sympathetic officers in that part of the country, and who has had, in the words of the Chief Commissioner of the province, 'long and varied experience as a Magistrate and Inspector General of Police.' The Chief Commissioner himself, with his very valuable experiences, not only of my provinces but also the North-West, while he does not recommend the section to be dropped, remarks as follows:—

'Nevertheless the effect of any such award of compensation will unquestionably be in the great majority of cases to increase the angry attitude which had already led to riot, and, if the Chief Commissioner were himself a District Magistrate, he would be very unwilling to make an award of compensation under the proposed section, unless or until he had made sure by the presence of special police that all risk of renewed turbulence was sufficiently met.'

"Such then is the risk, my Lord, which may have to be run sometimes in giving effect to this section, that a special police must be on the spot beforehand to meet any renewed turbulence that may arise owing to the section being put in force. Is it worth our while to run this risk? If the object be to punish the inhabitants in more ways than one, I believe that they can be so punished according to the penal laws already in force. I do not think that sufficient reasons have been produced to show that the existing laws have been found insufficient for the purpose, and that the Indian Penal Code has failed. But if the object be not to punish them, but to recoup the losses suffered by others, then again the existing law of damages gives them sufficient protection, and that it does give it has been, I hope, made sufficiently clear from the opinions which I have quoted or referred to.

"My Lord, there are one or two other points in this connection to which I would beg leave to draw the attention of the Council, in order to show how far safer it would have been to leave the question of damages to be settled by the ordinary Courts of law. The section, as it stands now, makes the inhabitants of

any proclaimed area liable to pay compensation for the injuries suffered by any person through the misconduct of others. Now, my Lord, in a disturbed place there is every chance of some persons being grievously hurt, or some loss of or damage to property taking place; and, as a matter of course, in these places additional police must have been quartered; so, generally speaking, the inhabitants will have to bear both the charges. Thus the incidence of taxation in such cases will be double that which the inhabitants used to bear before. The individual incidence, however, will be still further increased when the exemption clause is brought into operation. Then a number of innocent persons will, as admitted by the Hon'ble Mover, always be included with the really guilty, and what will be the feelings of these innocent persons under this threefold pressure of taxation? They, at least, are conscious that they are innocent, and when they see that they have to bear not only the cost of the additional police as before, but also a share of the compensation charges, and when they feel that the incidence of this twofold charge presses upon them all the more sharply because of some persons having been exempted, amongst whom, though innocent, they have not been included—when, my Lord, they begin to think and feel in this way, will they not begin to think and feel also, however unreasonably, that the Government is doing them great injustice, and that the Government is favouring a certain class or number of people at their expense? I would thus humbly and respectfully suggest that this supposed sense of favour will make the sting all the more poignant, and is likely to create an unpleasant impression. The people in this country, my Lord, are proverbially loyal, peaceful and law-abiding, and they have great faith in the justice of the British Government. But when these common ignorant people have once begun to think and feel in the way I have pointed out above, is it not to be apprehended, my Lord, that they will give expression to their thoughts? Is there not some ground for fearing that when ideas such as these I have described above have once taken hold of them, they will raise a cry from one province to another 'till there will be a good deal of discontent throughout the country.' My Lord, I make no pretension to being able to read the signs of the times and say with a certainty what causes may bring danger to the State, and what policy it would be best for the British Government in this country to adopt. This much, however, seems to me certain, namely, that any measure which tends to spread discontent amongst the subjects of the Government, though such a discontent may not at once manifest itself openly, requires to be carefully weighed in the balance before it is launched upon, and as a loyal subject, who feels himself bound both to his God and to his sovereign to remove all such causes of disaffection by means both private and public, I venture to appeal to Your Lordship and to

this Council to drop this much-vexed compensation section from the Bill, and thus remove what may be the cause of—as the Commissioner of a Division puts it in this connection—'a wide-spread disaffection which may assume a political significance.'

