Tuesday,
13th January, 1914

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. LII

April 1913 - March 1914

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

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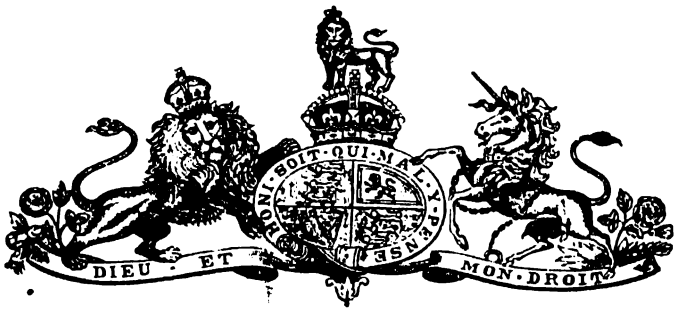

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE INDIA COUNCILS ACTS 1861 to 1909 (24 & 25 Vict., c. 67, 55 & 56 Vict., c. 14, AND 9 Edw. VII, c. 4).

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Tuesday, the 13th January, 1914.

PRESENT:

The Hon'ble SIR HARCOURT BUTLER, K.C.S.I., C.I.E., Vice-President, *presiding*, and 51 Members, of whom 45 were Additional Members.

THE INDIAN CRIMINAL LAW AND PROCEDURE AMENDMENT BILL.

The Hon'ble Sir Reginald Craddock moved that the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, be referred to a Select Committee consisting of the Hon'ble Sir Ali Imam, the Hon'ble Sir William Vincent, the Hon'ble Mr. Wheeler, the Hon'ble Mr. Achariar, the Hon'ble Mr. Arthur, the Hon'ble Sardar Daljit Singh, the Hon'ble Mr. Pandit, the Hon'ble Raja Abu Jafar, the Hon'ble Mr. Malaviya, the Hon'ble Mr. Das, the Hon'ble Mr. Banerji, the Hon'ble Mr. Rice, the Hon'ble Mr. Wynch, the Hon'ble Mr. Laurie and the mover.

The Hon'ble Mr. Chakravarti Vijiaraghavachariar said :—"Sir, in rising to offer a few remarks on the motion before us I associate myself with my Hon'ble friends who, at Simla, offered their most cordial thanks and congratulations to the Hon'ble the Home Member upon the introduction of this Bill I believe that this is a brave attempt, the first of the kind, on the part of Government in the matter of social legislation in response to the rising national consciousness. The Bill, in order to be

thoroughly understood, will have to be read in connection with the speech of the Hon'ble the Home Member made at Simla, a most careful performance breathing kindliness in spirit and courage in resolve. While I am at one with all my Hon'ble friends in the matter of the excellence of the intentions and disinterested integrity of the objects of this measure, I venture to think that the programme and plan need examination in detail to see how far those intentions and objects are carried out and also in view of finding out, if possible, what would be the effect upon the sentiments of the people and the declared policy of the Government in matters social, if the measure, as it is now placed before us, even with the modifications that may possibly be introduced by the Select Committee, be enacted *in toto*. The programme may be divided into three heads: the first part relates to the penal provisions of the law, the second part to what may be called the remedial measures, and the last part is devoted to a scheme for the protection of minor girls by rescuing them from immoral contamination and by handing them over to suitable custody. This third part is entirely new; while the first and second parts are intended as a supplement to the existing law. Now I will take the points seriatim. The existing penal law on the subject of the protection of minor girls is contained in two sections, Nos. 372 and 373, of the Indian Penal Code. These two sections relate to traffic in girls and are intended to protect minors from being made victims to immoral contamination. The first section makes the act of a person who disposes of a girl under 16 years of age for immoral purposes penal, whether that act is selling, leasing or any other disposition; the second section, in similar circumstances, makes the act of the buyer or lessee or whoever else is the other party to the disposal criminal and penal. The penalty is severe enough and rightly so, it is 10 years' imprisonment and fine. The amendment proposed relates to portions of these two sections. Those who have had anything to do with the administration of criminal justice must have come in contact with pleas raised on behalf of the accused in connection with prosecutions under these sections.

"The amendment says that when a minor is disposed of in the manner mentioned in these two sections for immoral purposes the person concerned shall be liable to prosecution in spite of the plea that the immoral act was to take place after the completion of the age of sixteen. There is, under existing law, an uncertainty as to when, to bring the act within the scope of the law, the immoral purposes should be achieved, whether during the minority, before 16 years of age; or whether the act achieved later than 16 years of age, is also included in these penal provisions. Such pleas are often raised, and successfully too, as to whether the seller and buyer could prove to the satisfaction of the Court that, although a minor girl is being trained as a courtesan, she would not be made a courtesan before she reached the age of 16. Under these circumstances Courts have said—but on this point there is a conflict of views—that the plea should prevail. The present addition takes away this kind of plea. The addition says it is immaterial whether the immoral purpose is to be achieved before the girl attains 16 years of age or afterwards. The next provision, which is also an addition to these two sections, is couched in certain technical terms which I need not explicitly mention. I believe the provisions of these two sections aim at a prohibition of habitual immoral use, not isolated, single or rare use. The amendment proposed by the Bill on the point is not very clear. I take it, in the light of the speech of the Hon'ble the Home Member made at Simla, that this is the meaning, namely, that these unfortunate girls are intended to be subjected not only to habitual misconduct but also to isolated and occasional misconduct: provided the purpose is this, the Act shall be made penal. There are also some explanations added by way of a definition of certain expressions and technicalities as to showing on whom the burden of proof should lie. I take it that this is a question of legal presumption and the object of the Hon'ble the Home Member is to cast the burden of proof as to good faith upon the accused. These are the additions to the penal provisions. I need hardly say that, so far as I am concerned, I welcome these additions. The next addition is to the remedial measures under the criminal law. These remedial measures are contained in section 552 of the Code of Criminal Procedure.

That section says that if a woman is in the possession of any person who has secured it by force or by fraud or by any other means for immoral and unlawful purposes, the Presidency Magistrate or the District Magistrate may issue a warrant of the nature of *Habeas Corpus* and secure her presence before him and restore her to liberty. In case this woman happens to be below 14 years of age, the Magistrate may also order her to be restored to her husband, parent or other guardian. Here the Bill proposes to raise the age from 14 to 16 and nothing more. Here again I think the addition most welcome. Taking these two sections together it strikes me that the reform of the law is not only very necessary but that it falls far short of the expectations of the public. The Hon'ble the Home Member dealt with this demand in his speech in September last. I beg to make a few observations in connection with these provisions and proposals. The additions may not be half-hearted, for the intentions and sympathy with the rising consciousness of the nation are patent, transparent and well sustained, but still the plan of action is wholly inadequate to give effect to these intentions and sympathetic spirit.

"In the first place let us take the question of the age for the minority of the girls. For the purposes of Criminal law in its various aspects we have to deal with the ages of girls on three or four occasions. Those ages are 12, 14 and 16. Now, as regards 12: We all know that it is the age of what is technically and notoriously called 'the age of consent.' We all know what the age of consent means because there were grave fears and acute and intense agitation some 20 years ago when this 'age of consent' was raised from 10 to 12. The next age is what is contained in the provisions of section 552 of the Criminal Procedure Code, namely, 14, the age for restoration to her guardian. It will be 16 when this Bill shall have been passed. Then there is the age of 16, treated of in sections 372 and 373 of the Indian Penal Code, for the purpose of treating girls as minors for protection against immoral disposal. What the public really demand is that all these several ages are wholly inadequate for the purpose of really protecting girlhood, and should be raised. For myself—and I am party to that public feeling—it would be most healthy and most in consonance with the public and national feelings to raise all these ages to 18: from 12 to 18, from 14 to 18 and from 16 to 18, and 18 should form the limit of age for all these purposes. I shall presently explain why. I am very well aware of the agitation some years ago when Sir Alexander Scoble started what was then called the Age of Consent Act. The fears and agitation were due to an inexcusable confusion of ideas on the part of Government and to inexcusable confusion of conditions, because in that case the husband and the stranger were placed on a footing of equality. That was the grand cardinal initial mistake made. If that confusion did not exist, if the conduct of the stranger was kept distinct from the conduct of the husband, there would have been no agitation or only to a small and inappreciable extent. Now the confusion in regard to this is that in this country and in many other countries marriage is not regarded as a contract; marriage is considered a sacrament; and marriages are performed not by the parties concerned among the vast majority of the people in India, but by their guardians; so that the question of consent for keeping up the relations between these two parties under the law of God and man does not arise. No doubt, with our knowledge of science, with our knowledge of physiology and physiological conditions and the requirements of Society, the parents and guardians of boys and girls have to be educated into postponing the marriageable age gradually. The agitation confined itself to interference in this matter by the State. Without stopping early marriages, without postponing the present low age of marriage, to put the parties married together and yet to prevent them from having what they believed to be the natural rights and relations sanctioned by the law of God and man was deemed improper; and hence the whole legislation was resisted. But there can be no excuse why ex-matrimonial relations with minor girls ought not to be prohibited by law and made penal. It is one thing to prohibit certain kinds of relations between a husband and a child-wife, and it is a totally different thing to prohibit those relations between girls of a particular age and strangers. What I respectfully ask for is that this age of consent may be raised for

ex-matrimonial relations or at all events for relations which are other than unions, where such unions are sanctioned by tribal custom to take the place of marriages and involving the dignities, duties, and responsibilities of marriage; in all these relations I fail to see why Government should not shake hands with social reformers and raise the age to 18. I cannot understand the policy or the morality of the hesitation. So in this connection, as I said, the Bill falls considerably short of national expectations and of the expectations of Indian thinkers and leaders.

