

*Friday,
14th February, 1902*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,
LAWS AND REGULATIONS

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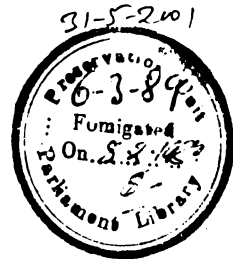
ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA:
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS

1902

VOLUME XLI



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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., c. 67, and 55 & 56 Vict., c. 14).

The Council met at Government House, Calcutta, on Friday, the 14th February, 1902.

PRESENT :

His Excellency Baron Curzon, P.C., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.

His Honour Sir John Woodburn, K.C.S.I., Lieutenant-Governor of Bengal.

The Hon'ble Sir C. M. Rivaz, K.C.S.I.

The Hon'ble Mr. T. Raleigh.

The Hon'ble Sir E. F.G. Law, K.C.M.G.

The Hon'ble Major-General Sir E. R. Elles, K.C.B.

The Hon'ble Mr. A. T. Arundel, C.S.I.

The Hon'ble Sir A. Wingate, K.C.I.E.

The Hon'ble Mr. D. M. Smeaton, C.S.I.

The Hon'ble Mr. C. W. Bolton, C.S.I.

The Hon'ble Rai Sri Rám Bahadur.

The Hon'ble Mr. Gopal Krishna Gokhale.

The Hon'ble M. R. Ry. Panappakkam Ananda Charlu, Vidia Vinodha Avargal, Rai Bahadur, C.I.E.

The Hon'ble Mr. L. P. Pugh.

The Hon'ble Sayyid Husain Bilgrami.

The Hon'ble Mr. R. G. Hardy, C.S.I.

The Hon'ble Rai Bahadur B. K. Bose, C.I.E.

The Hon'ble Maharaja Rameshwara Singh Bahadur of Darbhanga.

The Hon'ble Mr. M. C. Turner.

DEATH OF THE MARQUIS OF DUFFERIN & AVA.

His Excellency THE PRESIDENT said :—"Before we proceed to the business of our meeting this morning, I should not like to let slip the occasion of paying our share of the universal tribute to the memory of the distinguished Statesman, Lord Dufferin, who passed away full of years and honour two days ago, and a part of whose eminent career was so closely identified with this country. Coming here at a rather later period of life than most of his predecessors, Lord Dufferin brought to India an intelligence of the highest order that had been

18 DEATH OF THE MARQUIS OF DUFFERIN & AVA; CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

[*The President ; Major-General Sir Edmond Elles ; [14TH FEBRUARY, 1902.]*
Mr. Pugh.]

ripened by experience in many parts of the world, a great knowledge of men, and a personal charm that endeared him to all.

"This combination of gifts enabled him, in the short space of four years, to leave a lasting mark upon the administration and history of this country, where he will always be remembered as a Statesman who not merely extended the borders of the Indian Empire, but strengthened its foreign relations, and added to its internal peace and contentment. India will, I am sure, not wish to be left out of the crowd of mourners who, in every quarter of the globe, are offering their last meed of respect at this illustrious Englishman's grave."

CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES moved that the Report of the Select Committee on the Bill to make better provision for securing house-accommodation for officers in cantonments be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. PUGH moved that in clause 2, sub-clause (1), of the Bill, as amended by the Select Committee, the definition of "grantee" be omitted. He said:—"I cannot very well explain the grounds for this amendment without going into other amendments in the group of which I have given notice, and I think that that will be the shorter and more convenient way for me to adopt. With regard to this amendment, the word 'grantee' is what is called a fancy name, and it has a definition wholly different from the ordinary meaning of the word. With respect to land, we know very well what grantee means: according to the definition of grantee in the Bill, a grantee is not a grantee of the land but the grantee of a permission to do something upon it. I propose with the aid of the other amendments to substitute instead of this word 'grantee' the word 'owner' throughout the Bill, but in order to do this it is necessary to confine the Bill within somewhat more narrow limits, and, if the Council agree to the amendment I propose, we shall not in any way tend to prevent the Government or the military authorities from securing that which is the object of the Bill and that which they desire, namely, to make better provision for securing house-accommodation for military officers in cantonments. We all recognise the paramount claim of the military authorities

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[*Mr. Pugh.*]

in this respect, but Chapter II appears to go further than this. The end of the sub-section provides for an enquiry into the titles of the persons who hold land in cantonments, and then the other sub-sections go on to impose upon those persons certain conditions and certain presumptions which have caused very great alarm in the country with reference to the intentions of the Government. That alarm to my mind is an alarm which is unfounded, but I cannot say that there was not some ground for it in the Bill as it originally stood. However, as it has been altered in Committee and as it has been explained previously at the last meeting of the Council, I do not think that there is now any ground for such alarm. It must be remembered that this is not a declaratory Bill with the object of declaring the law as relating to cantonments; but it is a Bill brought forward for a certain specific purpose, and it does seem to be going beyond its real object to go and endeavour to declare the law with regard to the titles of these persons who hold houses in cantonments. The alarm was caused owing to the serious diminution in the value of property which was apprehended supposing that the provisions in question were retained. I have always thought, and still think, that the Government may well rest and take their stand upon the law, as it is at present, without any endeavour to alter it and certainly without endeavouring to put any statutory presumptions in the way of litigants, even in cases in which the Government is not at all interested and to which the Government may not be a party. I propose, therefore, in order to carry out this portion of my suggestion, to omit sub-clauses (3), (4) and (5) of clause 3. This will simplify the Bill very much; it will allay this anxiety and this alarm; and, at the same time, as far as I can judge, it will give the Government all that they require. On the other hand, I think that the Bill will put those who are affected by it, namely, house-owners in cantonments, in a better position than they are in at present. It will take away a great deal of that uncertainty which at present besets them; they will have a Bill showing clearly the position in which they stand instead of being liable to have Military Resolutions made with respect to them at intervals, perfectly uncertain, and Military Regulations the scope and result of which also they cannot foresee. I am bound to say that my honourable and gallant friend in charge of the Bill has in every way shown his desire to meet the views of the house-owners in this matter, and if, as I trust, the amendments which I now propose prove acceptable to the Council, I cannot but hope that the Bill will meet with the acceptance of the country and at the same time secure the object which the Government have in view. With these words, My Lord, I beg to move the first amendment which stands in my name."

[Major-General Sir Edmond Elles.] [14TH FEBRUARY, 1902.]

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES said:—"My Lord, I am prepared, on behalf of the Government, to accept the amendment now proposed by the Hon'ble Mr. Pugh; but I wish it to be distinctly understood that I do so without prejudice to the claim of the Government to be the owner of the soil in cantonments.

