PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

1887.

VOLUME XXV.

Published by the Authority of His Excellency the Governor.

Bombay:
REPRINTED AT THE GOVERNMENT CENTRAL PRESS.

1895.

CONTENTS

Proceedings of the 12th February 1887.

Proceedings of the 16th July 1887.

Proceedings of the 23rd July 1887.

CONTENTS.

PROCEEDINGS OF THE 10TH OCTOBER 1887.

INDEX

TO THE

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR OF BOMBAY ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS.

Volume XXV.

PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

FOR THE

PURPOSE OF MAKING LAWS AND REGULATIONS.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Bombay on Saturday the 12th February, 1887.

PRESENT:

His Excellency the Right Honourable LORD REAY, LL.D., C.I.E., Governor of Bombay, *Presiding.*

The Honourable M. MELVILL, C.S.I.

The Honourable J. B. RICHEY, C.S.I.

The Honourable the Acting ADVOCATE-GENERAL.

The Honourable KASHINATH TRIMBAK TELANG, C.I.E.

The Honourable DADABHAI NAVROJI.

The Honourable Ráo Bahádur MAHADEV VASUDEV BARVE, C.I.E.

Papers presented to the Council.

The following papers were presented to the Council:—

Letter from the Secretary to the Government of India, Legislative Department, No 2076, dated 22nd October 1886, returning, with the assent of His Excellency the Viceroy and Governor-General signified thereon, the authentic copy of the Bill to amend the Bombay Land Revenue Code, 1879.

Letter from the Officiating Secretary to the Government of India, Legislative Department, No. 129, dated 14th January 1887, returning, with the assent of His Excellency the Viceroy and Governor-General signified thereon, the authentic copy of the Bill to amend Bombay Act III of 1874.

Letter from the Officiating Secretary to the Government of India, Legislative Department, No. 230, dated 24th January 1887, returning, with the assent of His Excellency the Viceroy and Governor-General signified thereon, the authentic copy of the Bill to vest the Port of Karáchi in a Trust.

Report of the Select Committee appointed to consider and report on the Bill to provide for the protection of pilgrims at the Port of Bombay.

Report of the Select Committee appointed to consider and report on the Bill to amend the Law for the periodical inspection and the management by competent engineers of Boilers and Prime Movers in the Presidency of Bombay.

Mr Melvill moves the second reading of Bill No. 2 of 1886.

The Honourable Mr. MELVILL moved the second reading of Bill No. 2 of 1886, entitled "A Bill to provide for the protection of pilgrims at the Ports of Bombay and Karáchi." He said:—There has been some delay in presenting the report of the Select Committee on this Bill to the Council, because it was thought necessary first to obtain the sanction of the Government of India to certain penal clauses contained in some new sections which have been introduced into the Bill by the Select Committee. As the Council is aware, there is a rule that no Bill containing penal clauses shall be brought before the Council, until those clauses have received the sanction of the Government of India. That rule does not apply in express terms to penal clauses introduced into a Bill by a Select Committee, but it appeared to the Committee that in principle it was the same thing, and that it was as necessary to obtain the sanction of the Government of India to the penal clauses introduced by the Select Committee as to those contained in the original Bill. The sanction of the Government of India has now been obtained, and the Bill is brought before the Council for the second reading. It has been published in due form for some time, and no objections have been received to it from any quarter. I presume, therefore, that there will be no objection to the second reading of the Bill, and I move accordingly that it be read a second time.

Bill read a second time.

The Bill was read a second time.

Bill considered in detail.

On the Bill being considered in detail, "1887" was on the motion of the Honourable Mr. Melvill substituted for "1886" in Section 1.

The Honourable Mr. MELVILL said:—There is one other amendment of which notice has been given to the Council, *viz.* that in Section 4 the words "being Mahomedans and not exceeding in number such limit as shall from time to time be prescribed by Government" occurring in lines 3 to 7, be omitted; and in line 1 the words "subject to the orders of the Governor in Council" be inserted before the word "The." The object of this amendment is to remove from the section the prohibition against the licensing of any person who is not a Mahomedan to be a pilgrim-broker. The reason for the amendment is this. A few days ago we received a telegram from the Government of India as follows:—"Section 2, sub-section 2, read in connection with Sections 3 and 4 of Bill to provide for protection of pilgrims at ports of Bombay and Karáchi will, as they stand, exclude Mr. Cook from the besiness he proposes to carry on for benefit of pilgrims with the countenance of Government of India, because as he is not a Mahomedan, he will not be capable of being licensed as a pilgrim-broker. This is undesirable, as arrangements with him are far advanced. The Government of India suggest that words 'being Mahomedans' be struck out of Section 4, and powers be taken by Bombay Government to restrict by executive order issue of licences to such classes as it pleases. This could be effected by insertion of some such words as 'subject to the orders of the Governor in Council' at beginning of Section 4. The Governor-General in Council will be glad to learn whether His Excellency in Council sees any objection to the alteration proposed." In reply to that we have telegraphed: "This Government has no objection to the proposed amendment, and the Bill will be amended accordingly." The object of the amendment therefore is to enable Government to appoint other persons than Mahomedans to be brokers. The Council will remember that, when I introduced the Bill, I informed them that Messrs. Cook & Son, the well-known firm, had undertaken to make arrangements with the view of improving the present system of convey-

ing pilgrims to and from Jeddha, and the essence of this arrangement was to be that tickets to Jeddha and back were to be issued on behalf of Messrs. Cook & Son by Government officers in the provinces of India from which pilgrims come, and that Messrs. Cook & Son should arrange with the railway companies in India for the conveyance of the pilgrims to Bombay. One of the members of the firm, who has been travelling during this cold weather in the upper provinces of India, informs me that he has been most favourably received by the Mahomedan communities in the different cities he has visited. His arrangements however are not yet complete. I am not therefore in a position at present to inform the Council whether Messrs. Cook & Son will perform those exact duties which will bring them within the definition of pilgrim-brokers under Section 2. It is however probable that such will be the case. In contemplation of that probability, it is necessary to remove from the Bill any words which would prevent the Government from appointing Messrs. Cook & Son to be pilgrim-brokers, if it is found desirable to do so. That is the only amendment which I have now to propose in the Bill, and, as no objection has been taken to it, I think it may be read a third time and passed.

The amendments were agreed to.

Bill read a third time and passed.

The Bill was then read a third time and passed as amended.

Mr. Richey moves the first reading of Bill No. 7 of 1886.