"Then there is another very serious point. Now these sections, 372 and 373, of the Indian Penal Code deal with two out of three sets of offending people, not to speak of the fourth, the minor girls. The sets of people are—I will call them by way of analogy—the producers, the distributors and the consumers. It punishes the first, the seller; it punishes the second, the buyer; but it leaves severely alone the fiend for whose sake the selling and the buying exist. I never can reconcile myself to this aspect of the criminal law. The poor impoverished mother who disposes of her girl may be punished with ten years, the wretched broker may be punished with ten years; but the rich and influential man, or whoever it is in whose behalf this is done, is to go scot free!! I never, since I took to law, have been able to reconcile myself to this aspect of the criminal law. It is a grave and mischievous defect, and I thought that this occasion might be taken advantage of to make all these three sets of people criminal under the law. That would certainly tend to greater protection of the girls. Now, Sir, this demand is no longer the special ticket of social reformers. The people of this country, Hindu, Mussulman, Christian, Jain, Sikh, and all alike, are awakening to a sense of the defects of their social customs and most so in the matters of the evils of early marriage and early maternity. And though, in a much lesser degree, people are also beginning to think that the Purdah system on the whole ought not to be maintained long. To encourage this new and rising consciousness, to support the nation in their attempts to get a reform of the existing social customs, I expect that Government should render all the protection that it is possible on their part to render. The protection of our girls and our young women against the intrigues of neighbours, against molestation as they travel by railway, steamer and otherwise, ought to be far greater than it is now. The law and the administrative arrangements are strangely defective as regards this protection; therefore our reform cannot be carried out at such a rate as we wish unless and until our girls, Hindu or Mussulman, etc., can walk out in the streets and can travel by railway train or steamer with the same confidence and certainty of protection as the American girls. Now, how is this to be done? The present state is this If the neighbours and others intrigue against a girl, provided she is unmarried and above 12 years of age, the law is silent. It must be agreed that it is a most lamentable state of things. You ask us to postpone the marriage, you speak every day from the platform of the evils of early marriage, but you say that a girl of 12 can be intrigued with with impunity. This is the state of the law. Can anybody now be asked to ask me further to argue this point? How many parents with unmarried girls over 12 will let them go out and give them the benefit of the free air while this is the state of the law? So I say that on this matter the Bill unfortunately falls considerably short of public expectations. The Hon'ble the Home Member made certain observations on this point. He says that the age of 12 is coincident in this country with a certain event in the physical development of the girl—I need not quote his own language—and he asks us to accept this natural guide in preference to artificial ones.

"I am sorry that it should be left to so obscure and humble a man like myself to combat what I should call this scientific superstition. I thought that this superstition was long ago exploded, that nature is perfect, and that nature is our guide. The distinction between rational civilized man on the one hand, and the savages and the lower brutes on the other, is that the rational civilized man not only studies nature, but conquers nature and has his dominion over it. I wonder who told him (the Home Member) that nature is perfect? I do not know if my Hon'ble friend was ever a gardener. The most

inexperienced gardener will repudiate this theory by his conduct. He destroys the first blossoms and the first fruits of the plants, nay for the first few years he knows from experience that these early blossoms will not allow the plants to grow into vigorous trees and to yield luscious fruits. I own a mangoe garden and I can speak with some experience. My gardener destroys the blossoms of the first three years. He won't allow any fruit for the first three years. I wish to know how my learned friend got the idea that the age of 12 is an unerring guide. If we are to follow nature everywhere, it is hopeless; we shall be always tearing each other to pieces if nature is to be a guide.

Now in this matter the Hon'ble the Home Member uses phraseology which I believe he has unconsciously borrowed from careless newspaper social reformers, phraseology as inaccurate as it is calculated to diminish our respect and worship of glorious womanhood. He talks of the attainment of puberty. I think that language has been most unfortunately used. In newspaper controversies they talk of ante-puberty and post-puberty marriages and things of that kind. I never can understand what these things exactly mean. Post-puberty marriage can only mean the marriages of middle aged and old women and not adult young women. To my mind puberty is a period into which boys and girls, boys no less than girls, gradually and slowly and imperceptibly glide. The human female cannot say, 'mama, I was a girl this morning and this noon I am a woman.' She cannot say that, any more than a boy can say 'papa, I was a boy yesterday and I am a man to-day.' The theory is a scientific mistake, and a very unfortunate mistake; merely because there is some difference in the signs of development between boyhood and girlhood into manhood and womanhood, it is an unfortunate error to say that girls in a few seconds jump from childhood into womanhood. Puberty is a period. Now this period of puberty to my mind is the most glorious period in womanhood, the best in her life, most full of romance, and of the capacity to enjoy and to make the best of the world. The length and character of the puberty depends upon heredity, her individual habits, upon climatic influences and social conditions; and we degrade womanhood when we talk of puberty as something to be concealed in euphemistic language, and I am sorry that the learned Home Member adopted the careless language of some reformers who carry on (I do not mean all of them) as often as not an ignorant warfare in newspapers. On this point therefore I am not at all prepared to agree in the view of the learned Home Member that the age of 12 is an unerring guide as regards the development of a girl. These are some of the remarks I intended to make in connection with these penal and remedial measures.

"There is also one more thing I could say in connection with this part of the programme. The Hon'ble the Home Member has disposed of this aspect in his speech at Simla in a paragraph, the spirit of which I must say is classic. It is a sort of apologia for *devadasis*. We all know who *devadasis* are. They do lead a life of celibacy, and I am sure these ladies are in the highest degree obliged for the new view taken by the Hon'ble the Home Member. I said classic spirit; I do not mean him disrespect. Rather I would liken him (the Home Member) to the great ancient sages: Pindar sang the praises of courtesans, and Socrates, the wisest of the Greeks, made pilgrimages to the homes of accomplished courtesans. We all know that it was he who advised the courtesan Theodota how to cultivate her charms and how to make her home the centre of attraction for all that was best in Greece. It is in that sense I use the term 'classic' and not at all in a disparaging sense. Now, however, the eternal maids, the *devadasis*, no more keep their vows of celibacy than the vast majority of mankind keep their oaths of fidelity to their wives. I mean no great reflection upon ourselves. We are now rising to a higher sense of our duties in this vital particular, but I only say that, throughout all ages and in all countries, degrees varying, men made the vow of reciprocal fidelity only to break it. And our maids attached to the holy temples do not at all keep that vow of celibacy. They are celibate, it is true, but if the vow of celibacy includes purity of life I do not know if they ever intend it—at any rate in practice they do not keep it. So under the shelter of the holy temples they maintain, and maintain successfully, schools of attractive vice, and now the Hon'ble the

Home Member finds classic apologia in defence of that system. At all events it would have been best in the interests of morality and in response to the views of social reformers if no allusion had been made to this aspect at all by the Hon'ble the Home Member. I should have been extremely glad if this matter was left alone, perhaps to be dealt with when, I hope, Government will make another response to the national grievance and the national demand, and amend the law relating to religious endowments. Perhaps when that course is taken—and I beg that it be taken in earnest by Government—this question of *devadasis* may be dealt with. At present I do not mean to propose any amendment as regards this matter in this Bill.

"Then we come to what are termed the rescue provisions. These rescue provisions are entirely new. I shall have to read the provisions somewhat in order to make myself clearly understood. I believe the Hon'ble the Home Member will correct me if I am wrong. I believe the rescue provisions are intended not only to cover cases of girls suspected of falling or about to fall, but also cases of the fallen girls, but if that is their meaning, as I gather that it is their meaning from the Hon'ble Member's speech, then the drafting is defective and inadequate. The rescue provisions are contained in three sections added to the Criminal Procedure Code, to section 552, and these are numbered as 552 (A), 552 (B) and 552 (C). Of these, the most important section is section 552 (A). Section 552 (A) lays down the conditions for rescuing girls.

"Under this section the Presidency Magistrate and the District Magistrate may take notice of this fact under the following conditions:—First, that the female child under the age of 16 years frequents the company of any common prostitute. Secondly, that she is lodging or residing in a house or part of a house used by any prostitute for purposes of prostitution, or is otherwise living under circumstances calculated to cause, encourage or favour the seduction or prostitution of the child.

"Now, I desire to examine these provisions—the Hon'ble the Home Member may correct me in doing so if I am wrong. The girl who is rescued and restored to liberty by the District Magistrate, under the provisions of section 552, from immoral influences and contamination, is *not* protected by the provisions of the new section. May I ask, Sir, if I am right in thinking that this defect will be removed in Select Committee? If it is the intention of the Home Member to exclude such girls, I have a great deal to say; but if it is the intention of the Home Member to include them, I have very little more to say."

The Hon'ble the Vice-President said:—"You cannot consider in this Council what will be done in Select Committee."

The Hon'ble Mr. Chakravarti Vijiaraghavachariar said:—"All I was going to ask is what is the intention of the Home Member in regard to this matter. I do not ask what shall be done in Select Committee."

The Hon'ble the Vice-President said:—"I must inform the Hon'ble Member that at this stage we are dealing with the general principles of the Bill and not with its details. I must ask him to restrict his remarks rather more to the general principles."

The Hon'ble Mr. Chakravarti Vijiaraghavachariar said:—"What I was referring to is what are the classes of girls that are to be included in the rescue proceedings. That, I submit, is a matter of principle. If you, Sir, rule that it is not a matter of principle but that it is only a matter of detail, I will of course leave it out."

The Hon'ble the Vice-President said:—"I think that, after the way the Hon'ble Member has raised the question and explained his point of view, it has ceased to be a matter of principle and becomes a matter of detail."

The Hon'ble Mr. Chakravarti Vijiaraghavachariar said:—"Very well, Sir; then I will confine myself to the language of the Bill. The language of the Bill says 'frequents the company of any common prostitute' Now let us see how we shall have to construe it? A girl of 10 might frequent the house of a prostitute. She might go to sell vegetables; she might go to sell flowers; and yet she might be brought under this section, because clause (*a*) does not define for what purposes the visit is intended. It merely says 'visits.' The visit is absolutely unqualified. Whether this girl who visits a dancing girl's house on business can and ought to be brought within the purview and scope of this Bill has to be considered. As it is I am unable to follow the phraseology of the proposal."

"The next portion of the section has reference to lodging. Now, in a large town like Bombay it is very possible that in one and the same house a woman of bad character and respectable families might be tenants. Is it intended that these provisions should be applied to such cases? The result will be, as pointed out in one of the opinions invited, that the law will be very difficult of application. Let us take, for instance, the courtesan. The law does not say whether she should be a courtesan at the time or whether she is an old woman who no longer practises her trade. No girls could visit her under the proposed law. Now, take the courtesans, who are in the full swing of their trade. The result of these laws would be that girls cannot be allowed to visit them for any purpose. What would be the effect? The effect obviously would be that they must have either adult women or boys and young men as their servants Girls below 16 would be excluded from all visits to, and from all intercourse with, these dancing girls. Now, I ask what will be the effect of this? I ask whether it is at all proper that girl servants who are employed by courtesans should be replaced by adult women and by young men? Of those two evils which is the greater? That is a point that has to be taken into consideration in dealing with these provisions.