"In the statement which I made at the meeting of Council held at Simla on the 25th October last I indicated as fully and clearly as I could what our claim is and what is its foundation. Nothing that I then said do I now retract, nor from the position which I then took do I now withdraw. On the contrary, the more I go into the matter and the more I hear of the arguments put forward in the memorials lately received and elsewhere on behalf of the so-called house-owners in cantonments, the more convinced I become of the strength of our case and the weakness of the other side. That the intention with which we began to form cantonments, was to include in them only areas entirely at the disposal of the military authorities, cannot be denied; for the old Regulations expressly forbade the inclusion of any lands which were private property, and a whole series of Regulations and orders issued from the beginning of last century onwards have consistently assumed and asserted the ownership of the State. But the house-owners of Barrackpore, for example, say that no proof exists of the precise manner in which, or the exact time when, the Government acquired lands at Barrackpore for a cantonment; that lapse of time, added to the civil and political confusions of the last century, has rendered it impossible for many of them to prove their titles affirmatively, however clear they may have been originally; and that the absence, until comparatively recent years, of any regular or scientific system and practice of conveyancing, such as is to be found with regard to transfers of land in England, renders it doubly difficult to make out a title sufficient to rebut successfully the presumption that houses in cantonments stand on land which belongs to the State. It is urged that in these circumstances, where neither party can show a clear title, the only equitable course is to respect and give the preference to undisputed and long possession. I answer emphatically that, in the circumstances of the case, it is not so. A cantonment is a cantonment, and every resident in one knows very well that the circumstances are special and very different from those outside. And I maintain, as I did before, that, when it is admitted that neither the Government nor the house-owner, if put to the proof, could show either how the land was originally included in a cantonment or under what circumstances it came to be built upon, it is but right and reasonable to give

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to the Government the benefit of whatever doubt and uncertainty there may be and to presume, in the absence of title-deeds on either side, that the land is the Government's and that it was all along understood by every one concerned that houses were built on it subject to special conditions and to meet special military requirements. This was the presumption expressly raised by sub-clause (5) of clause 3 of the Bill as introduced, and, instead of its being an unjust presumption opposed to all legal principle, I believe it to be one which the admitted facts alone are sufficient to raise and of which the Courts would, in the absence of any statutory declaration on the subject, themselves give us the benefit. I have already referred to the house-owners of Barrackpore, who have, I know, heard of the case of *Robinson v. Carey*, decided in 1865 with reference to a house in their midst, and I will now read what Mr. Justice Norman, whose judgment was upheld on appeal by Chief Justice Sir Barnes Peacock and Mr. Justice Morgan, said on the particular point which I am now discussing. 'With respect to the property of the soil in cantonments,' the learned Judge observed,* 'where there is no evidence that the land is part of a settled estate; no proof that it pays revenue to the Government; nothing in fact to show that it is held by any other tenure; I think it must be taken that the soil is the property of the Government, and that occupation by the owners of bungalows is permissive.' The presumption sub-clause of the Bill goes no further than that; it was, I believe, actually suggested by Mr. Justice Norman's dictum; and it merely lays down the same rule in different language. I should, therefore, have no difficulty in continuing, were it necessary to do so, to defend the presumption and repel the charge that it is opposed to all legal principle. In the numerous memorials directed against this sub-clause, the measure is alluded to as practically an act of confiscation; but it is an extraordinary fact that, though the memorialists thus assume a title which they do not possess, there is not a single case on record in which such title has been proved as against the Government except such a case as is contemplated by clause 4 of the Bill, and I challenge the opponents of the presumption to adduce one. On the other hand, I quote an extract from a memorial of 1899 from the house-owners of one of our largest cantonments—'Your memorialists respectfully object to the term 'grantee' as not applicable. Had Government given the land and houses, it would have been; but as the land is still the property of Government and the houses are built for Government purposes, either for sheltering the garrisons or for purposes of catering to the wants of the same, there is nothing granted.'

* Bourke's Rep., Pt. I, at p. 410. For the case on appeal, see *Carey v. Robinson*, 1 Indian Jurist, N.S., 8.

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" But, My Lord, the presumption was raised and asserted by the original framers of the Bill simply because the position underlying it was regarded as the strongest justification for a measure involving a certain amount of interference with the ordinary law of contract between landlord and tenant. We do not desire to have a statutory declaration regarding it for any other purpose; and when the spokesmen of house-owners in cantonments and the house-owners themselves come forward, as they have done, and say that the operative provisions of the Bill as it now stands are perfectly reasonable, that they justify themselves, and that they may be applied quite irrespectively of any considerations based upon the ownership of the soil, I must confess that they are practically conceding to us what we want. With the Hon'ble Mr. Pugh's amendments we shall, in the first place, avoid the necessity for a succession of troublesome and not inexpensive local enquiries into intricate questions of title; for all that we shall have to do, is to satisfy ourselves regarding the expediency of making the Act operative in any particular case. In other words, we shall have to take into consideration only such arguments as those put forward in the earlier part of the Barrackpore memorial, namely, that there is already plenty of accommodation available for military men on reasonable terms at Barrackpore, that the relations between landlords and tenants there are satisfactory, and that there is no call for interference in the matter. In the second place, we shall avoid the chance of subsequent litigation regarding the operation of the Act. And, finally, we shall have a simple and practical measure to administer. That being so, My Lord, I think that the Government and the Council may accept the Hon'ble Mr. Pugh's amendment, supplemented as it will be by the other consequential amendments standing in his name, and so remove the issue of title from the Bill; and, after what I have now said, it will scarcely be possible for any one to argue hereafter that, by agreeing to this course, we have abandoned anything or made any admission detrimental to the rights of the Government to the land in cantonments. Should the question of ownership ever arise in any other connection we shall assert our claim and rely on the facts, on common sense, and on the presumption laid down with authority in the reported case which I have again cited to-day. I may add that the more we enquire into the condition of individual cantonments the more we are convinced of the strength of the Government claim. In the case of one cantonment which has been much relied on by those holding the contrary opinion, we have lately received a full report containing what we believe to be irrefutable evidence as to the title of the Government, and we should, if necessary, embark with confidence on legal proceedings to establish it."

[14TH FEBRUARY, 1902.] [*Mr. Hardy ; Sayyid Husain Bilgrami.*]

The Hon'ble MR. HARDY said:—"I have little to add to the very full statement which the honourable and gallant member has laid before the Council. I think, if I may be allowed to say so, the Government is acting wisely in accepting the proposal to omit sub-clauses (3), (4) and (5) of section 3. They contain an important presumption to which no reference is made in the preamble of the Bill. That preamble simply lays down that the Bill has for its object the securing of better accommodation for military officers in cantonments, and the introduction of a presumption of this nature is inconsistent with the logical development of the Bill from its preamble. I think the Government will lose nothing by the omission of these sub-sections. A great deal of contentious matter and a great deal of heart-burning, I venture to say, will be averted by their omission. I desire, as the member representing the Province in which there are a very large number of cantonments, to assert that the reasons given by the Hon'ble Sir Edmond Elles justify the acceptance of the proposals of the Hon'ble Mr. Pugh. The Bill when shorn of the sub-sections adequately meets the necessities of the situation, and as their omission does not involve any yielding by Government of its undoubted claim to the proprietorship of cantonment land, I agree with the honourable and gallant member in accepting the amendments proposed by the Hon'ble Mr. Pugh."

The Hon'ble SAYYID HUSAIN BILGRAMI said:—"My Lord, I will make but a few very brief observations on the question now before the Council.

"It cannot be denied that, in its original shape, the Bill was somewhat stringent in its application to grantees; but the paring to which it has been subjected in process of passing through the hands of the Select Committee, has removed its asperities, and the amended Bill, as it now stands, is as fair and moderate as it was possible to make it when conflicting interests had to be reconciled and power taken for the securing of better house-accommodation for the military, who are responsible for the defence and protection of the country.