The Honourable Mr. RICHEY, in moving the first reading of Bill No. 7 of 1886, entitled "a Bill to consolidate and amend the Law relating to Toda Girás Allowances," said:—The sum of about Rs. 1,46,000 is paid every year from the treasuries of Gujarát towards toda girás allowances. The holders of these allowances are persons of the Rajput and Koli class, and their origin I may quote from the earliest record we have on the subject. They were given for protection or for exemption from disturbance, and the Collector of Ahmedabad, who reported on them on the 19th January, 1821, describes them as follows:—"The denomination Girássia is generally applicable only to Rajputs, but in reference to the article under consideration I may observe that in this province of the turbulent every one who possessed the power to annoy has and enjoys his girás either in land or money, and this is proportionate to the awe which he or his ancestors may have been able to inspire or to the injuries which he or they may actually have committed." The origin of Toda Girássias dates from the time of anarchy, when the Mussulman power was weakened in Gujarát, and the petty chieftains and leaders by making depredations, by incendiarism in the villages, and by terrorising the people exacted these dues. In other cases they were paid by the villagers to Chiefs a little more considerate to secure them from such depredations. In all cases they were in the nature of black-mail. If a village was depopulated the toda girás was supposed to cease; therefore it was to the interest of the recipient to maintain the village communities in comparative prosperity. In that way it acted as a purchase of protection as well as purchase of exemption. In succeeding to the Government of Gujarát we undertook a great many obligations to secure the peace of the country, including guaranteeing the Gáikwár tribute from his tributary States, and guaranteeing his Girássias their rights against him. There has been an officer employed for the last nine years in settling claims at are still outstanding and unsettled, a legacy from those times. To protect our own villagers we undertook from our own Treasury to pay the Girássias who had formerly levied their dues direct, and in case of non-payment, harried the villages or burned the

crops or carried off hostages. Very soon after we had undertaken to make these payments regularly the creditors of these classes, who are usually improvident, found these allowances to be convenient assets for attachment in execution of decrees in the usual process of the Civil Courts, and as early as 1830 the question arose whether Government should do anything to interfere and protect these allowances from alienation through the decrees of the Court. The case best known in connection with it and the one which has since created a very large record on the subject was the case of the man Sambhulal, who purchased a toda girás right at a sale under the decree of the Surat Court. That case went through the Courts of India and after decision on both sides the highest Court of the time in India found these allowances were inalienable. Sambhulal then appealed to the Privy Council. The suit was instituted in 1841, and in the course of the proceedings which he had instituted against Government to have his right to the allowances recognised, Government sent instructions, which I will read, to the officers in the defence of the suit. They said:—

" It would be difficult, if not impossible, to define the origin of the Girássia and of his rights and dues. But this is certain, that on our coming into possession of any district where we have found Girássias, we have respected their rights, and have taken great pains to ascertain their dues on villages, and, in order to prevent disputes and violence have paid these dues direct from our treasuries. These dues have always been considered hereditary, but it may be doubted whether there is any real authority for considering these Girássias as hereditary officers, or their dues as emoluments of office. [Government had to rule on that because some of the Government officers dwelt strongly on the point that some Girássias were called upon for service, and that these toda girás allowances were in the nature of payment for services.] Their position varied according to the Girássia's power. In some cases he was a chief, holding lands and rights in various villages; in others he was little better than a recognized freebooter, but with established dues on his particular village. In all cases where the dues were unpaid, we know that under the native rule the Girássia resorted to violence against the recusent village. These dues may, in our language, be considered black-mail or the price of forbearance. But, however considered, they were a property recognized by us without considering their origin, but merely the person or property to whom the dues belong, and are to be paid. It is believed that Girássia dues paid from the treasury have been frequently paid to their creditors, and that there have been instances of their sale and mortgage, chiefly in the Surat District. Our policy, however, should be to prevent these transfers, and to make this Girássia property inalienable, as the holding of a particular class, which we have recognized as an exclusive property for the maintenance of these persons for the great end of preserving the peace of the country. The defence, therefore, should be that the Girássia dues paid from the treasury are fixed in the person of the Girássias; that they were so in their origin, and have since continued so; and that the whole nature of the tenure and the circumstances of the country require that the Government should maintain them to be inalienable."

These were the opinions of the Government of Bombay in January, 1844; and after obtaining the decision which confirmed their views, the matter rested until 1860, when the Privy Council found that toda girás allowances must be considered an ordinary recognised class of property liable to the processes of the Court. The Court announced that they constituted "a recognised species of property capable of alienation and seizure and

sale under an execution." That was the decision in 1860, in view of which the Government took under consideration what course they were to adopt in order to secure their object, which was that the recipients of these allowances should be continued in receipt of their allowance, in order to assist in their maintenance and to act as security for their good conduct. In 1862 the Government resolved that they would continue to pay these allowances from the treasury; perhaps I had better read the passage :—" Faith should now be kept with their descendents, although they are no longer dangerous to the State. This the Governor in Council is prepared in the strictest sense to do, but he cannot allow that a tax at first so irregularly imposed on the community should now be extorted from the public purse by others than those in whose favour the original arrangements were made, or that Government should be compelled to continue its good offices between the Girássias and the village communities in a manner to which it never pledged itself. It should therefore be publicly declared in every táluka, as the Revenue Survey settlement is introduced, that the new rates of assessment do not include any such collection, and that Government will in future not aid or take part in the collection of girás." The last portion of that decision refers to the alternative course open to Government. At any moment they might have refused to pay these allowances any longer and allowed the Girássias to assert their rights if they were prepared to do so by legal process against the village community who had been originally liable to them. But Government go on to say :—

" In thus placing the Girássias in the same position with respect to the village communities which they originally held, the Governor in Council cannot allow them to resort to other than legal means to enforce their claims, and if any village communities decline to accede to the Girássias' demands, the latter must resort to the Civil Courts. At the same time the Governor in Council is not unwilling to make some sacrifice of revenue in order to relieve the Girássias from the necessity of resorting to law, and he is prepared, whenever the Girássias may be willing to receive from Government his present income, instead of collecting it direct from the villagers, to continue that income to him under such reasonable rules and restrictions as it may seem fit to Government to impose." So that by the departure made in 1862 a contract was to be made with the Girássias in order that they might not be forced back by the refusal of their dues by the treasury to their previous lawlessness in demanding their dues on the village; and in consideration of this undertaking of Government to continue their dues, they were put under restrictions, and in 1863 a form of agreement with the Girássias, who were willing to accept these terms, was issued. Very large numbers—about twelve hundred I believe, or at any rate more than a thousand—signed this agreement. Among the conditions in these agreements are the clauses :—" We will not alienate our girás out of our families by sale, mortgage," &c., and " we will, whenever called for, perform police or any other service which it may have been or may be customary to exact from Girássias, in return for the payment of girás." So that in 1862 Government supposed that the Girássias who signed these agreements and accepted sanads for their allowances were precluded from alienating them or pledging their allowances to their creditors. But fresh cases arose in which the Courts gave execution against girás allowances, and Government were advised in 1875 that this agreement was not such a legal instrument as would enable Government to make use of it to protect girás allowances from alienation. In the meantime the Pensions' Act had been passed, and it was thought that under the

provisions of that Act—XXIII of 1871—these allowances would not be saleable. But the question was raised in one of the subordinate Courts and referred to the High Court, who found that the girás was liable to attachment for sale by the Court. Although under the Pensions' Act, the Privy Council had found that no suit could lie against the Government, still, as regards the holder, he was, according to the decision of the Court here, amenable to have his girás allowance subjected to attachment and sale. Government were accordingly brought to the position they had been in on the decision of the Privy Council in 1860 that toda girás allowances were open to the process of the Civil Court. They have since had other advice on the subject of legislation, and after considerable reference on the question to the Government of India we have now come to the conclusion that this short Bill, which is before the Council, will provide all that is necessary to meet the original objects. These objects are to define the extent to which the toda girás allowances are heritable, and to prevent future alienation. Now the limitation of succession to the lineal male heirs is no new provision. It has been a recognised condition of these allowances for many years, and all the Girássias accept it. We have had no objections or remonstrances made against the Bill, and it is in fact really giving legal standing to the actual state of the case; with regard to the succession to these allowances, we have further provided discretion to allow continuance of the toda girás in the line of a brother. The other object is to prevent alienation. There is a very simple provision made that no mortgage-charge or alienation shall be valid except those which have already taken place. The intention from the first has been that the allowances should be continued to those persons who belonged to the turbulent classes in order that the peace of the country may be maintained, and that they may not, owing to their losing these allowances, be provoked again to have recourse to breaches of the peace. A few allowances are paid directly by Inámdárs, and we treat them in the same way, as it is a matter of public policy for protection of the subjects that there should be no exception made. I move the first reading of the Bill.