"Now, the most important portion is that which relates to the rescuing of these girls The Bill says the District Magistrate shall hand over these girls to 'suitable custody,' and it has also been mentioned both in the Bill and in the speech that the District Magistrate or the Presidency Magistrate will prefer the custody of persons who are of the same religion as the girl rescued. Now this question of preference is very important and must be anxiously considered by this Council. It is admitted that in this country we have not got homes for the refuge of these falling and fallen girls. We have very few homes worth the name. In the present state of things in this country 'suitable custody' ought to exclude individual male custody. Now, individual custody, especially custody of males, will certainly be resented by the nation unless the person, the man especially, if he is a man, unless that person is related to the girl in such a degree and such a manner that no suspicion of improper relations is ever likely to arise. The people are likely to resent such a handing over to individual custody. Individual custody would obviously not be understood, would not be desirable. Then we must have custody in the way of homes managed for this purpose or along with other purposes. But such homes, if any, are exceedingly few so far as the Indian nation consisting of all creeds and races is concerned. Now, the District Magistrate will have the discretion to find out what is suitable custody, and in such cases what will be the effect if preference alone is to be given? It follows by necessary implication that it is open to the District Magistrate to hand over girls of one religion to custodians of another religion. Now, I very respectfully and seriously submit that India is not prepared for this revolutionary change. This is a revolutionary change to which we have not a parallel anywhere in the world, and it will be most unwelcome to the people of this country. Now, that has to be considered very seriously by Government. I have some other observations to make as regards this matter. Apart from the very important question of custody these unfortunate girls are to be handed over to, there is the question of what is to become of them. Among Hindus marriage at a particular age, or before the girls reach a particular age, is compulsory according to their

law and their religion. Now, if a Hindu girl rescued from the evils of contamination and handed over to custody, whether of the same religion or of another religion, has to be kept there under this proposed law up to the time of her majority, *i.e*, 18 years, who is to marry this girl? Before she reaches her eighteenth year marriage is compulsory according to Hindu Shastras. There is no provision for all that here. And how is the marriage to be performed? That is one defect. And a more serious aspect of the question is, who are likely to marry the girls? I fear, Sir, whether Hindu, Mohamadan or Sikh, it will not be easy to find a husband for any such girls. Where these girls are what are called fallen girls, certainly no husbands will be had for them. The fact that they are rescued, the fact that they are improved in morals, all these may be very good for society, but when questions of marriage are considered, whether Hindus, or Mussulmans or Sikhs, girls rescued from houses of ill-fame, girls rescued from immoral influences, though in the best interests of society itself and in the interests of the girls, will not find husbands.

"Now, what is the Government and what are these homes to do in view to marry and find a career for these falling and fallen girls and fallen young women? Perhaps the question might be put to me as to what would be the case if they are not rescued. Here I am on tender ground, but short of prostitution there are various instances in which girls unfortunately guilty of lapses find husbands because their relatives and friends commit the pious fraud of concealing their misconduct. Now, their shame is to be registered and published by the Magistrate, and published to the whole world. But in the present existing condition, unless a girl becomes a prostitute, she will find a husband—I do not say in all cases, but in very many cases she will. We must take society as it is. In the present economic condition of India, with enormous poverty and greatly unequal distribution of such wealth as there is, girls, in their grinding poverty, it may be with the connivance of their guardians or even with the support of their guardians, may fall within the provisions mentioned in this Act, but they will be comparatively solitary, occasional, rare lapses, in the life of a girl. Being solitary, occasional, rare lapses, these will not be known to the whole world, they will not be published to all and sundry persons, and everybody concerned, and not only everybody concerned, but others also from motives of charity and kindliness, will throw a veil over these facts. The result will be that numbers of these girls, whatever may be their secret character, in the absence of these provisions, will be married and will find husbands and a career, but under the provisions of this Act, what will be their fate? The fate of these girls will be that they will be registered either as fallen or as about to fall. Under this arrangement no one will know which is the girl that has fallen and which is the girl that was about to fall when rescued. Of course where the girl's age is very tender when rescued there will be less difficulty, but where the girl is of a somewhat advanced age between 11 and 15 or so, then it will be exceedingly difficult for marrying families and husbands to know which are the fallen girls and which are not. But are we, for this purpose, to divide these girls into (*a*) the falling girls who are rescued before they have fallen, and (*b*) girls who have fallen before the rescue? Then there will be a race between the girls intended for the (*a*) class and the girls intended for the (*b*) class in the matter of classification. If the fallen girls deny that they fell at all and claim to be placed in the class most likely to get husbands, is the Magistrate to hold an inquiry as to the truth and justice of the claim, and say 'I won't'? Is it in the interest of society to tear the veil off and say 'You do not belong to the first class, you belong to the second class; and therefore I will not put you in the first class'; and thereby diminish the chances of marrying those girls and setting a career for them? Are we then going to divide these unfortunate victims? In order to divide them into two such classes an inquiry is necessary as to their guilt actual and their guilt possible. This, obviously, is most undesirable, absolutely tending towards the disruption of families, and, in my humble opinion, eventually to the increase of courtesans and not the diminution of courtesans, because these people cannot marry."

The Hon'ble the Vice-President said:—"I think the Hon'ble Member has raised his point in sufficiently wide terms now. He is a member of the Select Committee and can fill up the points of detail later on."

The Hon'ble Mr. Chakravarti Vijiaraghavachariar said:—"If it were a question of mere addition to the existing sections of the Bill that, as a matter of detail, would be a point for consideration in the Select Committee. I may at once say that I am for dropping these provisions Kindly allow me to say why I think these provisions should be dropped."

The Hon'ble the Vice-President said:—"I do not wish to restrict the Hon'ble Member in the discussion on the scope of the Bill. It must be on the ground of principle. I have allowed him to give his reasons why he wishes these provisions dropped. I hope he will not exceed three-quarters of an hour."

The Hon'ble Mr. Chakravarti Vijiaraghavachariar said:—"I shall be as short as possible, Sir. The point I wish to make is this. In order to marry these girls, I was going to say, perhaps it would be necessary to introduce what I may call a home for fallen boys and young men. That is all. I do not intend to say anything more on that point. It would be exceedingly difficult to find husbands in the existing state of society with the existing prejudices and sentiments.

"A point that strikes me, as a matter of principle, which is worthy of consideration, is this. It refers to the procedure prescribed—the ways and means as I may call it—for catching hold of these girls who are about to fall. It is said that the District Magistrate upon complaint, or on his own knowledge and suspicion, may take notice of such cases. Now, we all know the difficulties, the obstacles, that would naturally lie in the way of the District Magistrate's knowing or suspecting the existence of such cases. How is he to know? Upon complaint? That is all right, but as regards his own knowledge and suspicion, the question arises how is he to know or suspect where these girls are and how is he to find out the facts? He must come to some conclusion as to whether he is right, as to whether his suspicions are right or wrong. This he can only do by making use of the existing machinery for finding out and collecting the evidence; and although we are told that this act places the matter beyond the reach of the Police, the District Magistrate will, however, employ the police. Seeing that policemen are highly elastic in their methods, it will place an additional instrument in the hands of the police of this country, which is not at all likely to be accepted by the people as a very healthy provision. Apart from the question of blackmailing, there will be considerable difficulty in the case of persons who belong to the police force, and even persons other than the police whom the District Magistrate might use for the purpose of collecting evidence, succumbing to influences of both money, and what not. Besides, the Magistrate's procedure is not made compulsory, and we are not told whether it is a judicial proceeding at all and whether the orders of the Magistrate are open to revision and repeal by the Sessions and High Courts. As the law now stands it looks very much like a departmental proceeding where a regular trial cannot be had under and owing to the provisions of this Bill. I see my status in the Select Committee curtails my intended speech here. Be it so. I had a great deal to say and I hope that in the Select Committee the Hon'ble the Home Member will allow me to be in the same position in which he was last year when the Resolution relating to the separation of the judicial from the executive functions was discussed. The principles and details of the Bill are so dovetailed that I do hope no difficulties will be thrown in the Select Committee in the way of proposing such changes as I think will be salutary and necessary, whether they belong to principle or to details. As I have said, the boundary between these two is very difficult for me to detect.

"When I say that these provisions as to rescue should be dropped, I do not mean to vote against the motion. Making allowances for all the defects of commission and omission, there is a substantial modicum of advance in this

legislation in the path of social reform, which is entitled to my cordial support. At the same time the third portion of the provisions, namely, the provisions relating to the rescue, are dangerous and even, I should say, illusory and treacherous ground; and even if there were some solid grounds, it would be most inopportune at this crisis to add to the national discontent. Even a single case of a girl handed over from one religion to another would produce a great evil, and the evil would be exaggerated and would cause profound heart-burning throughout the length and breadth of the country. For all these reasons I am even entitled to warn the Government on this matter, and I beg and pray that these provisions may be dropped as at once useless and dangerous."

The Hon'ble Sir Reginald Craddock said:—"Sir, in moving the motion that the Bill be referred to Select Committee, I refrained deliberately from making any further statement, because there had already been two occasions on which the views of the Government on the subject had been placed before the Council. In 1912, when Mr. Dadabhoy was introducing his Bill, it fell to me to inform the Council of the general kind of measure which the Government were disposed to take into consideration after the opinions from Local Governments and from the public generally had been received. At that time the proposal was entertained of making a differentiation in respect of the age of consent between husbands and strangers. It had been then contemplated as a possibility that in respect of extra-matrimonial relations the age of consent might be raised to 18, and that between the ages of 13 and 15 girls might be protected by the constitution of a new offence of misdemeanour if intercourse was had with them. These proposals were circulated then, and as I explained last September, they were dropped because we were warned on all sides that it was undesirable to interfere with the age of consent or to attempt discriminations of the kind mentioned. I recognise that the Hon'ble Mr. Achariar is an ardent social reformer, and he is anxious that we should take a very bold step indeed in raising the age of consent outside matrimony to so high a limit as 18. I am afraid that we have to suit our legislation, not to the extreme demands of the most ardent social reformers, however much we may sympathise with them, but to the effect that our laws will have on the masses of the people at large.

"Then he made a reference to *devadasis*, or the girls dedicated to temple worship. As I explained last September, the omission in respect of them was merely an omission by name; that is to say, we did not desire to put in the law that any religious practice was in itself immoral. If it was immoral, it would come under the law; but we did not want to define it as immoral in itself, because we were warned that, although as a rule, such dedication did involve a life of immorality, it had not done so originally, and there might be exceptions, and therefore that to brand dedication as such as immoral was undesirable, and likely to wound the feelings of Hindus. While the Hon'ble Member is so extremely bold as to urge us as to a step which we should certainly hesitate to take in the matter of age, he is, on the other hand, apparently over-cautious regarding the rescue provisions. Regarding these, the only thing I would like to say is that they are a cautious and tentative proposal; that for years we demurred to taking action of this kind, and that the steps we have now taken are the very minimum that could be taken in the direction which we have been urged to follow from so many sides; and I am constrained to feel some surprise that the Hon'ble Member, in spite of the boldness with which he has urged the raising of the age of consent to 18 years, should be so timid regarding the risks and disadvantages which might follow the rescue procedure. It is of a tentative kind, and in particular cases a Magistrate is only able to exercise the powers when he is satisfied that suitable provision can be made for the custody of a child.

"I do not propose to follow the Hon'ble Member in all his details. As you yourself have said, Sir, he is a Member of the Select Committee, and as such will have ample opportunities of putting forward his views. We have all along desired to proceed as far as, and no farther than, it is safe to proceed in such matters, where the interests of so many social customs and ancient prac-

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tices are involved; but we shall give every sympathetic consideration to any arguments that may be put forward by the members of the Select Committee, and shall see whether any modifications are necessary in this Bill in order to meet the objections that may be urged."