"I make this appeal with the less hesitation, my Lord, as the part of the country which I specially represent is happily exempt from the violent disputes which have unfortunately given rise, of late, to rather serious troubles in some other parts of India. In the Central Provinces not only are agrarian disputes practically unknown, but the relations of the Hindu and Muhammadan communities have always been marked by mutual good-will and respect. I consequently lie under no temptation to form an exaggerated estimate of the dangers which I foresee are likely, where an opposite state of things prevails, to arise from the operation of the clauses which provide for compensation for injuries to be awarded by the executive authorities against particular classes of the inhabitants of a disturbed locality. On the contrary, I feel—and I am sure that this will also be the feeling of the people of the Provinces generally—that in the absence of some great change in the circumstances and temper of the people, which there is no reason to apprehend in the near future, these provisions of the Bill are likely, as far as these Provinces are concerned, to remain a dead-letter. Nevertheless, my Lord, I cannot help feeling that the general tendency of the compensation clauses of the Bill will be to increase irritation where it exists, rather than allay it, and thus to bring about a state of things which every loyal subject of the Government must deplore, and that there is much room to fear that they will have this tendency no matter how carefully and impartially they may be worked."

The Hon'ble SIR ALEXANDER MILLER said:—"I think that the opponents of this clause have been under a misapprehension when they speak of this as a punishment of the guilty, or as requiring a judicial investigation in order to discover who are guilty. This is not in the nature of a punishment or fine. It is a compensation which is to be given to the victims of an outrage of whom the perpetrators are ordinarily unknown. It is said that hitherto no such law has existed in this country. I think that if the clause now proposed by Government errs in any way—and I do not mean to affirm that it does so err—it is because it is too cautious and too much confined, that instead of laying down the broad principle which prevails in England, and I believe in every country in Europe, that in cases of this kind, where the aggressors are unknown, the locality is bound to make compensation to the sufferers, it limits the com-

pensation to be given to a few admittedly very exceptional cases. It is in fact a mere tentative clause not affirming the principle as broadly as I believe the Government might be justified in affirming it. But I do not think that it is really to be attributed as a fault to Government that in introducing an innovation of this kind they have thought it fit in the first instance to minimise it as far as possible, and I do not think that any one who looks at the provision of this section as now altered can help thinking that if compensation of this kind is to be given at all, it could not possibly be given in more limited circumstances or subjected to more careful safeguards than those inserted in this section. Certainly the safeguards are largely in excess of those which exist in similar circumstances either in England or Ireland. There is no such thing—it is a misapprehension on the part of Hon'ble Members—as a judicial investigation either in England or Ireland as to the question of whether there has been an outrage committed, or as to the amount of damages for that injury. All that is given by the Act already quoted is a right on the part of persons who are to have compensation assessed to them to bring an action against the public authorities if they refuse to do their duty in assessing and levying that compensation; but it is not an action against supposed aggressors at all; it is an action against the public authorities in order to make them do their duty. That is not given in this section, and I have no reason to suppose that it could be required. It is said that the ordinary law is sufficient to deal with these injuries, but it is overlooked that the ordinary law can only deal with persons proved to be aggressors. No doubt, if you can show that a given individual has inflicted an injury, you have an action against him; but this Bill is intended to meet a case where it is absolutely impossible to say who are the particular individuals who have committed an outrage, and therefore where the ordinary law is perfectly powerless. All that is at all peculiar in the section is this, that the duties which are entrusted in England to the police authorities, and which are entrusted in Ireland to the Grand Jury of the county, are entrusted in this Bill to the very highest executive authority of the Province, that is to say, the Local Government; and I am bound to say that it appears to me that the section is so limited and so safeguarded that it is almost impossible for compensation to be given in any case where it is not fairly due; and I am afraid it is very possible that there may be cases where it would be desirable that compensation should be given, where the terms of this section would not enable Government to give it."

The Hon'ble MR. MEHTA said:—"When the Hon'ble the Legal Member said that the executive authorities may be trusted to deal with claims for compensation under the section in the same manner as the 'police-

authority' under the English Statute, I should like to point out that he was forgetting the essential difference between the two bodies. I have already pointed out that the 'police-authority' of the Statute stands in technical language for the corporations of the towns and the benches of Justices of Counties, that is to say, for the local bodies who maintain their own police and who have to pay the cost from their own pockets by taxing themselves to levy a police-rate for the purpose. They can, therefore, well be trusted to scrutinize claims against themselves. The executive authorities under the section have, on the other hand, only to put their hands in other people's pockets. But what Hon'ble Members who oppose my motion forget most is that under the Statute the claim is made for the purpose of ascertaining whether the party against whom it is made is prepared to admit it, otherwise the only resort is an action at law. That is very different from a District Magistrate awarding compulsory compensation without the consent or, if he likes it, without even consulting the parties who are ordered to pay it. The rest of the arguments of the Hon'ble Members proceed upon a misconception of our position in this matter. We have not said and we do not say that parties who have suffered damage from riots should not be compensated at all. In England, the hundred is liable, because in England the police is local, and the hundred maintains it. In India it is different, and the cost of the district police is not localized, but is paid out of general funds. *Primâ facie*, the compensation should come out in the same way. But, even admitting that it were right to make special areas liable, our main contention is that that liability should be adjudged judicially like all other pecuniary liabilities, and that executive officers should not be vested with the power of adjudging it arbitrarily without trial and judicial enquiry, in which both sides could be heard."