Bill read a first time.

The Bill was read a first time.

His Excellency the PRESIDENT:—Do you wish to refer the Bill to a Select Committee?

The Honourable Mr. RICHEY:—No, Your Excellency. I think that the principle of the Bill having been accepted, a review on the second reading will be sufficient. There have been no objections or petitions on the subject.

Mr. Melvill moves the first reading of Bill No. I. of 1887.

The Honourable Mr. MELVILL, in moving the first reading of Bill No. I. of 1887 entitled "A Bill to further amend Bombay Act II. of 1874," said:—This Bill calls for very few remarks. Bombay Act II. of 1874 is an Act for the Regulation of Jails in the City and Presidency of Bombay and the enforcement of discipline therein. Section 17 of the Act divides criminal jails into three kinds—first, subordinate; second, district; and third, central. Section 19 of the Act is as follows:—"District jails shall be established at the seats of the Courts of Sessions Judges." Thus the section makes it obligatory to establish district jails in every place where there is a Sessions Court. Section 22 says—"All convicts sentenced by the Courts of Session shall be imprisoned in the district jail." Now that small stations like Sátára have been brought by rail within easy communication with Poona, where there is a central jail, it is more convenient to do away with the district jails and their extensive establishments at these small stations, and to transfer all convicts as soon as they are sentenced by the Sessions Court to the central jail at Poona. The

present Bill, therefore, proposes to amend Section 19 of the Act by making it optional, and not compulsory, to establish district jails at the stations at which criminal sessions are ordinarily held by Sessions Judges. We have introduced a new Section 22*a* to make provision for dealing with convicts in a district in which there is no district jail, there being of course no provision for such a contingency in Act II. of 1874, which provides that there shall be district jails in every district. Lastly, the opportunity has been taken to amend Section 41 of the Act so as to bring it into harmony with Section 400 of the Criminal Procedure Code. The section of the Code requires that, when a sentence has been fully executed, the warrant shall be returned to the Court from which it issued, while Section 41 of Bombay Act II. of 1874 requires the warrant to be sent to the officer from whom it was received. Now the officer from whom it was received may not always be the Court by which it was issued. For example, if a prisoner is sentenced by the Sessions Court at Thána, and sent to the jail there, and afterwards forwarded to the Central jail at Poona, then, when his sentence has expired, the warrant according to the Criminal Procedure Code should be returned to the Sessions Court, while according to the Bombay Act it would be returned to the Superintendent of the jail at Thána. The matter is not one of much importance, but there is a conflict to this extent between the two Acts. It is of course necessary that the Act of the Imperial Legislature, which is the latter Act, should govern the procedure. Section 41 of Act II. 1874 has been altered accordingly by striking out the last paragraph. I move that the Bill be read a first time.

Bill read a first time.

The Bill was read a first time.

The Honourable Mr. MELVILL :—The Bill has been duly published. No objections have been made to it; in fact it is a Bill to which no objections can be made. As we are anxious to carry out our economical measures as quickly as possible, I propose that the standing orders be suspended, and that the Bill be read a second and third time at once.

Standing orders suspended and Bill read a second and a third time and passed.

The standing orders were accordingly suspended, and the Bill was read a second and a third time and passed.

The Honourable Mr. MELVILL :—I must ask, my Lord, for an extension by one month of the time granted for the presentation of the report by the Select Committee on the Aden Port Trust Bill. Two months were originally allowed for the report; but there has been some delay in consequence of the necessity of obtaining the opinion of the authorities at Aden. The report is now being drafted, and will very soon be presented.

Extension of time for receiving the report of the Select Committee on Bill No. 5 of 1886.

The extension was granted.

His Excellency the President then adjourned the Council.

By order of His Excellency the Right Honourable the Governor in Council,

A. SHEWAN,
Acting Secretary to the Council of the Governor
of Bombay for making Laws and Regulations.

Bombay, 12th February 1887.

Abstract of the Proceedings of the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Poona on Saturday the 16th July, 1887.

PRESENT:

His Excellency the Right Honourable LORD REAY, G.C.I.E., LL.D., Governor of Bombay, *Presiding.*

The Honourable Sir M. MELVILL, K.C.I.E., C.S.I.
The Honourable J. B. RICHEY, C.S.I.
The Honourable the ADVOCATE GENERAL.
The Honourable KÁSHINÁTH TRIMBAK TELANG, C.I.E.
The Honourable F. FORBES ADAM.
The Honourable J. R. NAYLOR.
The Honourable Khán Bahádur KÁZI SHÁHÁBUDIN, C.I.E.
The Honourable Ráo Bahádur MÁHA'DEV WA'SUDEV, BARVE, C.I.E.

Papers presented to the Council.

The following papers were presented to the Council :—

(1) Letter from the Secretary to the Government of India, Legislative Department, No. 748, dated 16th March 1837, returning, with the assent of His Excellency the Viceroy and Governer General signified thereon, the authentic copy of the Bill to further amend Bombay Act II of 1874.

(2) Letter from the Secretary to the Government of India, Legislative Department, No. 953, dated 16th May, 1887, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to provide for the protection of Pilgrims at the Ports of Bombay and Karáchi.

(3) Report of the Select Committee appointed to consider and report on the Bill to vest the Port of Aden in a Trust.

(4) Second Report of the Select Committee appointed to consider and report on the Bill to amend the Bombay Hereditary Offices Act so far as it relates to Matádárs.

(5) Memorandum from Mr. Pándurang Rámchandra Desai, Pleader, District Court, Thána, regarding the Bill to Amend Bombay Act III of 1866.

Mr. Richey moves the second reading of Bill No. 3 of 1884.

The Honourable Mr. RICHEY in moving the second reading of Bill No. 3 of 1884, a Bill to amend the Bombay Hereditary Offices Act so far as it relates to Matádárs, said :—Your Excellency,—In moving the first reading of this Bill Mr. Peile explained that the law of 1874 had been found to be unsuited to the case of the watandárs of Gujarát. He explained their position, which was described by Mountstuart Elphinstone to have originated in the taking of the Government revenue rights in a village not by single patels, but by the members of a patel family in shares, with joint responsibility for the revenue. The head of each branch holding a share is a matádár, and the matádárs jointly manage the village affairs. Thus each matádár has an individual right of office as member of a body of joint-officiators, and it is merely for administrative convenience that one of the body has been selected under British rule for the office of police or revenue patel. In the Deccan the patelki watan is rather an individual office, which

Bombay Act III of 1874 seeks to bring back as far as possible into the line of the original sole officiator. It is true that there are in the Deccan watans distinct takshims, which are treated in some respects as watans, and the matás are not very different from takshims; but the matás cannot be treated as takshims, because of the difficulty about actual service. The Bill before us is decisive and simple, and provides an alternative procedure to the existing procedure, by which those who are members of a matádár group shall all be eligible for appointment. Instead of being as the present law is, rather seeking exclusion, we want to make it inclusive, and the main essence of our Bill is directed to that end. It would perhaps help the Council to understand how we propose to meet claims of these matádárs, if I state briefly the process by which we have arrived at the position in the Bill on that point. First of all we find the Gujarát watans are made up of groups of families. The question before us is how to provide such machinery as will allow each family to have its right of succession. Under the watan law all watandárs are eligible for succession provided they are elected by the other "sharers" as they are called. All are to have their right of succession recognised; we propose that the several families shall enjoy that right in rotation on the occurrence of a vacancy; we provide for the election of an officiator, at which election all the matádárs of the village shall have the right to vote, and all members of the matádár family whose turn it is to enjoy the right of office shall be eligible for election. The first restriction comes in here—"Every family whose turn it is." Then we have to find out who are the persons who are entitled to nominate. In order to do this we take the names of all members of the families who have been registered as matádárs, as proper persons to be vested with the right to elect an officiator, and in order to provide a simple method by which, in case of an election failing, the Collector shall fill up the vacancy, we vest the rights of each matádár family in a representative. The election failing, the right of office will fall to the representative matádár of that family. As to the various points on which the Honourable Mr. Telang has to move amendments, I need only say these are matters which can very well be dealt with after the Bill is read a second time, as the principle of the sections upon which they are to be introduced is already included in previous legislation.