"The only part of the amended Bill which appears to bear heavily on grantees, is confined to sub-clauses (3), (4) and (5) of clause 3. Sub-clause (5) certainly looks like a confiscatory order, and I had myself thought of proposing that the whole of Chapter II with the exception of sub-clauses (1) and (2) of clause 3 should be omitted, if only for the reason underlying the Minutes of Dissent annexed to the Report of the Select Committee, that the question of title is altogether outside the scope, and in no way required for the purposes, of

[*Sayyid Husain Bilgrami*; *Rai Bahadur P. Ananda Charlu.*] [14TH FEBRUARY, 1902.]

the Bill. I have, therefore, no hesitation in supporting the motion brought forward by the Hon'ble Mr. Pugh.

"I should like, however, to add that it occurs to me, from the slight experience I have had of cantonment life, that, in spite of the care that has been taken, in clause 8, sub-clause (2), and again in clause 18, to provide that the rent offered or enforced for the purposes of the Bill shall, in all cases, be 'reasonable', disagreement and disputes will still arise as long as no definite standard of rent is available to be referred to by either party in case of need. Even a Committee of Arbitration will not always be able to satisfy both parties, though they may be compelled under the proposed Act to abide by its decision. In the cantonments in and around Secunderabad I have frequently heard house-owners complain of being compelled to accept what they looked upon as inadequate rents, and make this a ground for refusing or neglecting to repair bungalows occupied by officers.

"As a way out of this difficulty, I venture to suggest that, in every cantonment that is brought under the operation of this measure, one or two or three bungalows, according to the size of the cantonment, should be built by the Cantonment Committee and rented to military officers at a fixed rent, not exceeding ten per cent. per annum on the outlay. Bungalows so built would not only serve as models for private speculators in house-building within cantonment limits to copy, but the rent charged by the Cantonment Committee would set up a fixed and indisputable standard for reference in connection with the assessment of the rents of all other houses in the cantonment.

"Funds for building these bungalows might be raised by debentures or lent at a nominal interest out of cantonment funds and recovered from the rent. Debentures carrying five per cent. interest would attract many investors, and, if one or two per cent. were devoted to a sinking fund for their extinction, the balance of the rent could be reserved for repairs. Power to raise the capital might be obtained, if necessary, in the same way in which similar power is obtained by municipalities in different towns in the country."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said:—"The Bill, as it originally stood, took most men's breath away. It caused no small amount of well-grounded and wide-spread alarm, as it seemingly involved a virtual abrogation of rights and confiscation of property, and as it threatened, on that account, to be viewed as an aggressive, instead of a progressive, measure. It further seemed

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to be of a piece with the species of legislation which began with pleading the need for an inch and ended with taking an ell. It is, therefore, no small satisfaction that, even as it is, some of the drawbacks are out of it in the shape it has received at the hands of the majority of the Select Committee. For it to prove more acceptable, or rather fairly satisfactory, we must adopt the amendments which await our decision.

"Personally I hold the view that, as there are barracks to house soldiers, so must there be quarters, attached to the barracks themselves as part and parcel of them, to house the officers as well. Such an arrangement, it seems to me, would ensure better discipline and a more vigilant control of the soldiers, quartered as they are amid a timid and alien population. But where this is not to be, the next best arrangement is what would be the outcome if the amendments on the agenda paper are accepted. I cordially support this amendment, and I may add, once for all, that my attitude is the same as regards the amendments which follow. They fully accord with my own views, and I should have urged them, if my learned colleague had not taken action. These amendments would, when accepted, almost bring the measure within the bounds of reasonable and recognised rights of property on the one hand and on the other, gratify the wishes of those who claim for military officers some degree of exceptional accommodation under existing conditions. What is of greater importance is that legal instincts will continue to remain unshocked and immemorially-established law on presumptions and on onus of proof will remain equally untouched and unreversed—notwithstanding the remarks made to-day by the Member in charge, and notwithstanding the case cited."

The Hon'ble MR. GOKHALE said :—"Your Excellency, as Government have been pleased to accept the amendment moved by the Hon'ble Mr. Pugh, I do not think it is necessary for me to say anything in support of it ; but, if Your Excellency will bear with me, I will, following the example of my Hon'ble friend, Mr. Bilgrami, make a few observations on the general character of the measure which the Council are invited to pass to-day. My Lord, it is true, that I have signed the Report of the Select Committee subject to dissent in one particular only, but I don't mind confessing that I regard all legislation of this nature with a considerable amount of misgiving. I am free to recognise that Government have been by no means precipitate in proceeding with this measure, as it has been before the public, in one form or another, for nearly thirteen years. I also recognise that large and important modifications have been introduced into the Bill to soften the stringency of its original provisions, and now that Government

have accepted the amendment of which the Hon'ble Mr. Pugh had given notice, I think they have done nearly all that lay in their power, short of dropping the Bill, to provide what have to be considered as reasonable safeguards to protect the legitimate interests of house-owners in cantonments. But, My Lord, when all this is admitted, and I make the admission most gratefully, the fact remains that legislation of so exceptional a character, interfering as it does with the normal freedom of contract between house-owners and tenants, can be justified only on grounds of the strongest necessity; and there is ample evidence in the opinions and memorials laid before the Select Committee to show that in the case of a large number of cantonments such necessity does not exist. In these cantonments no difficulty has been experienced in the past in the matter of obtaining house-accommodation for military officers, the number of bungalows available being largely in excess of military requirements, and a certain proportion of these bungalows remaining, as a matter of fact, vacant from year to year. Poona is a typical instance of this class of cantonments. It has been estimated that the number of military officers requiring house-accommodation in Poona is about 160; while the number of bungalows in Military lines is over 200. Now all these 160 officers do not take a house each. The younger officers generally prefer chumming, three or four in a house. A considerable number reside in the Western India Club and in hotels, and a few live even in Civil lines. The result is that every year a certain number of houses remain without tenants. It may be urged that it is not intended to put the proposed enactment into operation at once in all cantonments throughout India. That is true, but as soon as the Bill is passed the matter gets out of the hands of the Legislature, and then it is all a question of the discretion of Government in their executive capacity, which, it will be admitted, is quite a different thing. I do not say that this discretion will not, as a rule, be wisely exercised, but it is conceivable that a Local Government may not always be able to withstand the pressure of the military authorities, who would naturally not be reluctant to be armed with the drastic powers which this Bill vests in them, when once the Act is extended to a cantonment. And I think there is reason to fear that the operation of this enactment, with all the safeguards it contains, is likely to prove in practice more or less prejudicial to the interests of house-owners. The Legislature, My Lord, may make the letter of the law as severely impartial as it can. The law itself has to be enforced through the medium of human beings, who are not free from prejudice. And in the present case it will be worked by military men, who are so accustomed to prompt and unquestioning obedience that they are often not likely to trouble themselves