The amendment was put and negatived.

The Hon'ble MOHINY MOHUN ROY asked for leave to withdraw his motion that section 6 of the Bill as amended by the Select Committee be omitted.

Leave was granted.

The Hon'ble MR. MEHTA, with the permission of His Excellency the President, then moved the two following amendments which stood in his name together :—

That the following be substituted for section 10 of the Bill as amended by the Select Committee, namely :—

"10. For section 30 of the said Act the following shall be substituted, namely :—

'30. (1) In any case of an actual or intended religious or ceremonial or corporate display or exhibition or organized assemblage in any street as to which or the conduct

of or participation in which it shall appear to the Magistrate of the district that a dispute or contention exists which is likely to lead to grave disturbance of the peace, such Magistrate may give such orders as to the conduct of the persons concerned towards each other and towards the public as he shall deem necessary and reasonable under the circumstances, regard being had to the apparent legal rights and to any established practice of the parties and of the persons interested. Every such order shall be published in the town or place wherein it is to operate, and all persons concerned shall be bound to conform to the same.

'(2) Any order made under the foregoing sub-section shall be subject to a decree, injunction or order made by a Court having jurisdiction, and shall be recalled or altered on its being made to appear to the Magistrate of the district that such order is inconsistent with a judgment, decree, injunction or order of such Court, on the complaint, suit or application of any person interested, as to the rights and duties of any persons affected by the order aforesaid.'"

And that the following be substituted for section 11 of the Bill as amended by the Select Committee, namely:—

"11. After section 30 of the said Act the following shall be inserted, namely:—

'30A. (1) The District Superintendent or an Assistant District Superintendent of Police may, subject to any rule or order which may at any time be legally made by any Magistrate or other authority duly empowered in this behalf,—

(a) make rules for and direct the conduct of assemblies and processions and moving crowds or assemblages on or along the streets, and prescribe, in the case of processions, the routes by which, the order in which, and the times at which the same may pass;

(b) regulate and control, by the grant of licenses or otherwise, the playing of music, the beating of drums, tomtoms or other instruments and the blowing or sounding of horns or other noisy instruments in or near a street;

(c) make reasonable orders subordinate to and in furtherance of any order made by a Magistrate under section 30.

'(2) Every rule and order made under this section shall be published at or near the place where it is to operate or shall be notified to the person affected thereby, and all persons concerned shall be bound to act conformably thereto.'"

The Hon'ble Member said:—"I do not propose to detain the Council at any length on this motion, as I recognize that, on whichever side may be the arguments, the votes are certainly on the side of the Hon'ble Member who protects the Bill. The Hon'ble Member is so much in love with the experiments of the Bombay Legislature, that my amendment aims at substituting the corresponding sections of the Bombay District Police Act of 1890 for those in the Bill. I

have copied the sections in my amendment word by word from the Bombay Act. The Hon'ble Mr. Stevens, who says that he has industriously waded through the debates in the Local Council on that Act, will no doubt remember that it was the avowed object of Lord Reay's Government that in imposing new duties, liabilities and restrictions they acknowledged at the same time their obligation to provide safeguards against the abuse of the powers vested in the police and the executive. The difference in the Bombay sections and the sections in the Bill is that the former incorporates safeguards, and the latter does not. For example, the orders of the Magistrate in the Bombay sections are controlled by the decisions of the Courts of law with regard to established rights of the parties. They regulate and control the use of music, but do not place it at the mercy of the executive. If we are to be consistent, let us follow the Bombay legislation on both sides and not simply take it up when convenient and drop it when it does not suit our purpose. My amendment gives the Council the opportunity of showing whether the affection for the Bombay Act is real or not."