Bill read a second time and considered in detail.

The Bill was read a second time, and the Council then proceeded to consider it in detail.

The Honourable Mr. RICHEY:—To prevent misunderstanding and possible difficulty I move the following amendment:—"In section 3, clause (1), for 'definition of watandár' substitute 'definitions of watandár and representative watandár.'"

The motion was agreed to.

The Honourable Mr. TELANG moved the following amendment:—In Section 5, add "(*hh*) the nature of the duties customarily discharged by matádárs." He said:—My Lord, As there is a penalty attached to any failure in the proper discharge of the duties of the office, there can be no objection to specify the duties, so that there may be no misunderstanding and every matádár may know what he is bound to do. I do not think there will be any practical objection to this course, and I move this amendment accordingly.

The Honourable Mr. RICHEY:—The objection will be the great difficulty in so doing the duties are so various. Some of them are very trivial and some important; but they are so varied and so indefinite that it would be impossible to lay down any rigid rules. The duty of a revenue patel has never to my knowledge been properly defined, and the duties of the matádárs may be regarded much as the patel's. I find only one order on the subject, quoted at page 120 of Nairne's Revenue Hand-book, which says—

"It is a mistake to suppose that the only duty of a matádár is to sign village papers. He has to assist in the examination of boundary marks and field inspection of all sorts, and to satisfy himself of the correctness of all the field statements, &c., which he signs." By the present law all watandárs are legally bound to render customary service, but no sanction is attached to this obligation; the bill provides a sanction in a penalty of a fine which may amount to ¼ of the annual emoluments. This in the case of a non-officiator would usually be a trivial penalty. Moreover, I think that the matádárs would be very jealous if we endeavoured to restrict their duties in any way. I think they would resent any statutory limitation of the service which gives them title to their emoluments. In respect to this I think the law as it stands is all that is required. The difficulties and objections are so very great, I could not accept the responsibility of defining their duties. In any case of dispute as to duty the matter must come before the Governor in Council for decision under section 83 of the Watan Act.

The amendment was withdrawn.

The Honourable Mr. TELANG next moved as an amendment to omit the proviso to section 6. He said—I have a very strong objection to legislation of this description, of which we have had much in recent days. The question involved being one of right, it ought, I maintain, to be left for determination to the established tribunals of the land, and not be handed over to the Governor in Council.

The Honourable Mr. RICHEY:—I understand Mr. Telang to assume that where there is more than one matádár family in a village, there must be an *onus probandi* laid upon any family claiming exclusive right, and the presumption is that all families have equal right and eligibility for office. I will read the report of the Committee which drafted the first Bill upon the point—

"There are exceptional cases in which we think that the right of office should vest immediately in the representative matádár, and that the other registered matádárs, if any, should have no right of electing an officiator. We refer to the cases in which, although there may be two or more distinct *matás* in a village, the right of office is exclusively associated with one only of those *matás*. It is provided in section 13 of the Bill, that in every village in which this is the case the sole representative matádár shall alone be entitled to office. We have given very careful consideration to the question whether these preferential claims to the patel's office should receive recognition, and if so what should be the means of determining where they should be recognised and where not. There are, no doubt, villages in each district in which the duties of patel have always been performed, with absolute or almost unbroken continuity, by members of one *matá* family only, notwithstanding that there are other *matá* families whose members discharge the minor duties of ordinary *matádárs*. But the fact of the office being confined to the one family is, especially since the commencement of the British rule, in many cases the result of accident merely. While, therefore, we feel bound to recommend that the exclusive rights of one out of several families should be recognised when they have been fairly established, mere continuity does not, in our opinion, constitute sufficient proof of such rights. They should, we consider, have such further corroboration as would be derived from (*a*) official recognition previous to the year 1875, when the Hereditary Offices Act came into force; or (*b*) the recorded admissions of other matádárs; or (*c*) the presumptions arising from very early records; or (*d*) in case of newer settlements, direct descent from the founder of the village. We are at the same time much impressed with the inexpediency of any course which would involve lengthy

investigations, or give occasion to the parties for the expenditure of time and money on litigation. The method which we propose is (sec. 6, para. 2) that it should rest with the Governor in Council to declare the existence of an exclusive right, and that he shall make the declaration (which shall be final) whenever upon consideration of past history of the tenure of the office in any village, or of the circumstances, so far as known, under which the village was founded, he deems it equitable to do so. The advantages which we think will be gained by this mode of settlement are:—(1) That in disputed cases Government will have the aid of the opinions, after the necessary inquiry, of the local officials, and of the Collector, and of the Commissioner; (2) that the Government will determine each case as equity, and not any set of rigid rules, may seem to require; (3) that there will be no further room for litigation or appeal when once a decision has been arrived at."

These are the grounds upon which it is thought desirable that the Governor in Council should have power to make an exception to the rule. Really if you withdraw this clause you will throw upon the wrong man the duty of proving his right.

The Honourable Mr. TELANG :—I am not satisfied with the explanation. The course proposed must prove unsatisfactory.

The Council divided :—

Ayes.	*Noes.*
The Honourable Káshináth Trimbak Telang.	The Honourable Sir M. Melvill.
The Honourable Khán Bahádur Kázi Sháhábudin.	The Honourable J. B. Richey.
	The Honourable the Advocate-General.
	The Honourable F. Forbes Adam.
	The Honourable J. R. Naylor.
	The Honourable Ráo Bahádur Máhádev Wásudev Barve.

So the amendment was lost.

The Honourable Mr. TELANG moved that the following words be substituted for section 8, clause (3)—

"If there are two or more Matádars of any such Matádar family, the Collector shall, as soon as may be after the passing of this Act, call upon all such Matádárs to send in to him in writing the name of the member of their family whom they wish to be entered in the said Register as Representative Matádár of the Matádár family. The Collector shall then enter in the said Register as Representative Matádár the name of the Matádár who obtains the largest number of votes, and in case of an equality of votes between two or more Matádárs, the Collector shall decide between them by drawing lots in such manner as he shall determine."

He said :—The proposal which I make is to enable members of a Matádár family to nominate their own representatives, instead of giving the Collector the power of making the nomination. In moving this amendment I would ask that the last clause be allowed to run in the form I have now read instead of that which I had originally proposed. I am quite content that in case of equality of votes the decision should devolve upon the Collector, in order that the Collector may then be able to apply the educational test proposed in section 28, clause (*c*).