The motion was put and agreed to.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

The Hon'ble Sir Ali Imam moved that the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration. He said:—

"Sir, last September at Simla, when introducing the Civil Procedure Code Amendment Bill, I placed before the Council the considerations that necessitated the amendments covered by that Bill. I had at that time expressed a hope that, considering the non-contentious nature of the Bill, it would be possible to move for the consideration and the passing of the Bill in that Session there. Out of regard, however, to desire of some of my non-official colleagues who wished this measure to stand over for a time, I moved for the consideration of the Bill to be deferred till now. Since September, the Bill has been published and has been before the public, and I feel sure that Hon'ble Members had ample time to study its provisions, and I am glad to find that, although a fairly good amount of time has been so afforded to the public and to Hon'ble Members, we have not received any criticisms nor, up to this time, any notice of amendments. Therefore, I may safely urge, Sir, that the Bill which is now before the Council is, as a matter of fact, of a non-contentious character. I move, therefore, that the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration."

The motion was put and agreed to.

The Hon'ble Sir Ali Imam moved that the Bill be passed.

The motion was put and agreed to.

RESOLUTION FOR EXEMPTION FROM ASSESSMENT TO REVENUE OF ARTIFICIAL SOURCES OF IRRIGATION.

The Hon'ble Raja Kushal Pal Singh said:—"Sir, I beg to move that the Council should adopt the following Resolution:—

'That this Council recommends to His Excellency the Governor General in Council that in all future settlements of land revenue any increase of assets due to the construction (otherwise than at the expense of the State) of wells, tanks or other artificial sources of irrigation be permanently exempted from assessment to revenue.'

"The most important means of safeguarding and increasing the agricultural products of India is Irrigation. The problem of Indian agricultural improvement is mainly a problem of adequate water-supply. The importance of improvements by irrigation cannot, therefore, be over-emphasized. Large and costly schemes of irrigation require years to be developed; while the system of well-irrigation is far less costly and yields immediate results. Wells are required in order to get full production from the soil in ordinary years, and to save the crops in times of drought. In the presidencies of Bombay and Madras the exemption of improvements by irrigation from taxation is *in perpetuum*. There, such permanent exemption from taxes of 'improvements' has justified itself by the effective encouragement given to the sinking of wells. The Irrigation Commission wrote in their report that the increase in

permanent wells was by far the greatest in the presidencies of Madras and Bombay, where exemption is perpetual.

"The Land Improvement Loans Act (XIX of 1883) in its present form arose out of the recommendations of the Famine Commission of 1880. This Commission recommended that the practice of Bombay and Madras should be extended to Upper India so far as to rule that the assessment of land irrigated from a permanent well should not be liable to enhancement on account of the well at any revision of the settlement, provided the well were kept in efficient repair. This recommendation was embodied in the Bill which afterwards became Act XIX of 1883, and was thus referred to by the Hon'ble Member of the Governor General's Council in charge of the Bill during the debate upon it :—

'The section, as it left the hands of the Select Committee, proposed to go even beyond the recommendation of the Famine Commission, and to exempt from increase of assessment profits arising from improvements effected by the aid of loans taken under this Act, not merely for such periods as would secure to the maker a reasonable return for his investment, but for all time. In those temporarily settled provinces where cultivation has almost reached its natural limits this principle might perhaps be applied with advantage, but in others where extensive areas are still awaiting reclamation, which can practically yield no return and pay no revenue until irrigated, the enactment of such a hard and fast rule would result only in a useless sacrifice of the prospective financial resources of the State.'

"The same opinion was expressed by Lord Ripon and Sir Steuart Bayley.

"For these reasons the clause which embodied the recommendation in question was curtailed ; and the profits of those improvements, which consists of the irrigation of land assessed at unirrigated rates, are still in Upper India exempted from an increase of assessment only for a limited term.

"The Famine Commission of 1901, observe : —

'We have carefully considered this question in the light of the grievous misfortunes which have within recent years afflicted Upper India. Our enquiries demonstrate that there is a field for the construction of wells, tanks and other artificial means of irrigation, to which it would be difficult to assign a limit. It has also been forcibly brought home to us—as it was to the commission of 1880—that the present terms on which these loans are offered do not attract the owners of land to make more than a partial use of the opportunities held out to them. We are convinced that nothing short of a permanent exemption will stimulate the owners of land to that full activity, which is on every ground so greatly to be desired.

'We recommend, then, that in all future settlements any increase of assets due to the construction, otherwise than at the expense of the State, of wells, tanks, or other artificial sources of irrigation should be permanently exempted from assessment to revenue. We are aware of the objection that it is financially unwise to exempt permanently the increase of assets due to irrigation in the poorer soils, because it is in the poorer soils that irrigation will lead to the largest increase of assets. But this objection is met by the consideration that, from the protective point of view, it is just the poorest soils which are most in need of irrigation.'

"While on this subject I cannot resist the temptation of quoting the very pertinent remarks made by the Hon'ble Sir Steuart Bayley during the debate upon the Land Improvement Loans Bill.

'*The English theory has regard to the relation between lessor and lessee, and from this point of view the English theory naturally urges that any increase in the letting value of the land caused by the lessee should be his and benefit him and that he* should get this benefit in the shape either of an increased length of lease on the old terms, or compensation for the unexhausted portion of his improvements. *The Indian* theory, if *I may say so, disregards altogether the relation between lessor and lessee and looks upon Government as a joint proprietor with the landholder,* and that Government, as a joint proprietor, is by the ancient law and custom of India entitled to a share in the produce of every bigha of land. *The logical deduction from the English point of view would be that the landholder should have, as a permanency, the full benefit of any increased value caused by his improvement.* Even here I think myself that the fact of the landholder in India having a permanent right of occupancy in his land really divides off his position in a very marked way from that of the lease-holder in England whose position is a temporary one. The natural outcome of the Indian point of view is that when the Government as the sleeping shareholder in the land has provided that the improver should receive full interest for his money spent on improvement, and that he has been recouped for his original outlay, thereafter the Government should retain its right to a share in the improved produce of the soil. These two theories no doubt are antagonistic ; but I think that

it would have been possible to have come to a reasonable compromise upon them. As a matter of fact *you will see that Mr. Crosthwaite based his proposals on the Indian theory, but he went far outside that Indian theory when he proposed that permanent improvements of a valuable kind should be exempted for ever. His object in so doing was that he considered that public policy required that we should do all in our power to encourage improvements of this kind rather than look to future increase of revenue. And in this view, as a matter of expediency, I most fully concur.* I think that it would have been very possible to arrange the two conflicting theories upon somewhat such terms as these if we had gone on and proceeded to legislate. But there was another difficulty and that was the difficulty of distinguishing between the two classes of improvements which Mr. Crosthwaite desired to distinguish. It was almost impossible to draw any line or to find any logical terms to cover the distinction which he desired; permanent and temporary would not do, nor perfect and imperfect; and after considering the matter again I have come to the conclusion that our mistake was in looking at the nature of the improvement instead of trying to find the distinction in the condition of the country to be improved. I think that if we had looked rather to the question of complete or incomplete cultivation, by a sparse or full population, we might probably have more easily found the means of logically distinguishing between the two classes than in looking to the nature of the improvement to be effected. However the idea of special legislation upon this point was abandoned, and it was abandoned because it was inextricably mixed up with the very much larger question with regard to the whole principle of re-settlement in Northern India which was at that time under reference to the Secretary of State. *In referring that question to the Secretary of State, the Government of India expressed in very general and broad terms its desire that improvements effected by landholders should hereafter be exempted from assessment, and in reply the Secretary of State, in equally general and broad terms, expressed his thorough approval of the principle.*

'I quite admit—in fact I most fully concur in what Mr. Quinton observed as to districts where the land is fully cultivated and where there is a very small margin of waste and a very full population—where, in other words, it is far more important to improve existing cultivation than to bring additional land under the plough—that there section 11 as its broad application may well stand, and the Government should say 'improve your lands by all means, we shall not take anything for it'.'

"The late lamented Lord Ripon said, during the debate on the Land Improvement Loans Bill :—

'It appears to me that the principle laid down in section 11 as it stood is a right principle in regard to what I may describe as fully cultivated land.'

"The then Lieutenant-Governor of the Punjab said :—

'He fully agreed that the principle embodied in section 11 of the Bill as it left the hands of the select Committee was applicable to districts which were fully developed, in which the margin of waste-land was small, and where the share in the assets of the land had come up to a fair level.'

"An improvement-making landholder not only secures his own share but that of the Government, which, in the shape of revenue and cesses, is always larger than his own share. The saving which will accrue to the state in famine expenditure and loss of revenue consequent on famine will recoup the loss of revenue which will result from exempting permanent masonry wells from taxation. Wells are dug and in some cases they fail to give water. Money is spent periodically on repairs. In some cases the water-level goes down after some years and wells become useless. One can never be certain that a well constructed by him will be successful. All these things constitute an element of uncertainty which discourages the investment of money in improvements by irrigation. If instead of constructing permanent masonry wells, landholders invest money in making loans to their cultivators, they will be getting much larger return. Unless this concession is made, there can be no sufficient inducement to landholders to construct masonry wells.

"The fear of enhanced revenue assessment deters many landholders from making improvements by irrigation.

"In the evidence given before the Indian Irrigation Commission, the Hon'ble Sir Gangadhar Madhav Chitnavis, the most talented member of the landed aristocracy in India, stated :—

'I would recommend that improvements should never be taxed, because these improvements secure the revenue to Government; whereas to the malguzars or the person who invests money, it is of course uncertain what he will have to pay by way of assessment.

He has also to spend money for the repairs of these works. While he is held responsible for them it is not certain whether the improvements he makes will always give him a sure return. A well may be dug and it may fail and may not be successful.

'I have stated the grounds already. He spends money, and considering vicissitude of seasons and many liabilities, such as repairs, etc., to which the improver makes himself subject, the sacrifice made by Government by such exemption will not be too much. It must also be noted that he thereby secures a larger share of Government revenue than his own share. This would also secure fully to people all benefits arising from the improvements on which they spend their money instead of keeping them under suspense that a large portion of the benefit arising out of such an improvement will be appropriated by Government after the settlement.'

"In the Report on the Improvement of Indian Agriculture, Dr. Voelcker says:—

'As long as this (taxation of improvements) continues, it will certainly act as a bar to agricultural improvement, and will prevent the outlay of private capital on wells and minor works of irrigation. I think, therefore, that the system should be relaxed, at least to the extent of securing to the man who digs a masonry well that he shall not be directly or indirectly liable to any rise of taxation on account of the improvement which he has effected by the expenditure of his private capital upon it.