The Hon'ble SIR ANTONY MACDONNELL said:—"My Lord, the Hon'ble Member has said that as we shew such an affection for the Bombay Act we ought to accept these sections which are taken from the Bombay law. But one may have an affection for the whole of a thing without being in love with a fraction of it. To these sections in themselves and in the abstract I desire now to take no exception, but they only form part of an elaborate procedure extending over several sections and comprising an entire chapter of the Bombay Act. Some of the more substantial provisions dealing with the powers of the police for the prevention of riot and disorder which the Bombay Act contains have been ignored by the Hon'ble Mover of this amendment, and particularly that provision of the Bombay Act, namely section 54, which confers on any Magistrate or police-officer special powers to enforce obedience to orders issued under the provisions of his draft sections 30 (*1*), (*2*). The two sections proposed by the Hon'ble Mover of the amendment are, therefore, as it were, in the air, and by themselves supply an entirely inadequate substitute for sections 10 and 11 as they stand in the Bill.

"My Lord, the Bombay Act enters into much greater detail on this subject than Act V of 1861, and we should be departing altogether from the framework of the latter Act were we to import into it the same details as are found in the Bombay Act. We shall take power in the rule-making sections to enable Local Governments to provide detailed regulations wherever they may be necessary."

The Hon'ble MR. MEHTA :—"I have taken those sections of the Bombay Act which deal with the subject-matter which sections 10 and 11 of the amended Bill propose to deal with."

The amendments were put and negatived.

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said :—"My Lord, in moving the amendment standing against my name that the proposed sub-section (*2*) of section 31A be omitted, I beg to observe that the proposed sub-section would cause needless harassment. The sub-section declares that any procession or assembly which neglects or refuses to obey an order to disperse shall be deemed to be an unlawful assembly. This has been introduced with a view to make such procession or assemblies liable to be dealt with under the provisions of Chapter IX of the Criminal Procedure Code. The question is, whether the penalties attaching to a violation of the terms of a license were not sufficient, and whether it is necessary to make such assemblies or processions liable to further penalties.

"To start with, the proposed sub-section (*2*) of section 30, which provides for licenses to be taken in the case of such assemblies or processions as, in the opinion of the Magistrate, would, if uncontrolled, be likely to cause a breach of the peace, is a precaution which would in itself in some cases act as a penalty. For the terms of a license may be so stringent that people may not be able to bring out processions at all. No doubt the power of requiring licenses to be taken under the circumstances stated above already existed, and I refer to it only to show that the probabilities of a disturbance arising from an assembly or procession had already been guarded against by it. But that is not all. Section 32 of the existing Act also provided that any assembly or procession, violating the conditions of a license, rendered itself liable to a fine up to two hundred rupees This should have been considered a sufficient safeguard. But some further provision has been suggested in the Bill. For the latter part sub-section (*1*) of the new section 31A now provides that the violation of the conditions of a license would render a procession or assembly liable to be dispersed. This new provision itself was in my opinion rather a little too harsh, for section 32 of the Act, which has in no way been altered by the Bill, had already provided a heavy punishment for the violation of the terms of a license, and the new provision just referred to, embodied in sub-section (*1*) of section 31A, would only serve as a double remedy. To enforce this second remedy, it seems, this third remedy, which I so strongly object to, has been added by sub-section (*2*). My Lord, to make an assembly liable to be deemed as an unlaw-

ful assembly means that every member belonging to it shall be, as a member of an unlawful assembly, liable, under section 143 of the Indian Penal Code, to be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. Then again, blunt swords and firearms are oftentimes carried in a procession as a matter of show, and thus the procession may come to be deemed not only as an unlawful assembly, but also as an unlawful assembly armed with deadly weapons, and the members thereof rendered liable, under section 144 of the Indian Penal Code, to a sentence of two years' imprisonment, or fine, or both. Thus the provision of sub-section (*2*) of section 31A would needlessly embarrass the law and harass the people. It will be contended perhaps that some provision must be made against disobedience of the orders for dispersal. It will be urged, what would be the good of passing orders for the dispersal of the procession or assembly unless provisions are made for the carrying out of those orders? I concur in the opinion given on the point by the North-Western Provinces Government that the police-officer concerned will be within his legal rights in so disposing the men under his command as without actual resort to force to make his order effective. If they are resisted by the procession or assembly, the act of resistance will convert the procession or assembly into an unlawful one, and thereupon it may be dispersed by force. The Government of the North-Western Provinces goes on to suggest that 'the legal position is not, however, as clear as might be wished, and it would be better if section 31 (now 31A) were to expressly authorise any officer in charge of a police-station to command a procession to stop or an assembly to disperse when the terms of a license have been violated, and to make his command effective by the use of force.' I think, my Lord, that if the object of sub-section (*2*) was simply to legalise the use of force in dispersing a procession or assembly ordered to disperse, a provision might have been made to that effect only. The provision of sub-section (*2*), however, goes much farther than is absolutely necessary, and I venture to hope that it will be omitted from the Bill, and I am sure that, for reasons already adduced above, its omission will in no way frustrate the object in view."