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much about nice points of law in enforcing their wishes. The Bill provides for referring all important matters of disagreement between house-owners and tenants to Committees of Arbitration. It remains to be seen how far the safeguard of these committees proves to be effective in practice. Past experience of these bodies in cantonments is not very encouraging. On this point I need quote no other testimony than that of the Hon'ble Mr. Hardy, who has described his experience of these committees in the following terms:— 'I have been a member on these committees, and I am bound to say I thought their tendency was to be hard on the house-owner.' Let us hope that the Arbitration Committees that will be constituted under the proposed enactment will give greater satisfaction. In one respect the Bill is certain to cause loss to house-owners. Where a non-military tenant is ejected in favour of a military tenant under the coercive clauses of the Bill, the house is sure to be shunned by non-military tenants after that, and so, if at any time the house-owner fails to get a military tenant for it, it is likely to remain without a tenant. I have made these observations to emphasize respectfully the great need there is for exhausting all ordinary remedies before resorting to the somewhat violent disturbance of the normal relations between house-owners and tenants which this Bill authorizes, especially in the case of those cantonments in which the inconvenience complained of in the preamble of the Bill has not assumed serious dimensions and where the requirements of the Military are of a fixed character. I believe in such cantonments Government might, with advantage, try the plan of selecting themselves the required number of bungalows once for all, and requiring their officers to occupy them for fixed rents. Such an arrangement, I submit, will be more equitable than that contemplated in the Bill, because there will be a reciprocity of obligations under it. For if house-owners will be thereby required to place their bungalows at the disposal of military officers, these latter, in their turn, will be bound to occupy them; and the chances of friction between house-owners and military officers will be minimised. Of course, where the evil mentioned in the preamble has grown so serious that such a simple plan will not be practicable, the proposed enactment will have to be enforced, for no one can question the fact, that cantonments exist primarily for the accommodation of military men and they must fulfil that purpose under any circumstances. But in regard to these cantonments, *i.e.*, where it will be found necessary to enforce the new law, I would venture to make one suggestion, and that is, that Government should publish every year a statement showing the number of cases in which the coercive clauses of the Bill have been enforced during the year. I think the mere fact that such a return will have to go up to Government will tend to

sober the excess of zeal on the part of cantonment authorities and will prove a salutary addition to the safeguards which have been already provided in the Bill. My Lord, it was not possible for me to bring up these suggestions in the shape of amendments, and I thought I might submit them to the consideration of Government in the course of this discussion."

The Hon'ble RAI SRI Rām BAHADUR said :—" My Lord, as one of the dissenting members of the Select Committee with respect to the provisions of clause 3 of the Bill, I consider it my duty to say a few words on the subject. But my task has been made easy by the action of the Hon'ble Member in charge of the Bill in accepting the Hon'ble Mr. Pugh's amendments and omitting the objectionable provisions in question. Their elimination will be a matter of the utmost significance in favour of the cantonment house-owners, who will, no doubt, hail this important alteration with feelings of gratitude towards Your Excellency's Government. The extent of uneasiness and alarm created in the minds of house-owners on their finding sub-clauses (2) to (5) retained in section 3 of the Bill presented by the Select Committee, may be gauged by the submission of so many memorials to Your Excellency from different places, praying for their withdrawal.

" My Lord, it is a matter for congratulation that these contentious provisions are now going to be taken away out of the measure. Had they been retained and allowed to pass into law, the inquiries necessitated by them would have raised a host of dormant claims involving the decision of thorny and intricate questions of title quite unnecessary and altogether foreign to the express scope of the Bill.

" I imagine that, when cantonments were formed, the Government, as represented by the cantonment authorities, were glad to get persons to build houses on almost any terms. The authority given to those persons in many cases must have been verbal. They spent large sums of money in building houses on the cantonment grounds. To have called upon them, after the lapse of such long periods, to show that their houses do come within the exemption, would have entailed great hardships on them. A legal right has now vested in those house-owners. ' It is immaterial '—to quote the remarks of the Hon'ble Judges of the Calcutta High Court,—' however legal rights may have sprung up, whether by grant, or by purchase, or by long enjoyment fostered by negligence or by favour in past times ; once a legal right exists, it is sacred.' The actual working of the provisions now to be eliminated might have interfered with such rights. It is, therefore, a matter for satisfaction that these objectionable provisions are now to be omitted.

[14TH FEBRUARY, 1902.] [Rai Sri Rām Bahadur.]

"My Lord, it appears that the question of placing, by means of statutory provisions, greater facilities in the hands of military officers to obtain house-accommodation in cantonments, has been engaging the attention of the Government for some time. One of the recommendations made by a Committee of Government Officers, appointed by the Government of India in 1884, was the desirability of legislation on this subject. In the year 1888, Sir George Chesney, the then Military Member, introduced in this Council a Bill which subsequently became law as the Cantonments Act of 1889. Chapter V of that Bill contained substantially the same provisions as those of the Bill now before the Council. But the provisions of that chapter evoked such hostile criticism from the public as well as from some other quarters, and were considered to involve questions of such gravity and importance, that it was thought inadvisable to give them legislative sanction at that time. After the lapse of a decade the Bill before us was introduced by Sir Edwin Collen, the immediate predecessor of the present Hon'ble Military Member.

"My Lord, I, for my part, do not consider it of any avail at this stage of the proceedings to go into the question whether any necessity exists for placing such a piece of legislation in the Statute-book, nor into the cognate question whether, judged by strictly equitable principles, some of the provisions of this Bill, even in their present modified and altered form, are justifiable. I shall confine my remarks to other points than those mentioned above.

"The Bill as originally introduced contained many provisions which, looked at from the cantonment house-owner's point of view, were unnecessary and unduly severe. These provisions did naturally evoke unfavourable criticism, not only from the house-owners, but also from several Government Officers. It is satisfactory that the Bill has undergone some very important modifications at the hands of the Select Committee. Many of its objectionable features have been removed, and the severity and harshness of several of its provisions have been softened. Some additions beneficial to the interests of house-owners have also been made. We are thankful to the Hon'ble Member in charge of the Bill and to other the Government Members for the due and favourable consideration shown by them to the amendments proposed and the suggestions made by their non-official colleagues on the Select Committee.

"With Your Lordship's permission, I shall briefly mention some of the most important changes made in the Bill by the Select Committee. The clauses rendering its provisions applicable to civil officers have been omitted. The restriction which it was proposed to place on transfers of house-property in can-

[*Rai Sri Rám Bahadur ; Sir Andrew Wingate.*] [14TH FEBRUARY, 1902.]

tonments, and the power of vetoing such transfers which was to be given to Commanding Officers, have also been withdrawn. Provision regarding imprisonment has been omitted. And an additional clause has been inserted to give greater facilities to house-owners in the matter of the recovery of arrears of rent from defaulting military tenants.

"My Lord, with the modifications and alterations noticed above and the amendments just now accepted by Your Excellency's Government, the Bill will, I hope, be more acceptable to the public, and specially to the cantonment house-owners, than it was in its original form."

The Hon'ble SIR ANDREW WINGATE said :—"My Lord, the cordial manner in which the Bill in its final form has been accepted makes it unnecessary for me to enter into any discussion respecting the contention set forth in some of the memorials that the land in cantonments has somehow or other ceased to be the property of the Government. I will, therefore, confine myself to stating that, so far as Poona is concerned, a very careful enquiry, recently made, has established two facts. One, that in 1817 and subsequent years, in accordance with the direction, eventually embodied in section 21 of the Regulation XXII of 1827, that no private land was to be included within the cantonment boundary, special care was taken to acquire any private land found on inquiry to be within the proposed boundary and to exclude any private land that, for reasons stated, it was not desirable to include. Accordingly, holders of *inám* lands were compensated by receiving other land of equal value on the same tenure in exchange and holders of ordinary lands by receiving an abatement of the assessment, this being at that date the only form of compensation recognised for this description of land, since cultivators had then no difficulty in finding fresh land.