'In a Resolution of the Revenue Department of the North-Western Provinces and Oudh No 898 A of 1869, a comparison is drawn between the four Districts—Ghazipur, Jaunpur, Ballia and Benares—which are under permanent settlement as regards the Land Tax, and the adjacent and similarly situated districts which are temporarily settled, and, consequently are liable to periodical revision of the Land Tax. In the former, 55 per cent of the cultivated area has been brought under irrigation by wells, tanks, and streams, and in Jaunpur alone 55,224 wells have been dug by private capital. But in the temporarily settled districts only between 16 and 17 per cent of the cultivated area has been brought under irrigation from wells and other sources, exclusive of canals. If the land under canals be added, there is, even then, only a total of 22 per cent of the whole cultivated area of the temporarily settled districts under irrigation as against 55 per cent in the permanently settled districts, there being no canals at all in the latter. Private efforts, therefore, under these circumstances, have done far more than all the aid of Government, even including the making of canals. The points here brought out are well worthy of consideration, and it has further to be remembered that anything which induces the people to invest money on the land gives them a permanent interest in the continuance of the English rule.'

"On page 24th of the Land Revenue Policy of the Government of India they say:—

'In Zamindari provinces, where the revenue is temporarily assessed on estates as a whole, and not on each particular plot of land composing them, the State has not similarly surrendered its right to all share in improvements in which the capacity of the soil plays a part with the industry or outlay of the cultivator.'

"I submit that the capacity of the soil should not be taken into consideration in this matter. The Government derives no benefit therefrom unless a landholder builds a well. A landholder invests his own money and reaps advantages with the aid of irrigation which the Government does not provide. The Government does not spend any money in providing water I fail to understand why the Government should share the benefits arising from improvements to the construction of which they have not contributed in any manner whatever.

"The late lamented Lord Ripon said:—

'Although it is I know said that there are two factors in the results of all improvement, namely, the expenditure of the tenants' capital and labour, and the inherent qualities of the soil, in the case of the cultivated land, this second factor should not, as it seems to me, be regarded as constituting an appreciable element in the calculation of the value of a tenant's improvements. For the right to enjoy the results of the inherent qualities of the soil is already covered by the payment of his ordinary rent, and the addition to the letting value of his land arising from his improvements may therefore be treated as resulting only from his expenditure of capital and labour.'

"In the Resolution No. 6—193-2, dated the 24th May, 1906, the Government of India say:—

'Seeing that the basis of the land revenue assessment is the principle that the State is entitled to a portion of the produce of all land, equity demands that this portion should ordinarily vary, if not with the gross produce, at all events with the net profits of cultivation; and to exempt a profitable improvement from enhanced assessment tends to favour the rich as

against the poor; nor can it seem fair to a poor peasant, without capital, that his neighbour who derives large profits from his improvement should be permanently assessed at the same rate on his secure and fertile irrigated lands as he himself pays on his fields dependent only on a precarious rainfall. Another practical objection to the proposal to exempt improvements permanently from assessment is that unless extended to existing improvements as well as new ones, it must soon lead to great inequality of assessment, since land assessed under the present rules as irrigated from an existing improvement would remain for ever assessed at a much higher rate than exactly similar adjoining land irrigated from a well or other work hereafter constructed. The Government of India are also of opinion that the adoption in Northern India of the proposed policy would lead to a very large sacrifice of land-revenue, quite out of proportion to the result attained in the encouragement of improvements; and it is to be observed that the Irrigation Commission recommend the trial of the policy only in tracts exposed to famine, in which special inducements are required.'

"The theory seems to be that the land belongs to the State, and it has in consequence a right to take a share of the produce as rent. Nothing could be more erroneous. The State demand upon land is not rent but only a land revenue, or in other words, a land-tax Even the East India Company took that view. In their despatch of 17th December, 1856, they laid down that the—'right of the Government is not a *rent* which consists of all the surplus produce after paying the cost of cultivation and the profits of Agricultural stocks, but a *land-revenue* only.'

"This is the soundest view that can be taken of the nature of the demand, and in this view it is nothing more than a tax which is imposed upon land for the purposes of the State. As a matter of fact, the state is not the owner of the land; the contractual relations of landlord and tenant do not subsist between the Government and the landholder; the subordination of the landholder is that of a subject to the Crown. The landholder's liability to pay a tax levied by Government is undoubted; but it is wrong to assume that the Government has a right to share in the proprietary profits.

"In support of my view I quote the following extract from the Hon'ble Mr. Gokhale's speech:—

'As regards the question of land revenue — whether it was rent or tax, and whether I was right in including it among the proceeds of taxation —the Hon'ble Member has raised again the old controversy to which by anticipation I had briefly referred. I will, however, mention in this matter a great authority on the subject — an authority which I hope will satisfy even the Hon'ble Member. One of the most distinguished Finance Ministers that the Civil Service ever gave to India was Sir David Barbour. Now, Sir David Barbour, as I have already stated, assisted Lord Cromer in his enquiry into the income in India per head, an enquiry which was made in the early eighties. The report, setting forth the final conclusions of that enquiry has been treated by Government, curiously enough, as a confidential document. On several occasions a demand was made in the House of Commons for the production of that report, but the Secretary of State invariably resisted it on the ground that the papers were confidential. By an extraordinary chance, however, I came across a copy of this report in the Imperial Records. I found it among a heap of books in a neglected corner. On the outside the volume had nothing to indicate that it was of a confidential character; inside, however, the word Confidential' was printed in a corner. I asked the librarian, as the book was there among other books, if I could use it, and he said I could, as well as any other book in the room! Now in that report, Sir David Barbour gives his deliberate opinion that our Land Revenue must be included among the contributions made by the people, and he gives most excellent grounds for that opinion. He says:—the only question that has to be considered is, of the total wealth produced by the community, how much is required by the Government for the purposes of administration? It is quite clear that if the Government did not take this land-revenue from the people, it would remain with the community and would fructify in its pockets. In that respect land-revenue stands precisely on the same level as the proceeds of the salt-tax or any other taxes, and therefore in estimating the total contribution of the people for the expenses of the Government, land-revenue, he says, must be included.'

"There is practical unanimity in the opinions of all authorities concerned that the right of private proprietorship in land was generally recognized by the Hindu Rajas, who thus claimed to receive from the cultivators of the soil, not a land-rent due to a landowner, but a land-tax due to the Government of the country. The land-revenue of the Hindu States was therefore a sort of tax on the income derivable from land.

"In 'An Introduction to Hindu Polity,' by Mr. Kashiprasad Jagaswal, a great array of authorities has been cited in support of this opinion, *vide* 'The Modern Review,' August, 1913, page 205.

"In the letter from the Government of Bengal to the Government of India, dated the 24th June, 1901, the then Lieutenant-Governor of Bengal says:—

'The controversy as to whether the Zamindars confirmed at the permanent settlement were landholders in the English sense or revenue-collectors of varying length of standing is familiar to all the readers of the revenue discussions in Bengal. The truth probably lies between the position adopted by the advocates of the two sides of the question, and while there were large numbers of middle-men suddenly converted into landholders, there were also hereditary chiefs with all the attributes of proprietorship that were known in their time in India.'

"The Government of India say that to exempt a profitable improvement from enhanced assessment will tend to favour the rich as against the poor. I submit that a landholder who is rich and will employ his capital in improving his land will realize large profits. There is no reason why his poor neighbour should consider it a grievance. Even at present, the temporary exemption does not place a rich and a poor landholder in the same position. A rich landholder who constructs masonry wells derives profit from his wells, which a poor landholder who cannot make a well cannot enjoy. If the Government is pleased to grant the suggested perpetual exemption, the fact that the improvement-making landholder will be realizing large profits will be a potent stimulus to poor landholders to follow the example of their richer brethren. Even poor landholders will probably borrow money and effect the same improvements on their lands. Even at present there are inequalities in assessment. Some districts and provinces are lightly assessed, while others are heavily assessed. Some enjoy permanent settlement, while short term settlements prevail in others. Perpetual exemption should be granted in respect of both existing and future improvements. Owing to the frequency of famines in recent years which have afflicted Northern India, the expenditure and loss of revenue in consequence of famines have been enormously heavy.

"I am sure that if my resolution is accepted, masonry wells and other irrigation works will be multiplied in such large numbers that famines will become things of the past and will cease to be dreaded by people.

"In the Resolution No. 6—193-2, dated 24th May, 1906, the Government of India say:—

'The adoption in Northern India of the proposed policy would lead to a very large sacrifice of land-revenue, quite out of proportion to the result attained in the encouragement of improvements.'

"I submit that in the majority of cases, the construction of a well does not lead to an enhancement of rent. It simply ensures the stability of rent and affords additional protection against the effects of drought.

"The following extract from the speech delivered by the Hon'ble Sir Duncan Colvin Baillie, K.C.S.I., Senior Member of the Board of Revenue of the United Provinces, in the meeting of the United Provinces Legislative Council held on the 2nd December, 1913, supports my view:—

'The rule which meets the Hon'ble Member's view would be as follows:—

'When land is improved by irrigation, by works constructed by or at the instance of landholders by the expenditure of private capital, the increase in rental derived from the improvement shall not be taken into account at the revision of the assessment of land-revenue next following the date when the works were constructed.

'The result in nine cases out of ten at least was that no effect on the jamabandi due to the improvement was discernible. The great bulk of the area of land in which wells can be constructed in these provinces was already irrigable. A landholder constructs a new well but that well does not make the land formerly un-irrigated irrigable. It adds to the supply of water available. It is used when water in the surrounding wells falls low. But it ordinarily does not lead to an enhancement of rent or at any rate to a material enhancement of rent. The rule which the Hon'ble Member advocated was abandoned because it was found to give practically nothing to the Zamindar, and it was for this reason that the Government adopted the principle of re-imbursing the Zamindar for the expenditure."

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"In view of these facts it cannot be said that the loss of revenue entailed by the acceptance of my resolution will be as great as is apprehended. The incentives which Government supplies to Agricultural improvements and the prosperity which those improvements bring to the people should be a matter of as much concern to the Government as the amount of revenue which is brought into the Exchequer of the State. The increase in produce in consequence of improvements will result in the expansion of trade which will add to the income of the State. The concession prayed for if made will strike the popular imagination as an act of great liberality.

"For these reasons I beg to recommend this Resolution for acceptance by the Hon'ble Council."