The Hon'ble SIR ANTONY MACDONNELL said:—"My Lord, it is no doubt true, as the Hon'ble Member says, that section 32 of the existing Act provides a penalty [of R200] for disobedience to an order issued under the two preceding sections. But the Police Act, as it stands, gives no power to the Magistrate or to the police to disperse an assembly which refuses to obey such an order. It is obviously most necessary that such a power should exist. The

order to disperse will never be given unless the assembly, on violating the conditions of its license, gives proof of its turbulent tendencies. If an order to disperse is once given, it should thereupon be possible for the police to enforce it. But, as I have said, the police, proceeding under Act V of 1861, cannot enforce an order to disperse; they must proceed under the Criminal Procedure Code. Under section 127 of the Criminal Procedure Code the Magistrate or police-officer has power to disperse an unlawful assembly. This sub-section thus will bring such an unruly assembly as I contemplate within the meaning of section 127 of the Criminal Procedure Code, and will give the police immediate jurisdiction to act.

"It is true that the punishment for being a member of an unlawful assembly provided by the Indian Penal Code is more severe than the penalty of fine provided by section 32 of the Police Act. But I do not think it unreasonable that a riotous mob should have the deterrent fear of adequate punishment held up before them. Practically an assemblage which acts contrary to the conditions of a license, which exhibits such riotous tendencies as to justify an order to disperse, and which refuses to disperse on issue of that order by a police-officer, has become an unlawful assembly within the meaning of the Penal Code, and I see no objection, but every advantage, in saying this plainly in this sub-section. By saying it we avoid all the contentious questions which might arise owing to the license having been necessarily directed to some few leaders of the assemblage, and not to each individual in a large crowd. The Government must therefore oppose the amendment."

The amendment was put and negatived.

The Hon'ble SIR ANTONY MACDONNELL said:—"This morning my attention was drawn to the wording of section 30, clause (*z*), and it has been brought to my notice that the wording of the section, as it stands in the Bill, might be interpreted to restrict the right of public meeting. I need hardly say that there was no intention on the part of the Government of India to do anything or to take any power to restrict the right of public meeting, and the Hon'ble Sir Griffith Evans, the Hon'ble Sir A. Miller and myself have been considering what words we might adopt with the view of removing any misapprehension of this kind; and, with Your Excellency's permission, I would beg to move the following amendment, namely, that the words 'place not being a private house or place of worship', in the third and fourth lines of section 30, sub-section (*z*), should be omitted, and that the words 'such road, street or

thoroughfare' be substituted for them. Then the sub-section would run as follows:—

'(2) He may also, on being satisfied that it is intended by any person or class of persons to convene or collect an assembly in any such road, street, or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the district or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a license.'

"I may explain that the question arises on sections 30, 31 and 32 of the Police Act. Section 30 deals with assemblies and processions on public roads, public streets or public thoroughfares. Section 31 says it shall be the duty of the police to stop any procession which violates the conditions of the license granted. Then we come to the penal clause, section 32, which runs:—

'Every person opposing or not obeying the orders issued under the last two preceding sections, or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.'

"Those assemblies and processions can only be assemblies and processions in public roads and thoroughfares. The object of the Government of India is not to alter the existing law upon these points, and I may say that it did not strike any member of the Select Committee that our language was capable of being interpreted in that manner. However, if Your Excellency permits that amendment to be put to the Council, and if the Council accepts it, all chances of misconception will have been removed."

His Excellency THE PRESIDENT:—"I think that that is an amendment which ought to be put."

The amendment was put and agreed to.

The Hon'ble SIR GRIFFITH EVANS moved that the following be substituted for sub-sections (2) and (3) of section 46 of Act V of 1861, as proposed to be substituted by section 15 of the Bill as amended by the Select Committee, namely:—

"(2) When the whole or any part of this Act shall have been so extended, the Local Government may from time to time, by notification in the official Gazette, make rules consistent with this Act—

(a) to regulate the procedure to be followed by Magistrates and police-officers in the discharge of any duty imposed upon them by or under this Act;

(*b*) to prescribe the time, manner and conditions within and under which claims for compensation under section 15A are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified and the proceedings (including local enquiries if necessary) which are to be taken consequent thereon; and

(*c*) generally for giving effect to the provisions of this Act.