"The other, that the land thus carefully acquired was as carefully preserved throughout the years that have since elapsed by a long series of Government Resolutions and by General Orders emanating from the military authorities. From first to last, it can be proved that no officer or other individual could acquire a right of property in land situated within cantonment limits merely by reason of having received permission to erect a house. The grant of a building site was subject to the ordinary conditions of cantonment tenure, on which alone the military authorities had power to confer it on the original grantee.

"I would like very respectfully to add one word on my own account. I am approaching the end of my service, and, in the experience I have had of various

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Bills, I have found the attitude of Government as full of sympathy towards its critics as in the case of the Bill now before this Council. I shall carry into retirement the conviction that by its respect for fair criticism, by its desire to meet as far as may be possible the opinion of the minority, by its readiness to adopt any useful suggestion and by the pains which it takes to inquire when the shoe is alleged to pinch, the Government will continue to possess the confidence of the people."

The motion was put and agreed to.

The Hon'ble MR. PUGH moved that in the definition of "house" in clause 2, sub-clause (1) (e), to be re-numbered and re-lettered sub-clause (1) (d), the words "erected on land occupied as aforesaid by a grantee" be omitted.

The motion was put and agreed to.

The Hon'ble MR. PUGH moved that at the end of the definition of "military officer" in clause 2, sub-clause (1) (f), to be re-numbered and re-lettered sub-clause (1) (e), the word "and" be omitted.

The motion was put and agreed to.

The Hon'ble MR. PUGH moved that in clause 2, sub-clause (1), after the definition of "military officer", the following be inserted, namely:—

'(f) "owner" includes the person who is receiving, or is entitled to receive, the rent of a house, whether on his own account or on behalf of himself and others or as agent or trustee, or who would so receive the rent or be entitled to receive it, if the house were let to a tenant; and '.

The motion was put and agreed to.

The Hon'ble MR. PUGH moved that in clause 3, sub-clause (2), for the words "how the land in such cantonment or part of a cantonment is held" the following be substituted, namely:—

"whether it is expedient to issue such notification and what portion (if any) of the area proposed to be included therein should be excluded therefrom".

The motion was put and agreed to.

[*Mr. Pugh ; Major-General Sir Edmond Elles ; [14TH FEBRUARY, 1902.]*
The President.]

The Hon'ble MR. PUGH moved that in clause 3, sub-clauses (3), (4) and (5) be omitted.

The motion was put and agreed to.

The Hon'ble MR. PUGH moved that in clause 4, the words "evidencing a disposition of immoveable property in a cantonment and", and the words and figures "before the first day of October, 1899", be omitted.

The motion was put and agreed to.

The Hon'ble MR. PUGH moved that for the word "grantee" or the words "a grantee", wherever it occurs or they occur in the said Bill, the word "owner" or the words "an owner", as the case may be, be substituted.

The motion was put and agreed to.

The Hon'ble MR. PUGH moved that in clause 14, sub-clause (1), the words "stands on land which" be omitted, and that for the words "granted by or on behalf of the East India Company or the Government" the word "erected" be substituted.

The motion was put and agreed to.

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES moved that the Bill, as amended, be passed.

His Excellency THE PRESIDENT said :—"In putting this motion to the Council let me say that the Government of India cannot but be gratified at the general agreement amid which this Bill is being passed into law. It was a subject that raised many thorny and difficult questions respecting the rights, or the assumed rights, of individuals, and we all know how readily, when a question of property is concerned, the bristles of the Englishman—and I think I may say the Indian too, who has perhaps learned a good deal from him—are apt to rise. Nevertheless, as I listened this morning to the speeches of Honourable Members, a spirit of almost universal beatitude, marred by scarcely a discordant note, appeared to have settled upon the scene. For this result I think that we are largely indebted to the tactful and conciliatory manner in which my Honourable Colleague, Sir Edmond Elles, has conducted this measure ; and I may say in passing that I listened with pleasure, and with gratitude, to the brief but eloquent tribute paid by the Hon'ble Sir A.

CANTONMENTS (HOUSE-ACCOMMODATION) BILL; INDIAN 33
STEAM-SHIPS (AMENDMENT) BILL; INDIAN TRAM-
WAYS BILL; ADMINISTRATORS GENERAL AND OF-
FICIAL TRUSTEES BILL.

[14TH FEBRUARY, 1902.] [*The President; Sir Edward Law; Mr.
Arundel; Sir Charles Rivaz.*]

Wingate, based perhaps upon a short experience of this Council, but upon a long experience of the administration of India, as to the spirit and manner in which the Government of India are anxious to meet their critics in legislative and other matters. Sir Edmond Elles has now the satisfaction of seeing this Bill, which he has conducted in the manner I have described, placed upon the Statute-book by what I anticipate will be the unanimous voice of this Council."

The motion was put and agreed to.

INDIAN STEAM-SHIPS (AMENDMENT) BILL.

The Hon'ble SIR EDWARD LAW moved that the Report of the Select Committee on the Bill further to amend the Indian Steam-ships Act, 1884, be taken into consideration.

The motion was put and agreed to.

The Hon'ble SIR EDWARD LAW moved that the Bill, as amended, be passed.

The motion was put and agreed to.

INDIAN TRAMWAYS BILL.

The Hon'ble MR. ARUNDEL moved that the Report of the Select Committee on the Bill to apply the provisions of the Indian Railway Companies Act, 1895, to certain Tramway Companies be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. ARUNDEL moved that the Bill, as amended, be passed.

The motion was put and agreed to.

ADMINISTRATORS GENERAL AND OFFICIAL TRUSTEES BILL.

The Hon'ble SIR CHARLES RIVAZ moved that the Report of the Select Committee on the Bill further to amend the Law relating to Administrators General and Official Trustees be taken into consideration. He said:—"My Lord, the alterations which have been proposed by the Select Committee in the original Bill were fully explained at the last meeting of the Council by my Hon'ble Colleague, the Law Member, and I need not, therefore, now offer any further explanatory remarks."

[*Rai Bahadur P. Ananda Charlu.*] [14TH FEBRUARY, 1902.]

"The Hon'ble RAI BAHADUR P. ANANDA CHARLU said:—"I share the regret, almost universally expressed, that this Bill has not been long enough before the public and that it has not been subjected to the scrutiny of High Courts other than the Calcutta High Court. To me personally, it seems to be a matter of advantage that Bills such as this—Bills which relate to legal principles and to the practical working of laws enacted—should be referred to the several bodies of legal men in the country, whether associated or not, and more especially when associated, as is the Madras Vakils Association, which, speaking from intimate personal touch, contains not a few of eminent legal learning and keen legal acumen. A departure, such as this, will prove, not only a handsome compliment, where it is richly deserved, but also of considerable profit to the Legislature and the public, notwithstanding that there is a fair amount of legal element, always secured in the Legislature itself.