The Hon'ble Sir Gangadhar Chitnavis said:—"Sir, I beg to support the Resolution. I have always held the view embodied in the Resolution before the Council. I think in the interest as much of the Government as of the land holder improvements due to irrigation works constructed by the private settlement-holder should be permanently exempted from assessment. This view is quite in conformity with some of the accepted principles of land tenures. Government have all along accepted the principle of exemption from assessment of improvements not carried out at State cost. The only difference between us is over the period of exemption. While the people have held that the exemption should be for all time to come, Government have made it a rule that it shall be for a period sufficiently long to recoup the land holder all capital cost *plus* interest. Even in the case of petty irrigation works like wells the Government have gradually liberalised their policy, and by their Resolution, dated 24th May, 1906, the Government of India passed orders, notwithstanding opposition from some of the Local Governments, for the elimination at the time of assessment of such wells from the village assets if they fell into disuse for any reason. As between landlords and tenants most of the provincial tenancy laws prohibit enhancement of rent on the ground of improvements carried out by tenants. I do not see why this principle should not determine in the same manner the relations between Government and the malguzar in regard to improvements. The great point in land revenue administration is that the prospector should have sufficient inducements for improving the soil. For the very security of the revenue, if for nothing else, this is absolutely necessary. Once this point is conceded, it becomes a difficult matter for Government to resist the demand now made. Permanent exemption of landlord's improvements from assessment offers inducements to him for undertaking them such as no other measure does. And this exemption does not affect prejudicially the dry assessment of the village and the possibilities of future enhancement. There is thus nothing by way of offset to the solid advantages of rural improvement which the concession is bound to secure. The fact should not be lost sight of that there is, after all, an element of uncertainty and risk in irrigation projects, and it is just possible that, with all preliminary calculation, the wells, tanks, etc., may not prove productive enough. Should this contingency happen, the capital is lost. Then there is the maintenance charge which the malguzar from self-interest bears. There may be some immediate loss to Government, but the permanent security of the revenue will more than compensate the loss. These considerations will, I hope, commend the Resolution to the acceptance of Government."

The Hon'ble Rai Sita Nath Ray Bahadur said:—"Sir, it is well known that nearly all our other sources of income are dried up, all the professions opened to us are crowded to overflowing, our arts and industries are gone, our trade and commerce are *nil*, we have fallen back on land, and land alone—it has been our last and only refuge. Eighty-five per cent of the population inhabiting this vast Indian continent live by agriculture, and agriculture alone. I do not wish to rake up those old controversies as to the how and why we have been reduced to this strait. This is neither the time nor the place to

expatiate on them. Avoiding all controversial points, may I not ask in all sincerity that so long as agriculture remains the main support of our people, the Government should, I say it is its duty to, adopt a still more lenient and liberal course with regard to its land revenue policy. I know that the land revenue policy of the Government has undergone a change since the time of Lord Curzon. How far it has benefited our people in its actual working can only be sufficiently testified to by my Hon'ble friends who hail from other parts of India. One of the reforms urged in that resolution of Lord Curzon's Government is that 'the principle of exempting or allowing for improvements by ryots should be further extended.' This principle is a well recognised and well known feature in that great piece of land legislation—I mean the Bengal Tenancy Act of 1885. For a definition of the term 'improvement' I may well refer to section 76 of the Bengal Tenancy Act of 1885, which, though not applicable to other parts of India, will give the general public an idea of what is meant by an 'improvement.' Many things are included in this definition. In my humble opinion, my Hon'ble friend's request is a very modest one, for he has based his recommendation on one kind of improvement alone, that is, improvement effected by the construction of tanks, wells, etc. Any increase of assets due to this kind of improvement should be permanently exempted from assessment to revenue. It will stimulate the malguzar or the ryot to improve his land. One thing I may suggest in this connection. The Government may give effect to this recommendation with regard to any improvement to be made in the future. There can be no harm or loss of revenue if this course is adopted; on the other hand, much will be gained to the benefit of the State and individual malguzar or ryot, otherwise there would be no incentive, no stimulus to make an improvement. I therefore earnestly request the Government to give its whole-hearted support to this Resolution."

The Hon'ble Sardar Daljit Singh said:—"Sir, I rise to support the Resolution put by my friend the Hon'ble Raja Kushal Pal Singh, who in his speech has discussed the matter so ably and exhaustively. The principle laid down in the Resolution now before us has been already upheld by the Government and is entirely in consonance with the policy hitherto followed. Leaving aside the permanently settled provinces the Government, in pursuance of the said principle, has in the Western and Southern Presidencies permanently exempted from assessment of revenue any increase of assets due to the construction of wells or introducing other means of irrigation at private expense. The period of temporary exemption in the Central and United Provinces is abridged to the end of the period of the current settlement, while in the Punjab this period lasts for 20 years and in certain special cases it has been extended 40 years. Now, Sir, every improvement that is effected in an agricultural area secures the Government land revenue, and as in the Punjab and United Provinces, where a system of occupancy tenant is in vogue, secures the interests of the tenant as well. Under the present circumstances, however, there is not much temptation for the landholder to incur considerable expense on the improvement of his holding, because all investments are matters of business enterprise and subject to the amount of profit that they would bring in.

"The present way of dealing with the improvements produce a deterrent effect and bars the improving of the land to its utmost capacity. It is advantageous to all parties concerned that all such improvements should be encouraged. The reform carried to any further extent, I am sure, would not affect the exchequer, but on the contrary it would serve as a safeguard against remission or loss of land revenue in bad years, and in the long run prove a substantial gain. Such a concession would be quite in keeping with the solicitude that the Government has been invariably showing for the welfare and amelioration of the agrarian and land-holding classes throughout the country."

The Hon'ble Mr. Rama Rayaningar said :—" Sir, the measure suggested in the Resolution will have to be considered sooner or later, and it is as well that it be considered now.

" As has been pointed out, two of the important expert Commissions that had been appointed to solve the most perplexing problems that characterise Indian Administration—I mean the Famine Commission and the Irrigation Commission—have expressed their opinions strongly in favour of the principle advocated by the Hon'ble mover of the Resolution. So did Dr. Voelcker, the well-known consulting Chemist to the Royal Agricultural Society of England. And what is more, Lord Curzon's Government dealing with the question summed up their policy in these terms :—

' It is the intention, however, of the Government of India in consultation with the Local Governments to take the whole matter into consideration with a view to the framing of rules that may stimulate the expenditure of private capital upon the improvement of the land and to secure to those who profit by such opportunity the legitimate reward of their enterprise.'

" Government further said :—

' The principle of exempting from assessment such improvements as have been made by private enterprise . . . . has been accepted by the British Government. "

" This being the policy of Government, what the Hon'ble mover prays for will only be the application of the principle which animates that policy.

" In permanently settled estates the cultivators are secured in the enjoyment of the benefits of their improvements. In the Bombay Presidency there are enactments which secure to the cultivator in perpetuity the whole of the profit arising not only from such irrigation works as wells or tanks, but from the minor improvements which would count for an increase in assessment in a system of reclassification of the soil. In our presidency of Madras such profits are similarly permanently secured to the ryots. In enacting the Estate Land Law the Madras Government was careful to secure for the ryot the benefit of his improvement.

" It is therefore quite natural that we should expect Government to make in favour of their temporary settlement-holder whatever sacrifice a zamindar is by legislature required to make in favour of his zamindary ryot. No ethical or administrative reason can justify a less liberal consideration of the claim of a settlement-holder for the fruit of his investment. The fact that the assessment of the holding is subject to a periodical revision does not in the least affect his position with regard to improvements made at his cost. The object of the Government, again to quote Lord Curzon, is to stimulate private enterprise and so forth, and I cannot imagine how that enterprise can be discounted in the case of a settlement-holder. Such differential treatment is not justifiable.

" I am glad that my friend the Hon'ble Rajah Kushal Pal Singh has made out a very strong case for the acceptance of his Resolution. He has satisfactorily answered the objections raised against what I consider to be the most well considered recommendations of the Famine Commission. I am in entire agreement with him when he says that the loss which Government may suffer in exempting from assessment the increase of assets due to private improvements will be more than compensated by the results that followed such exemption. Sir, no country in the world is so dependent upon agriculture as India is, and in no country is agriculture so dependent upon rain as in India. If any measure can in the least mitigate the almost inevitable consequence of drought that measure is a welcome measure, and I dare say the measure proposed by the Hon'ble Rajah Kushal Pal Singh is such a measure. Sir, I have therefore the greatest pleasure in supporting that measure. "

The Hon'ble Sir Edward Maclagan said :—" I do not propose to trouble the Council at this stage by giving the reasons which make it necessary

for Government to oppose this Resolution. The reasons are given in full detail in a Government Resolution of 1906 and they will be further explained later on by the Hon'ble the Revenue Member. I merely wish to point out what I think must be spoken of as 'misapprehensions' which occur in the remarks which have been made by some Hon'ble gentlemen who have spoken.

"I do not propose to follow the Hon'ble mover in his discussion of the theory on which land revenue is based. It is unnecessary for us to consider that in dealing with the present question, because whether the Government stands towards the landholder in the position of landlord to tenant, or whether it is merely taking a tax on his income, in either case there is nothing in the administration of the other branches of taxation in this country, or in the systems of taxation in other countries, or in the system of taxation which has prevailed in India from the beginning, to render it unjust or improper to take a reasonable amount of taxation from improved land. The Hon'ble Sir Gangadhar Chitnavis has very rightly pointed out that of late years the principle on which Government have treated improvements of this kind has very much developed, but I think it would be as well if Hon'ble Members clearly understood to what extent the Government at present gives exemptions from assessment to people who construct irrigation improvements. I will take the two Provinces which are chiefly concerned, *i.e.*, the Punjab and the United Provinces. Now, in the Punjab if a man makes a well he receives an exemption from enhancement of taxation for at least 20 years. If it is found that the exemption which he is thus given will not cover twice the amount of the capital he has spent, then he may be given a longer exemption which may extend to 40 years. In the United Provinces they go still further. There a deduction is made from the assets from the next settlement after the construction of the well, and the maker of the well receives a concession which thus extends not only to the remainder of the term of the existing settlement, but for the whole of the next settlement. That is to say, he *must* receive an exemption for 30 years, and he *may* receive an exemption up to 50 years. Neither of these can be called an illiberal system of exemption from taxation.

"Then the Hon'ble Member has told us that if this exemption is made permanent instead of temporary, we shall have such a large number of additional wells made that the expenditure on famine will be very much reduced and will far more than compensate us for the loss of revenue which will be occasioned by the concession. He has unfortunately given us no figures; he has not given us the data on which he bases his calculation. I think that if he will look into the figures he will find it very difficult to justify a statement of this kind. When you come to think of it, when a man makes a well, the fact that he has to pay additional land revenue for the land irrigated by that well after a large number of years is a small consideration—too small to induce him to decide whether to make the well or to leave it unmade. He may not have the capital to make the well; he may have other reasons, and all this may prevent him from making the well; but the fact that he has to pay land revenue after a large number of years will not weigh much in the considerations which guide him. I find that one of the best and most experienced of the Revenue Officers who were consulted in 1902 goes so far as to say: 'I do not for a moment believe that any man who wishes to improve his land has ever been deterred from doing so for fear of land revenue.' That may not be the experience of everybody, but still that is the experience of a capable Revenue Officer. I may add that it is also in accord with my own experience. I have had very many opportunities of discussing the land revenue question with landholders who have been affected by it, and although I have discussed it with thousands of landholders, and although it has been my duty to listen to all they had to tell me, of the disadvantages of increasing land revenue, I have never, to my recollection, heard a landholder say that he was not going to make a well because he was afraid of the land revenue being enhanced after a number of years. That may not be the experience of everybody, as I have said, but still I think it goes far to show that the enhancement of

land revenue does not usually enter into the considerations which weigh with a landholder in making or not making a well. He may not make the well because he has not got the capital; he may not be able to get the capital on reasonable terms; his co-sharers may refuse to help him; his land may be scattered about the village and he may have no power to consolidate it. There may be other reasons which will prevent him from making the well, but it is not because he has got to pay land revenue after 20 or 30 or 40 years. If a landholder did come to me and say that was the reason, I should try and exhaust all the other possible reasons before I accepted this one.