The Honourable Mr. RICHEY :—The procedure proposed by the Honourable Mr. Telang was that provided in the first draft of the bill and it was rejected by the Select Committee for the following reasons :—

"In Section 8 we have, with the concurrence of two of the members of the Committee which drafted the Bill, whom we had the advantage of consulting, struck out the part of clauses 3 and 4 which provides for the appointment of a representative matádár by the vote of a majority when there are two or more matádárs in a family, and thus left the determination of the representative matádár to the Collector, who will enter the name of the head of the family as its representative, on the principle followed in the Bombay Hereditary Offices Act. It appears to us that, the determination of the representative being permanent for all future time, injustice might be done if the appointment were made by a majority of matádárs able to be present on one particular occasion, and that an opening would be afforded thereby for unfair dealings."

Mr. Telang proposes to get rid of the difficulty of getting all the voters together by allowing written votes. This would be open to considerable abuse. The votes would have to be taken in the presence of some officer that they might be verified; if not, there would be great risk of forgery, and of subsequent repudiation even if genuine, and there would be no meeting these objections. There are rarely more than three nominees of one family, and it would be scarcely worth while going through the form of election, yet the danger of the wrong one getting the office and its becoming hereditary in the wrong family is serious, so that the objections are both as to principle and practical difficulties.

The Honourable Sir M. MELVILL :—A representative matádár is the head of a family. Suppose the senior heir for the time being were a child of three years of age. His chance of election would be imperilled. Surely in such a case some judicial authority should be exercised.

The Honourable Khán Bahádur KAZI SHAHABUDIN :—I think it is admitted that the hereditary heads of families are the representatives of those families. This is the custom in India, but in fifty out of one hundred cases there would be no chance of the head of a family being elected. The proposed amendment would lead to jealousies, intrigues and interminable quarrels among matádárs, as the social position of the officiator is vastly superior. There are already many intrigues and many quarrels among the heads of these families and these would be increased if the plan proposed were adopted. Hence I am against the amendment.

The Council divided :—

Aye.	*Noes.*
The Honourable Kashinath Trimbak Telang.	The Honourable Sir M. Melvill.
	The Honourable J. B. Richey.
	The Honourable the Advocate General.
	The Honourable F. Forbes Adam.
	The Honourable Khán Bahádur Kazi Shahabudin.
	The Honourable Ráo Bahádur Mahadev Wasudev Barve.
	The Honourable J. R. Naylor.

So the amendment was lost.

The Honourable Mr. TELANG next moved that the words "if in the opinion of the Collector there are good grounds for such request" be omitted in section 19, paragraph

2, and said:—I do not see why a representative matádár should not be allowed to officiate as soon as he likes without consulting the Collector or any one else.

The Honourable Mr. RICHEY:—Suppose you take the two amendments together, section 19, paragraph 2, and the next one (section 24, clause (*a*) of proviso—substitute "shall" for "may"). It is important to have a man who holds the office of patel a man of some experience as officiator, or there would be a risk of constant change of office. Indeed, it would be unlimited. As to section 19, clause (2), that is already the law. It was included in the Act passed last year, so that it is, merely an extract put into this Bill for convenience sake, so as only to have one Act. As regards section 24, clause (*a*), I see less objection to this, because it does not involve that risk of the frequent change of officiators, but there is always an advantage of leaving it to the discretion of the Collector, because he would be sure to put in the representative if he was a good man. Otherwise a lad of eighteen who had hitherto been disqualified by minority might claim office. He could hardly learn his duties in the short time which would be left to him. I think we may trust the Collector always to allow the deputy to be removed, when good cause exists, by the representative who appointed him.

The Honourable Khán Bahádur KAZI SHAHABUDIN:—It would be hard upon a representative matádár, who has appointed a deputy, not to be able to remove him if he wished to perform the work himself, or appoint, say, his own son to the post. There are Collectors and Collectors, and it may happen that the representative matádár may be frustrated by subordinate officers.

The Honourable the ADVOCATE GENERAL:—As we have already affirmed the principle of the Bill in carrying its second reading, and as the scheme of the Bill is to invest the Collector with the power of dealing with matádárs, I am against these amendments, which, if carried, would seriously abridge the Collector's power.

The Honourable Mr. TELANG:—I quite admit that the principle has been affirmed, but as the Honourable Mr. Richey said in moving the second reading that my proposals might be considered subsequently, I did not bring them forward at that stage. It is therefore quite open to the Council to deal with them now. On the merits I adhere to the view I have already expressed:—

The Council divided:—

Ayes.	*Noes.*
The Honourable Kashinath Trimbak Telang.	His Excellency the President.
The Honourable F. Forbes Adam.	The Honourable Sir M. Melvill.
The Honourable Khán Bahádur Kazi Shahabudin.	The Honourable J. B. Richey.
The Honourable Ráo Bahádur Mahadev Wasudev Barve.	The Honourable the Advocate General.
	The Honourable J. R. Naylor.

So the amendment was lost.

The Honourable Mr. TELANG then moved an amendment to omit clause (*c*) of section 28, and said:—I am rather sorry to have to move this amendment, for it is not one of a sort with which I can ordinarily sympathise. But it seems to me that when a person is pronounced disqualified in consequence of not having passed such an educational test as Government may think fit to lay down, a disqualification is set up about which we

should be very chary, interfering as it does with hereditary right. When I was serving on the Education Commission some five years ago, I had an idea that something of this kind might be done. My colleague, Mr. Lee-Warner, and I had a conversation about it, and we both were of opinion that something in this direction might be attempted, provided it did not interfere with hereditary rights. So it seems to me that although an educational test should be imposed it is premature to introduce it at the present stage.

The Honourable Mr. RICHEY:—This was made part of the law for watandárs last year. Such a test would be an easy one to most matádárs. Their sons at the present time are at school and could satisfy the test, such a test as Government may demand. In all villages in Gujarát where the test would be likely to be enforced there are schools, and I think it would be a great mistake to make Gujarát an exception to the general law. There are duties likely to be required of patels which demand a higher standard of intelligence to enable them to be carried out, and I think all patels should be able to satisfy a reasonable test.

The Honourable the ADVOCATE GENERAL:—As to Mr. Telang's argument concerning hereditary rights, it must be remembered that even these must be subordinated to the public good. This clause does not bind Government to enforce the educational test at any particular time. It is subject to such limits and reservations as may be thought proper. The retention of the clause will not prejudice the matádárs. It will be a wholesome stimulus to them to educate themselves.

The Honourable Sir M. MELVILL:—The extension of village sanitation is one of the most important questions of the day. It would be impossible to enforce regulations on the subject without some officer in the village empowered to punish offenders. It would be very hard on a poor man to carry him off to a distant Magistrate. It should be open to Government to give the patel power to punish offenders, but that could not be done where the patel is uneducated. He would not be fit to be trusted with such powers. I don't think there should be any difficulty in enforcing such a test. We have already sanctioned it in other districts, and should make no exception in the case of Gujarát.

His Excellency the PRESIDENT:—It seems to me that where a man is justly jealous of his hereditary rights as patel or matádár, an educational test will do more to preserve those hereditary rights than anything else. For those rights would be threatened in the long run by want of due capacity to exercise them properly, and by intellectual inferiority.

The Honourable Mr. TELANG:—I should have no objection to the educational test being enforced if sufficiently long notice of the proposed amendment were given, say ten years. What I wish to guard against is the chance of these people being disqualified by legislation without having had sufficient notice that something more will be insisted on in future than has been in the past. I shall be quite content to withdraw the amendment if I am told that no immediate enforcement of this clause will be attempted. I do not wish to limit Government to this or that period. I shall be content if notice of some reasonable period of years is given. But not to give such notice would interfere unfairly with what we are dealing with here as a valuable right.