"An urgency is, however, pleaded to justify the exceptional course taken as regards this Bill, namely, that the retirement of the late incumbent of the office of the Administrator General and the occasion to appoint a successor were intended to be taken advantage of to make the office a salaried one and to introduce other modifications consequent upon that change. I am not sure that this reason is altogether adequate; but whether it is adequate or not, I am clear that the change of the office into a salaried one is not brought in, a day too soon. It will place a whole-time officer at the disposal of the public and will not only facilitate access to him but also prevent delays and congestion of work.

"As regards the Official Trusteeship, while I am fully in accord with the framers of the Bill that it should be a salaried office as well, I am not equally at one with them that it should be amalgamated with the office of the Administrator General. The facilities and relief conveyed to the public with one hand by making the Administrator General a salaried officer are more than whittled away with the other hand, by leaving the public still to wait till the officer doffs the one office and dons the other; for it is quite clear that he cannot be conveniently attending to both classes of his visitors promiscuously. The same remark would apply to the proposed Deputy. I am, therefore, not in favour of the fusion as an affair of public convenience. An influential committee has indeed expressed itself in favour of this fusion. But it will be found, on examination, that the committee in question had to face a proposal of quadruple alliance and their method appears to me to have been to apply the process of elimination, mainly on grounds of conflict of duties which would be entailed thereby and the special

qualifications some of them called for. On that test, of course, nothing can be said against the amalgamation which is proposed in the Bill. But, as I said, it is open to objection on grounds of facility to the public. The Government have, however, resolved to try the experiment, and it has, at least, one merit, namely, that, when the offices are lumped together, the head and the deputy may be paid bigger salaries, and that fact may attract more capable men than would be otherwise available.

"Having regard to the shortness of notice and the diversity of views that seem to exist, representations have poured in from far and near, and the latest is from Burma early this morning. The last one, though latest, seems to me to deserve considerable attention. Almost all the facilities and advantages, meant by making the Administrator General a whole-time officer would seem to be lost, or mostly lost, to distant places, such as Burma. I am told, and I am sure I am rightly told, that, so far back or so recently as 1890, when the Act of 1874 was amended, the Authorities themselves, in a manner, felt the force of the complaint, and power was taken to divide the Presidency of Bengal into so many provinces as the Viceroy should think fit, when the then incumbent vacated office, a separate head being provided for each. This information came to me far too late to admit of my making further enquiries and of determining whether any and what change should be made in the law to give effect to the promise, if any such were made. But, as we are only engaged in remedying a few out of the many shortcomings of the law in force and as I believe a more comprehensive Bill to amend the whole Act is either in contemplation or must soon be brought on the anvil, I content myself with merely calling pointed attention to the demur from Burma. A like consideration has influenced me, to a great extent, in not moving any amendment on the question of relieving sureties of administrators, on a proper case being made out. The hardship is severe and is repeatedly felt by sureties. It even has the effect in many instances of increasing the difficulties of procuring solvent and almost life-long sureties, with the result that the cases are not inconsiderable in number, in which bogus sureties contrive to bamboozle or the original sureties have suffered reverses in their own affairs so as to be no longer as substantial as at first. I shall say no more on this point just at present, chiefly because the judicial authority on the law of jurisdiction on the subject is slight and because the conflict between the High Courts—as yet between two High Courts only—is as between a division Bench of one such Court and a single Judge of another. I have nothing more to say at this stage."

The motion was put and agreed to.

[*Rai Bahadur P. Ananda Charlu*; Sir [14TH FEBRUARY, 1902.]
Charles Rivaz.]

The Hon'ble RAI BAHADUR P. ANANDA CHARLU moved that in clause 2, sub-clause (2), of the Bill, as amended by the Select Committee, after the word "attorney," the words "or a vakil of the High Court, admitted under the Letters Patent and the rules framed thereunder," be inserted, and that the words and figures "notwithstanding anything in the Administrator General's Act, 1874," be omitted. He said:—"In my minute of dissent I have briefly stated my reasons on this point. It is as follows:—

'My other amendments aim at getting rid of a gratuitous distinction. Class-legislation is always invidious and irritating. In this particular instance it has to be deprecated chiefly as giving the go-by entirely to the present conditions, which are wholly different from the conditions a quarter of a century ago, *i.e.*, in 1874. It only remains for me to add that I trust that my objection on the latter point will not be mistakenly viewed as of a sectional nature. It is, on the contrary and obviously, an opposition to what is, on the very face of it, sectional and narrow. My attitude would be precisely the same in the interest of common fairness, if I did not belong to the legal profession at all and if the exclusion from all chances of eligibility were levelled at the barrister or the attorney class'.

"To this passage I shall add a few words. As has been fairly admitted, the offices have been reserved to a barrister, not merely as a homage to one branch of the legal profession, but on the ground that, if the head of the office possesses the higher qualification, his opinion will be more readily accepted when legal questions arise in the course of administration. I am quite at one with this being the main, or even the sole, test. Applying that test, I cannot accept the sectional limitation contained in the Bill in its present form."

The Hon'ble SIR CHARLES RIVAZ said:—"My Lord, I regret that I cannot accept the proposal of the Hon'ble Mr. Ananda Charlu.

"Perhaps the most important, and certainly the most difficult, of the duties performed by the Administrator General are in relation to Europeans and their private concerns, and this naturally brings him, in circumstances often of peculiar delicacy, into the closest contact with people and affairs in England and other European countries. It is clearly desirable that the Administrator General should, by common origin and training, be able thoroughly to understand the mode of dealing with the cases of the persons affected. I do not for one moment wish to disparage the legal attainments of vakils, but here we have to consider something more. For the reasons, no doubt, which I have just indicated, the Act of 1874 made only barristers eligible for the appointment; and

I must remind the Hon'ble Mover that we have agreed to a considerable abridgment of the Bill in order to leave matters as far as possible alone."

The motion was put and negatived.

The Hon'ble RAI BAHADUR P. ANANDA CHARLU moved that the word and figure "Section 6" be inserted at the beginning of clause 4, sub-clause (1), of the Bill, as amended by the Select Committee.

The Hon'ble SIR CHARLES RIVAZ said :—"I must oppose this amendment, My Lord, for the same reasons as I have just given in the case of the other amendment."

The motion was put and negatived.

The Hon'ble MR. TURNER moved that clause 9 of the Bill, as amended by the Select Committee, be re-numbered clause 10, and that before that clause the following be added, namely :—

'9. In section 256 of the Indian Succession Act, 1865, as amended by
 Amendment of section 256, Act X, 1865. section 6 of the Probate and Administration Act, 1889, after the word "administration", the words and figures "other than a grant under section 212" shall be inserted.'

He said :—"The very full statement made by the Hon'ble Member in charge of the Bill at our last meeting, followed by the observations and explanations of the Hon'ble Legal Member, have made the position of Government and the objects of the Bill perfectly plain and perfectly intelligible. Had this full information been vouchsafed to the public at an earlier stage of the proceedings, there would not have been the necessity for the criticisms levelled at the Bill as presented to the public. It must be remembered, My Lord, that those who administer the law have to be guided by common sense and a reasonable view of the provisions of an Act that cannot be got by the intentions of the framers of the Act, however excellent those intentions may be, and, therefore, I consider that the public and the Chamber of Commerce were perfectly justified in criticising in the most frank and open manner the provisions of the Bill as first proposed.