"(*3*) All rules made under this Act may from time to time be amended, added to or cancelled by the Local Government."

He said:—"The amendment comes to this. It provides for rules to be made for carrying out the purposes of the Act, in particular prescribing the time, manner and conditions under which claims for compensation should be made, and the manner in which these various proceedings shall be carried out by the local officers. I thought it was very necessary to have some rules regulating the procedure under section 15 for reasons previously stated.

"This is the last of my amendments, and I only desire to add further that as amended there are only three questions of any importance raised by this Bill—should non-resident zamindars be treated as inhabitants, should a power of exemption be given to the Local Government, and should compensation be granted in special cases under special orders of the Local Government? That opinions should differ on these points is to be expected, but much of the opposition in Council to-day was more appropriate to the original than to the amended Bill. The angry waves of feeling raised by the original Bill have not yet subsided."

The Hon'ble SIR ANTONY MACDONNELL:—"I accept the amendment."

The amendment was put and agreed to.

The Hon'ble SIR ANTONY MACDONNELL said:—"My Lord, I have now to propose that the Bill as now amended be passed, but before doing so I have a few final words to say, and I am bound to make them very brief, considering the many speeches which have already been made on the Bill, and the patient consideration that has been given to it. But I do not wish to propose the motion without first asking the Council to consider what changes—what substantial changes—are made by the Bill in the existing law. I submit to the Council that the substantial changes are only three: first, there is the enlargement of the meaning of the word 'inhabitants'; next there is the compensation section; and, lastly, there is the power of exemption. The Hon'ble Mr. Mehta, no doubt, believes that the provisions regarding assemblies and processions are a substantial change, but I submit that on that head we

really do nothing but regularise the exercise of a somewhat indefinite power, thereby limiting it. The substantial changes are the three I have mentioned, and, after all that has been said in this Chamber to-day, I may surely indulge the hope that the public will come to recognise these changes in their true proportions, and to regard as mere figments of the imagination the many extravagances that have been said and written about them.

"One word more. It has been suggested that this is a one-sided measure aimed at a particular section of the community. This is only one of the lamentable misconstructions—I shall use no harsher word—which are often placed on much of the actions and saying of the Government and its officers. I wish to give to that suggestion the most public, the most emphatic, contradiction, and I cannot conceive how any sane man can honestly give credence to the suggestion for one moment. The Bill is aimed at no section or creed or nationality; its intention is to injure no one, but to prevent the misguided of all creeds and of all nationalities within this wide empire from injuring themselves. It is, I again repeat, a measure of prevention, of the existence of which, if it passes on to the Statute-book, ninety-nine out of every hundred of the population will probably feel nothing. If the hundredth comes to feel it, it will do him good, while preventing harm to the other ninety-nine."

The Hon'ble SIR CHARLES PRITCHARD said:—"My Lord, the amendments of the Police Act made by the passing of this Bill will, I believe, have a most salutary effect in strengthening the deterrent influence of the law and its power to prevent disturbance of the peace and check the commission of crime. I have not thought it necessary to intervene in the debate, but I do not like to give an absolutely silent vote for the measure, which has my cordial support."

His Honour THE LIEUTENANT-GOVERNOR said:—"I have not spoken before on this Bill chiefly because the arguments which had been used in the attacks made upon the measure appeared to me so flimsy and so transparent that they hardly required an answer, and also because the answers given by the Hon'ble Member in charge of the Bill assisted by other Hon'ble Members sitting opposite were so able that there was very little that could be added to what was said by him. But I do not wish to give an absolutely silent vote on this motion. I wish to say that the Bill as amended has my cordial support as far as its main principles are concerned. It is a great improvement upon the law as it stood, and I believe it will be for the benefit of the populace generally. It will strengthen the hands of the authorities only so far as they ought to be

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strengthened, and it will have a beneficial and salutary effect in producing peace and quietness in districts which are occasionally troubled by religious and agrarian disturbances."

The Motion was put and agreed to.

INDIAN RAILWAY COMPANIES BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to postpone his motion that the Bill to provide for the payment by Railway Companies registered under the Indian Companies Act, 1882, of interest out of capital during construction be taken into consideration.

Leave was granted.

CALCUTTA;
The 8th March, 1895.

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

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