His Excellency the PRESIDENT:—I am afraid the undertaking cannot be given, for there are certain measures which cannot be delayed, measures which are very urgent, such as that relating to sanitation. To have them properly administered you must have local administrators capable of carrying out the provisions of these Acts. The public cannot be neglected because hereditary officers have not received sufficient education.

The Honourable Mr. TELANG:—The public at large should be made to pay for special officers for these purposes. I am one individual who would be taxed for such a purpose, and I am quite prepared to submit to this rather than that hereditary rights should be interfered with and the pledges given by the State prejudiced in any way. The immediate enforcement of such a rule as is proposed would be regarded by the matádárs as interference with such pledges.

The Honourable Khán Bahádur KAZI SHAHABUDIN:—If this clause were to be put into force within the next four or five years, it would sweep away more than fifty per cent. of most useful servants who, however, are not educated. If Government will give them previous notice of say 10 or 15 years, then I would support the clause. I know many of them who are not educated beyond knowing how to sign their names.

His Excellency the PRESIDENT:—I believe I am right in saying that it is not intended to disestablish the present holders of the office but to apply the test in case of fresh vacancies.

The Honourable Mr. RICHEY:—That is so, but I would observe that as the police patel who would have to deal with sanitation is selected by the Magistrate, this clause does not necessarily apply to him. The revenue patel would not have to deal with questions of sanitation in the larger villages and towns which have two officers.

The Honourable Khán Bahádur KAZI SHAHABUDIN:—But it does not say whether for police patel or revenue patel. It says for patel's office.

The Honourable Mr. RICHEY:—The Magistrates appoint police patels; they have, I know, for some time been anxious to get some educational qualification for the police patels.

The Honourable Khán Bhádur KAZI SHAHABUDIN:—But this clause applies to police patels also; it does not exempt them.

The Honourable Mr. RICHEY:—His Excellency the President said he could not undertake to postpone the application of the clause on account of sanitation which might affect the police patel. The clause necessarily affects revenue patels only. But present incumbents are to be exempt.

His Excellency the PRESIDENT:—The two offices of revenue and of police patel are entirely distinct.

The Honourable Khán Bahádur KAZI SHAHABUDIN:—But, your Excellency, this Act makes no distinction between the two offices.

His Excellency the PRESIDENT:—The revenue patel can only act as police patel when the Magistrate appoints him under section 5 of Bombay Act VIII of 1867.

The Council divided:—

Ayes.	*Noes.*
The Honourable Káshinath Trimbak Telang.	The Honourable Sir M. Melvill. The Honourable J. B. Richey. The Honourable the Advocate General. The Honourable F. Forbes Adam. The Honourable J. R. Naylor. The Honourable Khán Bahádur Kazi Shahabudin. The Honourable Ráo Bahádur Mahadev Wasudev Barve.

So the amendment was lost.

The Honourable Mr. TELANG moved the following amendments in section 29, para. 2:—Before "misconduct" add "departmental" and for the words "or if fraud," &c., substitute the following:—"If an officiator shall be accused of any criminal offence, the Collector may suspend him from office, and in the event of the officiator's conviction before a criminal Court—such conviction not being reversed or quashed—the Collector may remove him from office."

The Honourable the ADVOCATE GENERAL:—I am in favour of this amendment. Looking to the nature of the misconduct as specified in the section, it appears to me that the most appropriate mode of proving it is by a criminal prosecution.

The Honourable Mr. RICHEY:—This would make it impossible to remove him from office without a criminal conviction. It suggests that every departmental offence must be a criminal one. We have adopted these sections altogether out of the old law, and these words are borrowed from the Statute. Of course it would be a very considerable reduction of the powers of Government or their officers if they were prohibited from dismissing watandárs unless there was a criminal conviction against them. There is no reason to alter the existing law in this respect. We very often find a case of misconduct meriting dismissal without question. The patel is a man of considerable influence in a village, and it would be often very difficult to get evidence such as you would want to convict him in a criminal Court. There are offences for which he would require dismissal which would scarcely be matters for criminal proceeding. It is to deal with this class of offences that we want power.

The Honourable Mr. TELANG:—The only question is whether it should not be as difficult to prove an offence against a man before the Governor in Council as before the regular criminal Courts Provisions of this character, withdrawing from the established tribunals matters which properly fall within their functions, form a feature of recent legislation not here only, but elsewhere, and I shall not allow myself to be a party to them.

The Honourable Sir M. MELVILL:—I think you may go further back than the last Act to find authority for the removal of a patel from office without a criminal conviction. It has been the case since 1843,—over forty years. It would be a very improper thing if an employer could not dismiss a servant without first obtaining a criminal conviction against him. I think we should require very strong reasons before altering what has been the law for nearly fifty years.

The Honourable Khán Bahádur KÁZI SHA'HA'BUDIN:—I think Government should have some power in cases which are not of such a nature as to necessitate proceedings under the criminal law. I have also known cases in which upon a technical point the Court has discharged the prisoner, who nevertheless was morally guilty of a serious offence.

The Council divided:—

Ayes.	*Noes.*
The Honourable the Advocate General,	The Honourable Sir M. Melvill.
The Honourable Káshnináth Trimbak Telang.	The Honourable J. B. Richey,
The Honourable F. Forbes Adam.	The Honourable J. R. Naylor.
	The Honourable Khán Bahádur Kázi Sháhábudin.
	The Honourable Ráo Bahádur Máháley Wásudev Barve

So the amendment was lost.

The Honourable Mr. TELANG then moved to omit in para. 4 of section 29 the words "or deputy" and from "or of the representative matádár" down to the end of the section. He said:—The effect of this clause would be to make the representative matádár suffer for the offences of others. He should of course suffer for his own crimes; but I cannot see how it can be just for him to be made to suffer for his deputy's offences. The matter has been discussed before, and I do not wish to occupy the time of the Council by going again over the whole ground. I did not hear the arguments in favour of the clause when it was discussed in the Council Chamber, though I read them afterwards in the report. As regards one of the arguments then urged, I would beg to point out that concealing evidence would be a dereliction of duty, and would render the offender liable to dismissal and to further punishment. As to another of the arguments adduced, I may say that I do not charge Government with having misused their powers or being likely to do so. But I am against vesting Government with such powers. I may add that the unfairness of this provision becomes particularly remarkable in view of the section which the Council has passed, authorizing the Collector to keep a deputy in office against the wishes of the representative matádár.

The Honourable Mr. RICHEY:—It has been the law for the last 44 years at least. It was again discussed in 1874, and again last year. The clause simply makes the principal directly interested in the conduct of his deputy. Thus the responsibility is put upon the proper person. I think the Council may safely accept the clause as it stands.

The Council divided:—

Ayes.	*Noes.*
The Honourable Káshináth Trimbak Telang.	The Honourable Sir M. Melvill.
The Honourable Ráo Bahádur Máhádev Wásudev Barve.	The Honourable J. B. Richey.
	The Honourable the Advocate General.
	The Honourable F. Forbes Adam.
	The Honourable J. R. Naylor.
	The Honourable Khán Bahádur Kázi Sháhábudin.

So the amendment was lost.

The amendment to section 30, of which the Honourable Mr. Telang had given notice was withdrawn.

It was decided that the Bill should come up for the third reading at the next meeting.

Mr. Richey moves the second reading of Bill No. 7 of 1886.