"The provisions of the Bill as first proposed were in some cases obscure, in some cases objectionable, but I am bound to say that the Bill as now amended

[Mr. Turner ; Sir Charles Rivaz.] [14TH FEBRUARY, 1902.]

is a vast improvement, and I do not think it can be reasonably objected to even on the score of hurried legislation. I have thought it right and necessary to append a Note to the Report of the Select Committee, not a Note of Dissent, but merely to record my strong view that it was not desirable to amalgamate the two offices of Administrator General and Official Trustee. It may be considered presumption on my part to express such an opinion in view of the Committee's Report, which is entitled to the highest respect, the Committee being presided over by the Hon'ble the Chief Justice of Bengal. My objection is stated entirely from a business point of view. I do not believe it will be found in practice that the work of Administrator General and of Official Trustee can be efficiently and beneficially performed by a chief officer who will be the Administrator and by his deputy, and I would respectfully urge upon the Government of India that they should, before this amalgamation is carried into effect, take the opinion of the present Administrator General himself, after an experience of say 6 or 12 months of the work of his office, as to whether he could recommend such an amalgamation. I would also urge, My Lord, that the matter of salaries should be very carefully considered. It is most desirable that the best and most efficient man should be obtained for these important posts, regardless of salary. As to the amendment which I am now about to propose, it is with the object of removing a grievance in connection with the working of the Indian Succession Act, which has been very fully dealt with by the Calcutta Trades' Association in their letter to the Government of Bengal, dated the 17th of May, 1901. It was pointed out in that letter that, whereas no security is required from an executor obtaining a grant of probate in person, in the case of an attorney of an absent executor a grant of Letters of Administration with will annexed is only made on security or sureties being provided. It is pointed out that the grant is made for the use and benefit of the absent executor. It is in reality a grant to the executor himself. Cases have been brought to our notice where a difficulty has been found in getting attorneys to act as executors because of their reluctance to provide security or the necessary sureties. The amendment which I have now the honour to propose will remove this unnecessary grievance and will be much appreciated by the public at large."

The Hon'ble SIR CHARLES RIVAZ said:—"My Lord, the addition now proposed is, of course, outside the scope of the measure before the Council, and the Hon'ble Mr. Turner, no doubt, remembers that it was on that account, and also because what was aimed at was the abridgment, rather than the amplification, of the Bill, that the Select Committee decided to take no notice of the recommendation regarding section 256 of the Indian Succession Act, 1865, made

by the Calcutta Trades Association in their letter of the 17th May, 1901, which had been made one of the Papers to the Bill. On its merits, however, the amendment suggested is a very reasonable one, and, as we are assured that its acceptance will be a concession to a public desire, I am prepared, after having consulted my learned colleague, the Law Member, to agree to it."

The Hon'ble MR. PUGH said:—"With regard to this amendment proposed by the Hon'ble Mr. Turner, I am extremely glad to find that the Government have accepted it. I felt the difficulty which the Hon'ble Member in charge of the Bill pointed out in Select Committee, but I am well assured that it will be looked upon as a great boon by the community at large, and that it will also be an additional proof of the desire of Government to meet the views of the community, even when they are going, in a case like this, somewhat beyond the scope of the Bill."

The motion was put and agreed to.

The Hon'ble SIR CHARLES RIVAZ moved that the Bill, as amended, be passed.

The Hon'ble MR. PUGH said:—"I entirely support the proposal that this Bill, as amended, be passed. I do not think that, upon further consideration, even my honourable friend on my left (Mr Ananda Charlu) can doubt but that it was a necessity to bring in a Bill at the present time, and the Government could not properly have gone on with things in their present condition until some Bill of wider and more far reaching scope had been elaborated, if such a Bill is in contemplation. This Bill has no doubt caused a considerable amount of alarm on the part of the public—an amount of alarm which was unexpected in the earlier stages; but for myself, I am satisfied that that alarm will altogether disappear, and has indeed altogether disappeared owing to the changes made in the Bill in Committee, and also owing to what was said by the Hon'ble Members who addressed the Council on the last occasion in explanation of the Bill. The provisions of this Bill may not all be strictly within the scope of the Bill, but I would point out this, that every single provision which is not strictly within the scope of the Bill is in favour of those who are interested in estates which do not come into the hands of the Administrator General and are distinctly in their favour, and the last amendment of the Hon'ble Mr. Turner, which has just been accepted by the Government, is a signal example of this. Then there is another amendment which I want to say a word about, to which the same observation applies and which confers a very great boon upon all the people of this country who do not come under English law. As to those that come under English law, we have provisions with reference to them which

enable them to go before the Courts when they require directions or advice, in a summary way without suit ; but as regards those who do not come under English law, they, at present, under similar circumstances, have no means of obtaining relief except by filing a regular suit—a long and costly proceeding. Now they will have the same summary remedies which those under English law had before ; and that, I venture to think, is a boon which will be very greatly appreciated by those whom it affects. I am very glad that the recommendations of the Committee over which the Hon'ble Mr. Justice Sale presided, and the former Committee over which the Hon'ble the Chief Justice presided, have been laid before this Council, but at the same time they do not remove from my mind the doubt, which I felt in Select Committee, as to the expediency of combining the two offices of the Administrator General and the Official Trustee. I cannot accept altogether what my learned friend, the Law Member, said on the last occasion with regard to the Select Committee having accepted this proposal. I understood that the view of the Select Committee was that it was not within their province to discuss this matter, because the amalgamation had been provided for by the previous Act, and the question as to whether the amalgamation was to take place or not, would rest upon the Government and upon the Government solely, and I trust that the Government will take the matter into serious consideration before this amalgamation is carried into effect. I will say one word with regard to the recommendations of the Committee over which the Hon'ble the Chief Justice presided. Looking at the words of their recommendation, I am not sure that they considered the amount of work which there was in the Administrator General's office, or the amount of work which there was in the Official Trustee's office, but they say generally that there is no reason—and they further say that there is no legal reason—why the two offices should not be amalgamated. It does not seem to me, upon reading that report, that they have considered the question as to the amount of work which had to be done in each of these offices. The Hon'ble Mr. Justice Sale's Committee, I understand, has come to the conclusion that the Administrator General as Administrator General will require, and ought to have, a Deputy. On the last occasion we heard that it was desirable that the person at the head of the office should possess the highest qualifications so that his opinion might be more readily accepted when legal questions arise in the course of administration. That applies equally as much, My Lord, to the case of the Official Trustee as to the case of the Administrator General, and I venture to think that, as beneficiaries whose estates are in the hands of the Administrator General are entitled to get the advice and the personal interference and intervention of a man of the highest qualifications, so are those interested in estates in the Official Trustee's office, and if

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the work of the Administrator General is now more than he can do and he requires a Deputy, it does not seem very clear how the further work can be thrown upon him, which would come upon him, supposing that the offices were amalgamated. I hope that this Bill as it now stands altered will give satisfaction. I believe it will be accepted as a fair and necessary measure. There is nothing further that I would add except this: that upon the last occasion my honourable friend, the Law Member, discussed the question whether the Administrator General was a corporation sole or whether he was not a corporation sole. That is a question, My Lord, upon which I do not feel called upon to express any opinion; but I would point out that, as regards a corporation sole, the main point appears to be that there should be a perpetual succession, and in the case of the Administrator General, there undoubtedly was provided by the former Bill a perpetual succession, and we have accentuated that by clause 3, sub-clause (4), of the present Bill, which provides that he shall be sued by his name of office and that no suit shall abate by reason of his death, resignation, suspension or removal. I am not going further into that question, because it appears to me a purely academical question, and I entirely agree with the Hon'ble Law Member in this: that, if the Administrator General was a corporation sole before, there is nothing in this Bill which prevents his still being a corporation sole. With these words I can only express my support of the motion of the Hon'ble Member in charge that this Bill be passed."