"Then the Hon'ble Member has referred to the various Commissions which have given their recommendations on the subject, and he has left us, I think, under the impression that he has the support of all those Commissions in his contention that permanent exemption from taxation should be given throughout India. Take, first of all, the Famine Commission of 1880. It is true that in one part of their report they say 'it might be possible to stimulate well construction by extending the practice of Bombay and Madras to Upper India.'

"But the same Commission in another part of their report say that 'the landowner should be guaranteed against any enhancement of his assessment for such period as to secure such a reasonable return on his investment as would encourage the prosecution of improvements,' that is to say, they recommend what the Government are at present doing.

"Then there is the Report of the Famine Commission of 1900. If I may be allowed, Sir, to tread on such consecrated ground, I will say this much, that this report does support the Hon'ble Member in so far as that Commission did recommend extension of permanent exemption; but the point is brought forward by the Commission, not in the general current of their recommendations, but as it were on a side issue, without any discussion of the merits of the question and in a very short paragraph. The question was thoroughly gone into by the next Commission, the Irrigation Commission of 1901—1903. That Commission went into the figures and data very carefully. They were misled as to some of their figures and they made mistakes on some of their data, but their recommendation was not that there should be a general extension of permanent exemption from assessment. They said that their general conclusion was that in Madras the permanent exemption had justified itself, and they went on to say that 'its trial in other provinces where exemption is at present only temporary would be justified in tracts exposed to famine in which special encouragements were required'; and they further went on to 'suggest a consideration of the question whether the rules applicable to the Central Provinces and to the Punjab might not be so far modified as to secure to improving landowners in those provinces a period of exemption from enhancement of revenue on account of their improvements which would not be less than that which is now given in the United Provinces.' In other words, they wished the other provinces to work their rules up to the same standard as those in the United Provinces, but said nothing about the general extension of the system of permanent exemption from assessment. And that, generally speaking, is the principle on which Government have acted since, that is to say, they are anxious to encourage the use of capital for the construction of wells and so far as this can be done by exemption from enhancement of revenue, they are ready to exercise thorough and ample liberality, but they are not prepared to go to the length, which the Hon'ble Member suggests, of giving permanent exemption."

The Hon'ble the Raja of Pirpur said:—"Sir, the very able and exhaustive speech delivered by my Hon'ble friend Raja Kushal Pal Singh renders it quite unnecessary that I should discuss this matter at any length. This speech has marshalled all the arguments effectively. But I would not be doing my duty both as representative of a Zamindar electorate and also as an Indian, if I do not afford my hearty support to this Resolution.

"The Indian continent is nearly all agricultural land. All wealth, prosperity, every means of livelihood, depends almost entirely on land alone. Too much attention cannot be bestowed on land improvement. Everything that makes the tenant more prosperous or the zamindar more happy deserves the fullest support of our enlightened Government.

"Nothing is a better safeguard against famine than improved irrigation. Irrigation can best be improved by means of *pucca* or masonry wells at a comparatively smaller cost and tanks, etc. But let any man walk round even the chief cities and after a mile's walk he would find the number of wells fewer and fewer. They are generally situated few and far between. The result is that no sooner there is drought for one or more seasons both the tenants and the zamindars, particularly the smaller landlords, are reduced to a deplorable state. Even the largest landlords acutely feel the loss of revenue and have to give up many expenses which indirectly reduce rural means of livelihood. As soon as matters take a serious turn the Government and a portion of the public have to undergo the burden of supporting a numerous population. For years the Government Budget has to suffer the pinch of famine and then apprehends a future drought.

"Would it not be advisable to do all the Government can to improve irrigation and multiply *pucca* wells? The present rules are not encouraging enough. If greater facilities and concessions are granted the benefit to the Government will be far greater than a slight loss of revenue. Afterwards that loss can be recouped in many other ways.

"We often find zamindars hesitating in investing their money in the construction of wells as there are other investments by which they derive greater benefit. They can advance money on higher interest and get much more than the wells give them. The principal and interest in a loan go on increasing, while the improvement made by means of *pucca* wells is shared by the Government.

"I think the contention of my Hon'ble friend, supported as it is by the opinion of experts, is very sound, that the benefit of improvements by means of making wells and tanks should be perpetually guaranteed to the owners of such improvements. After all he spends his own savings which he might have invested otherwise where Government could not have asked anything of him. The Government loses nothing by the landlord's improving the land. On the other hand the Government gains indirectly by the increased prosperity and the increased production. Moreover, in some cases, wells and tanks are constructed not so much for the purpose of enhancement of rent but for the increase in existing insufficient and unreliable means of irrigation. Why should the zamindars be taxed for their foresight and for helping the Government and the public in times of scarcity and famine? Perhaps it can be said against them that they help themselves also. But is it a fault or an offence? Is a zamindar who does a good act and by that gains some possible benefit to be fined in some future settlement for spending his money in improving irrigation rather than in usury.

"I think, Sir, when the Government fully consider this question they would be sure to look favourably to this Resolution. After all the zamindars generally, and those of the United Provinces particularly, are a heavily taxed class. Ordinarily they have to pay from 45 to 50 per cent of the rent they receive, besides heavy cesses and the cost of collections, etc. They have to undergo the brunt of famines. They have to keep up their position and contribute to many public communal and philanthropic subscriptions. Their condition deserves the particular attention of the Government. Their indebtedness was one of the eleven points which Lord Curzon had noted for reform in India. I hope that the Government will accept this laudable resolution. With these few remarks I support the Resolution."

[13TH JANUARY, 1914.] [*Maharajah Manindra Chandra Nandi; Mr. Abbott; Sir Robert Carlyle*]

The Hon'ble Maharajah Manindra Chandra Nandi of Kasim Bazar said:—"Sir, in supporting the Resolution moved by the Hon'ble Raja Kushal Pal Singh, I may mention at the outset that I come from a part of the country in which revisions of settlement and assessment of the land revenue do not take place on account of the Permanent Settlement. It would have been an advantage if a uniform system of land assessment had prevailed throughout the country, but since this has not been found feasible it is certainly desirable that the land revenue system should move along the line of least resistance. The fact cannot be denied that the revision of every settlement is almost invariably followed by an enhancement of the assessment of the land revenue. This has a very disturbing effect in tracts of land where short term settlements prevail, as, for instance, in the Central Provinces, Sind, the Punjab and part of the United Provinces. Every landholder desires to improve the land he holds and he often introduces artificial sources of irrigation to improve and increase the yield of the land. Now, when the term of settlement extends to only ten or twenty years, after which it is to be revised and the land revenue almost certain to be enhanced, the landholder feels reluctant to incur heavy expense on the improvement of his land. It must not be forgotten that the capital outlay on tanks and other sources of artificial irrigation is often considerable and cannot be recovered in a period of 10 or 20 or 30 or 40 years. Consequently, short term settlements and the subsequent enhancement of revenue act as a deterrent upon the improvement of land.

"It may be admitted at once that the State as the real proprietor of the land is entitled to a share in the increase of assets whether due to the State or the landholder, but in any case there ought to be a reasonable limit beyond which improvements effected by landholders should be exempt from revision and enhancement of assessment."

The Hon'ble Mr. Abbott said:—"Sir, I beg to support the Hon'ble Mover of this Resolution. I am sure that it would be an advantage to the Province as a whole and to Bundelkhand in particular. I should have liked to have seen the Central Provinces included in the Resolution; it would be a greater boon. Very many villages in the north of the Central Provinces and in the south of Bundelkhand bring in little or no revenue, but with good wells, small dams and tanks thousands of acres would be brought under cultivation. The rich far-sighted landlord is a blessing, and I should like to see him get the full fruits of his labour."

The Hon'ble Sir Robert Carlyle said:—"The Resolution proposed by my Hon'ble friend deals solely with the one question—whether assets due to the construction (otherwise than at the expense of the State) of wells, tanks, or other artificial sources of irrigation should be permanently exempted in all parts of India from assessment to revenue. I accordingly confine myself strictly to this one point, and do not follow the Hon'ble Mr. Abbott in considering whether permanent exemption should be given in parts of the United Provinces and of the Central Provinces.

"If my Hon'ble friend's proposal were accepted, the loss of revenue involved would be very large. The assessment on the profits due to a well in the United Provinces and in the Punjab would, on an average, come to something like Rs. 20 a year; and as there are already about 750,000 wells in these two provinces, the annual loss in this part of India alone would be about a crore and a half of rupees. Even if the exemptions were confined to works constructed after the period, the loss involved would be very great if the construction of wells goes on as rapidly in future as of late years. I trust this Council will agree with me that a very strong case would have to be made out before the Government of India would be justified in agreeing to incur so heavy a loss. I could understand this Council recommending such a course if our practice were inconsistent with that followed in other civilized countries,

or if it were opposed to the best traditions of revenue administration in this Empire. In this matter, however, we are at least as liberal as European Governments; and, so far as India is concerned, it is our Government that has been the first to treat liberally those who have made improvements at their own expense.

"I entirely sympathise with the importance attached by the Hon'ble Mover to the importance of safeguarding and increasing agricultural production in India by increasing the water-supply, but I join issue with him in the view that this can, to any considerable extent, be furthered by the means proposed by him.

"It is quite true that the Irrigation Commission considered that the construction of improvements was proceeding much more rapidly in Madras and Bombay than in other parts of India, but the figures on which they relied were not satisfactory. I have had quinquennial figures prepared and they do not bear out their contention. Inter-provincial comparisons are unsatisfactory as figures do not always represent the same things in different provinces. In the United Provinces we can compare the figures between the permanently and temporarily settled areas and there we find the construction of improvements going on much more rapidly in the temporarily settled districts than in the permanently settled tracts. I do not attach any importance to these figures. All I say is that we can tell very little from a mere comparison of the figures in various provinces. I follow Sir Edward Maclagan in declining to follow the Hon'ble Mover, who raises the old question whether land revenue is taxation or rent. For the present purpose it is immaterial. Every Government in India has enforced its right to a share of the produce of the land.