The Honourable Mr. RICHEY moved the second reading of Bill No. 7 of 1886, a Bill to declare and amend the law relating to Toda-giras allowances. He said:—The Bill of which I move the second reading was before the Council at Bombay. It was explained at the time, therefore it is not necessary that I should go into it now. Its origin was explained, and it was shown that the allowances were subject to considerable restrictions, and these restrictions have been embodied in an agreement which has been entered into by most of the holders of them. The allowances have been held by the Civil Court to be alienable; but a suit would not lie against Government, therefore Government's hands are free. As the Bill is intended to give effect to existing practice, I [illegible]e, at the suggestion of my Honourable friend Kázi Sháhábudin, introduced an amend-

ment to modify the proviso of section 3 in order to bring it into conformity with that practice. The amended proviso is as follows—"(*a*) on failure of such heirs the Governor in Council may, if he thinks fit, direct that the allowance, or some portion thereof, shall be continuable hereditarily to the lineal male heirs in male descent of a brother of the first recipient of such allowance under British rule; (*b*) when any toda girás allowance or any portion thereof ceases to be continuable to a male heir, the widow, if any, of the last recipient shall receive, during her lifetime, the same amount which was payable to her deceased husband in respect of such allowance." We have been in the habit of letting allowances be continued to widows, and I shall move the amendment to make law what has so long been custom. The Honourable Mr. Telang has submitted an amendment making toda girás like ordinary private property with regard to succession. Of course, if the Honourable Member's motion is carried it would increase the contingent liabilities of our treasury, and it might be argued that it is beyond the powers of a Member of Council to make an amendment which would impose such charges without permission, but I think I can satisfy the Honourable Mr. Telang best on the point raised by reading the report of the Government of Bombay on this very issue, as follows:—"I am to state that the proposal is not, as supposed by the Government of India, a new suggestion, but is in strict continuity with the policy adopted by the Government long before 1862 in dealing with these allowances. The limitation of succession to property held from the State to lineal male descendants is moreover not a new device invented for toda girás alone. The settlements effected with inámdárs in this Presidency, at least, have from the earliest times been very generally subject to this restriction, as is evidenced by the rules for the adjudication of titles in Schedule B of Act XI of 1852. The limitation is well understood by the privileged classes concerned, and it does not appear that any objection has ever been raised to it by any girásia. Indeed, as the Government of India have noticed, the practice of disallowing female inheritance in the case of toda girás had prevailed in the Broach district at least from an early period, and Government in 1843 issued an order "forbidding succession in the female line" to such allowances everywhere. The proposal of this Government for giving legislative sanction to the restriction of succession is not, therefore, as the Government of India suppose, a new suggestion, the intention being simply to give legal validity to the executive orders of the last 40 years. The origin of this rule of limitation is to be found in the nature and purpose of the girás allowances. The girás was given to purchase protection, or to induce turbulent classes to abstain from violence; and it was therefore of the essence of the estate that the property should be held by the persons from whom protection was to be obtained or from whom violence was to be apprehended. If females were allowed to inherit the object of the grant might be as effectually defeated as it would by alienation." We have taken agreements from the recipients in which they have undertaken to accept terms such as are now proposed. We do not attach much importance to these agreements. But there are eleven hundred in which the restriction is clearly laid down.

The Honourable Khán Bahádur KÁZI SHA'HA'BUDIN:—When I read this Bill restricting the toda girás allowances to lineal male heirs, I was aware of the exclusion of female heirs, but to exclude collateral heirs when the holders are without heirs male does not seem to me to be good faith on the part of Government.

The Honourable Mr. RICHEY.—This is only a limitation which has been enforced.

The Honourable Khán Bahádur KA'ZI SHA'HA'BUDIN :—There are some thousands of cases in which collateral succession has been allowed.

Discussion adjourned

The discussion was adjourned to enable the Honourable Mr. Richey to consider the question as to pledges given by Sanads, now raised by the Honourable Kázi Sháhábudin's remarks.

Extension of time obtained for presentation of Select Committee's report on Bill No. 5 of 1886.

The Honourable Sir M. MELVILL obtained from the Council an extension till 19th March, 1887, of the period originally granted for the presentation of the Report of the Select Committee on Bill No. 5 of 1886 (a Bill to vest the Port of Aden in a Trust).

Sir M. Melvill moves the second reading of Bill No. 5 of 1886.

The Honourable Sir M. MELVILL in moving the second reading of Bill No. 5 of 1886, a Bill to vest the Port of Aden in a Trust, said :—The report of the Select Committee is before the Council for consideration. It was published in the *Government Gazette* on the 7th April last, and no objection has been taken to the Bill as amended by any person except the Political Resident at Aden, whose communication on the subject has been printed, and is before the Council. It will be seen that the Political Resident objects to the creation of a board for the management of the Aden harbour. It is, however, too late to entertain such an objection now. The Bill has been introduced on the recommendation of a former Resident. That recommendation was approved by this Government, by the Government of India, by the Secretary of State, and the Board of Trade. It has been the subject of a vast amount of correspondence; and constant pressure has been put upon this Government by the Secretary of State, the Government of India, and the shipping and mercantile firms connected with Aden, to secure that the Bill may be pushed on as fast as possible. The Bill has been read a first time, and referred to a Select Committee whose report has been presented ; and it could not be dropped now, unless for much stronger reasons than those suggested by the Political Resident. It is quite true that Aden is primarily a fortress, and that the interests of trade must at Aden be subordinated to military and naval exigencies; but the Bill has been so drafted as to give a preponderating influence to officers of Government to reserve the appointment of all trustees in the hands of Government, and to give to the Political Resident and to Government a powerful control over the proceedings of the Board. I do not think therefore that there is any sufficient reason for the apprehension of the Political Resident, and I may mention that, should it be found hereafter that the provisions of this Bill are in any way inconvenient or insufficient, it will at any time be competent to the Governor General in Council, upon the recommendation of this Government, to introduce changes by means of a regulation made under the provisions of 33 Vict., Chap. III. At the same time I think that it may be expedient to introduce into the Bill a section which will enable Government to interpose in the event of the Board making any order, or carrying out any work, which might appear likely to interfere with the defences of Aden as a fortress and naval depôt, and I have accordingly given notice of an amendment of the Bill with that object. The objections taken by the Political Resident to certain details of the Bill have been carefully considered, and effect has been given to some of them, but not to all. It seems unnecessary to make provision at present for the time—which must be distant, and which may never arrive—when sea-going vessels will be

able to lie alongside of quays and wharves at Aden. Ths Political Resident wishes to introduce into the Bill certain provisions taken from the Sea Customs Act (VIII of 1878), which on the advice of the Legal Remembrancer it has been thought better to omit. The Sea Customs Act, which is an Act of the Government of India, makes Aden a foreign port and not a Customs port or a warehousing port; and it is doubtful whether it is competent to this Council to introduce into a local Act provisions which the Supreme Legislature has advisedly, in an Act which deals with the subject and with Aden, declared to be not applicable to Aden. I do not say that it may not be desirable that some of these provisions should be made applicable to Aden: but if so, it seems better and safer that the Resident should put them into the form of a Regulation, which might be submitted by this Government to the Governor General in Council. It will be observed that it is stated in paragraph 6 of the Select Committee's report that we have struck out sections 37 and 38 of the original Bill as unnecessary, on the ground that Aden is not a Customs port. It is, however, true that Customs duties are levied at Aden upon arms under section 8 of Act XI of 1878, and it may be desirable, as I believe it to be within the competency of Government, to appoint proper places at Aden to be wharves for the loading of arms under section 11 of the Sea Customs Act, 1878. To that extent, therefore, it seems proper to meet the Resident's wishes by retaining so much of sections 37 and 38 of the Bill as provides for accommodation for Customs officers; and I have given notice of an amendment accordingly. The Political Resident desires that power should be given to the board to open and search packages of goods, whenever it may think necessary. Such power is not, I believe, given to any other board of the same kind; and it does not appear to be necessary, inasmuch as the authorities at Aden already have power, under the Arms Act and the Abkári Act, to search for concealed arms and for liquor. I now move that the Bill be read a second time.