The Hon'ble MR. RALEIGH said:—"My honourable friends, Mr. Turner and Mr. Pugh, have both accepted this Bill. On some points they still entertain doubts, and before the Bill is passed I ought, perhaps, to make some reply to their observations. On the question whether it was right to deal with this as a matter more or less urgent and requiring immediate legislation, I think I may leave my honourable and learned friend, Mr. Pugh, to answer the Hon'ble Mr. Turner, but when the Hon'ble Mr. Turner tells us that the full explanations of the intentions of Government with regard to these offices were not given in time, I am disposed to say that there is a considerable measure of justice in the charge.

"It follows almost inevitably from the nature of government in this country, and from the manner in which our proceedings are conducted, that there is not that timely and full explanation of the intentions of the Government with regard to a matter of this nature which is given in other countries with institutions of a different kind. So far as in the future we can provide against such misunderstandings as have arisen in the present case, I think we ought to use every effort to do so. Both my honourable friends maintain their objection to the combination of the offices of Administrator General and Official Trustee. On this point, of course, I have no right to speak for the Executive Department of

[*Mr. Raleigh; Mr. Arundel.*] [14TH FEBRUARY, 1902.]

Government with which the question of policy will lie, but I do not regard this Bill as making any final or irrevocable arrangement. But our position is this: we were fully aware that the law had already made provision for the combination of offices. Whether it will turn out that it will be expedient to bring them together or to keep them apart, I think only the experience of the new Administrator General can show. No doubt there is much to be said for the position, that the work of the Administrator General's office is already more than one man can undertake, but it has been represented to us that the labours of the Administrator General are greatly increased by the defective system under which he has to work; that it is a system under which every detail of the office business must be passed under his review, and that if in course of time the new Administrator General is able to introduce a better system it would greatly lessen the amount of his own work. Whether that is really so or not, time will show, and I think, that in time, the Government ought to be ready to reconsider the arrangement, and to do what at the time when the question comes up shall appear to be best for the proper conduct of both offices. I think, My Lord, that what my learned friend, Mr. Pugh, has said, dispenses me from saying anything more about a corporation sole. I have no hesitation in saying that the arguments addressed to us on this and other abstract points have contributed materially to the improvement of the Bill; and should indeed have said so a fortnight ago, if it had not been that a certain combative letter betrayed me into making a combative speech. The sages of the English law who evolved out of their inner consciousness large quantities of legal metaphysics with regard to corporations sole would, I think, have been surprised if they had known that their abstract doctrines were to be made the subject of debate in this Council. As Mr. Pugh is agreed with me on the practical point, that is to say, admitting for the sake of argument that the Administrator General is a corporation sole, there is nothing in this Bill, as amended, which deprives him of that character, I think I need not detain the Council longer with purely academic argument, but merely give my voice in favour of passing the Bill."

The motion was put and agreed to.

INDIAN ELECTRICITY BILL.

The Hon'ble MR. ARUNDEL moved for leave to introduce a Bill to make better provision for facilitating and regulating the supply and use of electrical energy for lighting and other purposes. He said:—"My Lord, in moving for leave to introduce a Bill to make better provision for facilitating and regulating

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[*Mr. Arundel.*]

the supply and use of electrical energy for lighting and other purposes, I propose to say a few words to supplement the Statement of Objects and Reasons annexed to the draft.

"The Bill, which is based on the Electric Lighting Acts and rules in force in England and in Bengal, has been prepared largely in response to the wishes of a good many persons interested in electrical projects, and Messrs. Crompton and Company, an enterprising English firm, voluntarily undertook considerable trouble and expense in framing and forwarding to the Government of India a draft Bill which they considered suitable to the needs of India. Comprehensive legislation has also been pressed upon the Government of India by the Governments of Bombay and of Bengal, while other Local Governments have either expressed approval or have intimated that the actual need for legislation has not yet arisen.

"The Government of Bombay consider that legislation is urgently needed. They desire an Imperial Act which 'would secure continuity of principle and be a distinct economy of labour and time.' Failing an Imperial Act, they would reluctantly contemplate legislation for the Bombay Presidency alone.

"Bengal is the only province which possesses, in Bengal Act IX of 1895, a law at all competent to meet present requirements. While intended mainly for Calcutta, it is applicable to municipalities throughout the province, and, although it has so far been extended to Howrah and Dacca only, the Local Government has already found that the tentative and cautious legislation of 1895 is insufficient, and desire further legislation, a principal object of which is to encourage the investment of capital in electrical enterprise by extending the term of a license from the present maximum of 21 years to a maximum of 42 years.

"The draft has already passed through a considerable amount of criticism, both official and unofficial, at the hands of very competent persons. I should like in particular to express my indebtedness to my honourable friend, Mr. Ashton, who last year was good enough to come to Simla and go through the Bill with me, clause by clause, making valuable suggestions. Mr. Ashton, I am sorry to say, is prevented by illness from being present to-day, or he would have been able to intimate the points—only a few I venture to hope—in which he is not in accord with the Bill as it stands and considers that it may be further improved. Mr. Meares, the Electrical Engineer to the Government of Bengal, has also rendered very great assistance in the preparation of the Bill.

"The Bill meets the wishes of the Government of Bengal and of the persons and firms interested in modifying the present Bengal Act, by providing that

[*Mr. Arundel.*] [14TH FEBRUARY, 1902.]

licenses for the supply of electrical energy may be given with or without a time-limit, and the restricted maximum of 21 years is thus removed. Following the Electric Lighting Clauses Act of 1899, it also provides that an undertaking may be purchased by a local authority or by the Local Government, after the lapse of 42 years and at subsequent intervals not exceeding 10 years during the currency of the license, at a price fixed on the value of the property at the time of purchase without any addition in respect of compulsory purchase or goodwill or profit. The object, of course, in this and like cases, is to secure to the community the eventual possession and profit of the undertaking, but only after allowing the company a lease of life sufficiently long to make it worth while for capitalists to invest in the undertaking.

"It is needless for me to go further into the provisions of the Bill, except to remark that in Part III provision is made to prevent interference with the electric installations of private persons and institutions, such as clubs. The ordinary provisions of the Bill will apply in such cases only if more than 100 persons are likely to assemble on the premises so provided with electric energy, and even then the Local Government may grant exemption from the provisions of the Bill on good cause being shown.

"After its introduction into this Council the Bill will, I trust, receive the benefit of public criticism, and I hope that at the next Legislative Session in Calcutta it may be referred to a Select Committee and be passed into law with such amendments as may be found necessary."

The motion was put and agreed to.

The Hon'ble MR. ARUNDEL introduced the Bill.

The Hon'ble MR. ARUNDEL moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

The Council adjourned to Friday, the 14th March, 1902.

H. W. C. CARNDUFF,

CALCUTTA:
The 18th February, 1902. }

*Offg. Secretary to the Government of India,
Legislative Department.*