"To sum up, I am convinced that the measure proposed would not have the effect anticipated by the Hon'ble Mover. It is not the usual practice in most civilized countries, nor is it in accordance with former practice in India. The Government of India is bound to see that Local Governments do not adopt principles of taxation oppressive, inequitable or harmful to progress, but there is nothing of this kind in the measures now adopted by Local Governments, nor would there appear to be sufficient grounds for the Government of India to compel all Local Governments permanently to exempt from assessment all assets due to improvements. If in any tract the concessions now given are insufficient it is to the Local Government that application must be made, and I am sure any reasonable representation will receive a fair hearing."

The Hon'ble Mr. Chakravarti Vijiaraghavachariar said:—"Sir, I wish to say a few words on this motion. The question whether the land tax in India is taxation proper or not does not now quite arise. This question of rent or tax is one which the Hon'ble Sir Edward Maclagan and the Hon'ble Sir Robert Carlyle refused to go into, and I do not wish to detain the Council on this very important point, but I will only call the attention of the Council to a statement as to the land tax policy contained in a book entitled 'Land Revenue Policy of the Indian Government', issued during Lord Curzon's regime. There Lord Curzon administered a brilliant snub to Mr. Dutt. He said that Mr. Dutt confused rent with land revenue. That settles the question once for all. Land revenue in India is certainly a tax, not rent. As regards the definite prayer of the Resolution there is one point, I believe, that has not been touched on by Hon'ble Members who have spoken either on the one side or the other, namely, the question of what is the basis on which this frequent enhancement of the land tax rests? As far as I understand it, the land revenue policy of the British Government has been, whether taken over and inherited from previous Governments or initiated by it and perfected by it, when the tax is once settled, a subsequent settlement of the same assessment is based on two grounds, justice to the taxpayer and justice to the Government.

"Justice to the taxpayer arises when, on account of deterioration of the soil and a host of other circumstances, he is entitled to a reduction of taxation:

on the other hand, justice to Government is a claim to a share of this unearned increment. We are sure, I believe, that the profits due to improvement at private expense cannot be called 'unearned increment'? If it is not unearned increment, I believe, whatever be the loss of revenue, the Government is not entitled to share it. It is next said that the speech of the Hon'ble Raja Kushal Pal Singh is devoid of figures showing whether or not the ryot, in making his improvement, takes this tax on his improvement into his consideration. I respectfully beg to submit that it is not a case for figures at all; it is a speculation, and *primâ facie* any person who is called upon to spend money upon improvement will be supposed to take all the facts into consideration which will show what sort of return he will get on that improvement. To say, therefore, that because he is given a period of from 20 to 60 years according to circumstances, he is not likely to take that into consideration, I respectfully submit, is not in consonance with all that we know of human nature. His state of mind is not capable of being put into figures. Now, it is not contended that by the end of the period allowed, whether it be 20 or 30 years or double that period, the man will have recovered the money expended upon it on the principle of a sinking fund. Unless and until it can be so stated, or unless and until there is a general revision of taxation throughout the whole country, I do submit that on the principles authoritatively enunciated and on the principles hitherto generally followed by Government as regards the administration of land revenue, the Government is not, in justice to the people and in loyalty to its acknowledged principles, entitled to tax the improvement. It is stated that the land tax in this country will compare favourably with the same in other countries. I respectfully submit that it will not. Figures have not been given either way. But some years ago the Hon'ble Mr. Gokhale in this Council did give these figures of comparison and proved that the incidence of land taxation in this country is far higher than the incidence of land taxation in the most advanced countries, and if it is necessary it can be again shown that the incidence of land taxation in India is much higher than that of any other civilised country. On all these grounds, on the ground of equity and on the ground of acknowledged principles and pledges, the recommendation before the Council is a very fair one and entitled to be seriously considered by Government. I need hardly say that the future Indian land policy must be to bring the land taxes of tracts not permanently settled as near as possible to the tax on permanently settled land and to the land tax in civilised countries, and also to the proportion of taxes upon other incomes here. Why should the owner of land pay a much larger proportion than the merchant, the trader or any other person? We pay 5 pies in the rupee as income tax, but compare this incidence of taxation with the tax on the profits which the landholder makes and the petty peasant makes. I respectfully submit that the future land policy must take all these facts into consideration. I have no hesitation therefore in according my vote for the Resolution."

The Hon'ble Raja Kushal Pal Singh said:—"Sir, the Hon'ble Revenue Secretary laid great stress upon the fact that the concession ordinarily allowed by the Government is not an illiberal one. I respectfully submit that the question before the Council is not whether the concession allowed is a liberal one or not. Every person has an equitable right to enjoy the fruits of his labour and expenditure. I do not see why a landholder who makes an improvement by irrigation should be debarred from deriving benefit from the improvement and from enjoying the whole profits thereof. The same Hon'ble gentleman mentioned that I gave no instance to show that in permanently settled districts the number of masonry wells was larger than in the temporarily settled districts. I read an extract from Dr. Voelcker's report. In the Report on the Improvement of Indian Agriculture, Dr. Voelcker says:—

'In a Resolution of the Revenue Department of the North-Western Provinces and Oudh, No. 898-A of 1880, a comparison is drawn between the four districts of Ghazipur, Jaunpur,

Ballia and Benares, which are under permanent settlement as regards the land tax, and the adjacent and similarly situated districts which are temporarily settled, and, consequently, are liable to periodical revision of the land tax. In the former 55 per cent of the cultivated area has been brought under irrigation by wells, tanks, and streams, and in Jaunpur alone 55,224 wells have been dug by private capital. But in the temporarily settled districts only between 16 and 17 per cent of the cultivated area has been brought under irrigation from wells and other sources, exclusive of canals. If the land under canals be added, there is, even then, only a total of 22 per cent of the whole cultivated area of the temporarily settled districts under irrigation, as against 55 per cent in the permanently settled districts, there being no canals at all in the latter.'

"Then the same Hon'ble gentleman said that he had a talk with a number of landholders and none of them said that he was prevented from making an improvement by irrigation from a fear of enhanced land revenue. On this point I beg to read an extract from Mr. Malony's evidence given before the Indian Irrigation Commission. In that evidence he stated :—'The fear of enhanced revenue assessment is undoubtedly one of the causes which prevents wells being made.'

"The same Hon'ble gentleman said that even if the concession asked for were made, there is nothing to show that the number of permanent masonry wells will be multiplied to the extent claimed by the Mover of the Resolution. As regards this point I beg to submit that the speeches of the landholding members of this Council, who hail from different parts of India and who have intimate acquaintance with the actual condition of things obtaining there, all show that the concession asked for will give an irresistible impetus to the building of masonry wells.

"As regards the Famine Commission of 1901, I shall observe that it was presided over by Lord MacDonnell, who is a great authority on all agrarian questions.

"The Hon'ble Member in charge of the Revenue Department said that, if the concession asked for is given, the loss of Government revenue will not be small ; it will be very large. He calculated the amount of loss, but I submit that in the majority of cases the construction of a well does not lead to an enhancement of rent, but simply ensures the stability of rent and offers additional protection against the effects of drought. I quote an extract from the speech delivered by the Hon'ble Sir Duncan Colvin Baillie. He said :—

'The result in nine cases out of ten at least was that no effect on the *jamabandi* due to the improvement was discernible. The great bulk of the area of land in which wells can be constructed in these provinces was already irrigable. A landholder constructs a new well but that well does not make the land formerly unirrigated irrigable. It adds to the supply of water available. It is used when water in the surrounding wells falls low. But it ordinarily does not lead to an enhancement of rent or at any rate to a material enhancement of rent.'

"I submit that, according to the view taken by Sir Duncan Baillie, the loss will be one-tenth of what the Hon'ble Member in charge of the Bill calculated. The Hon'ble Member in charge of the Revenue Department stated that in recent years the number of masonry wells constructed in the temporarily settled districts of the United Provinces was larger than in the permanently settled districts of the same Provinces. The reason is not far to seek. The recent famines which afflicted the United Provinces were almost all confined to the Western and Southern portions of the United Provinces. The permanent settlement is only in the Eastern districts, which all escaped from the famines of recent years. The Hon'ble Member in charge of the Revenue Department further said that I ought to have gone before the Local Government for the concession prayed for. I beg to state that I did move a Resolution in the Provincial Legislative Council, but unfortunately it was not accepted there."

[13TH JANUARY, 1914.] [*Mr. Rama Rayaningar.*]

The Resolution was put and the Council divided as follows :—

Ayes.	*Noes.*
The Hon'ble Nawab Saiyid Muhammad.	The Hon'ble Sir Robert Carlyle.
„ Mr. Chakravarti Vijiaraghavachariar.	„ Sir Harcourt Butler.
„ Mr. R. R. Venkataranga.	„ Sir Ali Imam.
„ Khan Bahadur Mir Asad Ali Khan	„ Mr. Clark.
„ Sir Ibrahim Rahimtoola.	„ Sir Reginald Craddock.
„ Maharaja M. C. Nandi.	„ Sir William Meyer.
„ Raja Abu Jafar of Pirpur.	„ Mr. Hailey.
„ Mr. M. S. Das.	„ Sir T. R. Wynne.
„ Mr. Huda.	„ Mr. Cobb.
„ Rai Sita Nath Ray Bahadur.	„ Sir A. H. McMahon.
„ Malik Umar Hyat Khan.	„ Mr. Brunyate.
„ Sardar Daljit Singh.	„ Mr. Wheeler.
„ Rao Bahadur V. R. Pandit.	„ Mr. Enthoven.
„ Sir G. M. Chitnavis.	„ Mr. Sharp.
„ Maung Mye.	„ Mr. Porter.
„ Mr. Abbott.	„ Sir E. D. Maclagan.
„ Raja Kushal Pal Singh.	„ Major-General Birdwood.
	„ Mr. Michael.
	„ Mr. Russell.
	„ Mr. Maxwell.
	„ Major Robertson.
	„ Mr. Kenrick.
	„ Mr. Kesteven.
	„ Mr. MacKenna.
	„ Sir William Vincent.
	„ Mr. L. M. Wynch.
	„ Mr. Donald.
	„ Mr. Walsh.
	„ Mr. Arthur.
	„ Major Brooke-Blakeway.
	„ Mr. Diack.
	„ Mr. Laurie.
	„ Mr. Arbuthnott.
	„ S. G. Barua.
	„ Mr. Rice.

The Resolution was accordingly rejected.

RESOLUTION FOR INVESTIGATION OF COLLISIONS AND RAILWAY ACCIDENTS BY A MIXED BODY OF OFFICIALS AND NON-OFFICIALS.

The Hon'ble Mr. Rama Rayaningar said :—"Sir, I beg leave to withdraw the following Resolution which stands against my name :—

'That this Council recommends to the Governor General in Council that rules be framed for every collision and every serious railway accident being investigated openly by a mixed body of Government officials, railway officials and non-officials and for the publication of their report.'

The leave was given and the Resolution was withdrawn.

The Council adjourned to Wednesday, the 14th January, 1914.

W. H. VINCENT,

Secretary to the Government of India,
Legislative Department.

DELHI :

The 21st January, 1914.