Bill read a second time and considered in detail.

The Bill was read a second time and the Council proceeded to consider it in detail.

The Honourable Sir M. MELVILL moved that the following sections be added to the Bill:—

"37. When Government appoint under the provisions of any Act for the levy of Sea Customs duties any wharf, quay, stage, jetty, or pier, to be a wharf or place for the landing and shipping of goods within the meaning of such Act, the board shall set apart, maintain, and secure on or in such wharf, quay, stage, jetty, or pier, such portion thereof or place therein, or adjoining thereto, for the use of the officers of Customs as the Political Resident at Aden approves or appoints in that behalf.

Accommodation to be provided for Customs Officers on Wharves, &c., appointed under Sea Customs Act.

"38. Notwithstanding that any wharf, quay, stage, jetty, or pier, or portion thereof has, under the provisions of the last section, been set apart for the use of the officers of Customs, all rates, tolls, charges, and rents, payable under this Act in respect thereof, or for the use thereof, shall be paid and be payable to the board or to such persons as they may appoint to receive the same.

Dues at Customs wharves, &c.

"78-A. If, in the opinion of the Governor in Council, the execution of any order or Resolution of the board, or the doing of anything which is being done, or is about to be done, by or on behalf of the board, injuriously affects or is likely to affect the defensibility of Aden against Her Majesty's enemies, or the security or sanitary condition of the Garrison, he may, by an order in writing, prohibit the execution or doing thereof.

Governor in Council may prohibit execution of orders, &c, affecting the defensibility of Aden or the security or sanitary condition of the Garrison.

"Pending the receipt of an order by the Governor in Council under this section, the Political Resident at Aden may, by a like order, suspend the execution or doing of anything by or on behalf of the board, which appears to him, for any of the reasons aforesaid to be open to objection."

The motion was agreed to.

He also moved that "44" be substituted for "42" in line 24 of section 79, and that "31" be omitted in section 70. These amendments were agreed to.

Bill read a third time and passed.

On the motion of the Honourable Sir M. MELVILL the Bill was then read a third time and passed.

The Honourable Sir M. MELVILL next moved the second reading of Bill No. 6 of 1886, a Bill to amend the law for the periodical inspection, and the management by competent Engineers, of boilers and prime movers in the Presidency of Bombay. He said:—Upon this subject I do not think I have anything to add to the report of the Select Committee. There is no objection to the Bill. Originally there was an objection from the Mill-owners' Association of Bombay. But now that the amended Bill has been before the public there seems to be no opposition at all, either from the Bombay Mill-owners' Association or any one else. There is only one alteration I would desire, and that is trifling. I will mention it to the Council presently.

Sir M. Melvill moves the second reading of Bill No. 6 of 1886.

Bill read a second time and considered in detail.

The motion was agreed to and the Council proceeded to consider the Bill in detail.

On the motion of the Honourable Sir M. Melvill, the words "boiler or prime mover in any steam-vessel" were substituted for the words "steam-vessel" in paragraph 3 of section 1.

Bill read a third time and passed.

The Bill was then, on the motion of the Honourable Sir. M. Melvill, read a third time and passed.

The Honourable Sir M. MELVILL in moving the first reading of Bill No. 2 of 1887, a Bill to amend Bombay Act III of 1866, said:—The Bill which I have now the honour to submit to the Council is one, the object of which is to remove the limitations imposed by what I may call the Mofussil Gambling Act, Bombay Act III of 1866. In consequence of those limitations gambling cannot be put down in towns which are more than three miles distant from a railway station, unless they contain 5,000 inhabitants and a resident Magistrate. The result is that a great amount of gambling goes on whithin a few miles of Bombay, which the authorities are powerless to check. The attention of Government was directed to the subject last year, by an article in a native newspaper; and upon inquiry we were informed by the Commissioner of Police in Bombay and the District Magistrate of Thána, that the mischief was one which had attained very

Sir M. Melvill moves the first reading of Bill No. 2 of 1887.

serious dimensions, and which required to be promptly dealt with. The Commissioner of Police reported as follows:—"Most professional gamblers find they cannot successfully carry on their occupation in Bombay, and resort to places outside in Sálsette, and especially to Chimore, where for some years past regular gaming houses have been established. These houses are notorious, and are almost daily visited by large numbers of bad characters from Bombay, and other towns and villages in Sálsette." This led Government to inquire further as to the prevalence of gambling in Sálsette, and especially at the place Chimore, or Chembur, mentioned by the Commissioner of Police, and which appears to be a place just outside the three miles radius from the Railway station of Kurla. We then received a report from the Superintendent of Police, at Thána, from which I may read an extract to the Council:—"The evil has not been entirely eradicated from the district of Thána; it has only been transferred from one part of it to several others of the same. The village of Chimore, in the Sálsette táluka, where gambling was previously carried on to some extent, and Bassein and Agáshi are now infested with gamblers to such an alarming extent, in the first mentioned of these places, that Pársis, Hindus, Mahomedans and Chinamen have for their separate use erected sheds in gardens, where they carry on this nefarious practice in an open manner. The Chinamen have coupled a lottery with gambling, and in doing so have placed themselves within the reach of the law, and will before long meet with their deserts. . . . . The first and second of the above three places are above three miles from the Railway station, and the first and the third have no resident Magistrate, and are thus beyond the reach of the law on the subject. . . . . The law is inoperative owing to Chimore being a village, containing less than 5,000 inhabitants, and to the absence of a resident Magistrate, and being more than three miles from Kurla, the nearest railway station." The report further said that "strings of tongas belonging to gamblers await the arrival of trains at Kurla, and take their disreputable cargo of gamblers from that place with all haste to Chimore, and bring them back to Kurla for Bombay in a similar manner. No hire is charged by the owners of conveyances, as they all belong to the chief gambling establishments, where raw youths and old men (apparently respectable) daily resort. The gambling so openly carried on so close to Bombay without fear of punishment, has a most demoralising influence over the people, and I attribute most cases of house-breaking and theft at Thána, to this vice carried on so close to it." On sending in this report, the District Magistrate made the following observations:—"The state of things at Chembur has often been reported on, but the same decision has always been come to, *viz.* that owing to the wording of the Gambling Act nothing can be done where the village in which the gambling establishments are is more than 3 miles from a railway station, and has no resident Magistrate. Till the law is altered nothing can be done, but the Commissioner may perhaps consider it advisable to bring the subject to the notice of Government, so that they may express a final opinion whether gambling on such a scale should be allowed unchecked in places so near Bombay, or whether they are willing to take steps to amend the Gambling Act. The alteration of '3 miles' to '10 miles' from a Railway station would apparently be what is wanted." This was in June last year, and two months afterwards Government was called upon to sanction a special police post at Chimore, in consequence of the increase of serious crime in the surrounding villages, which was distinctly connected with the prevalence of gambling at Chimore. Now we cannot of course prevent people from gambling altogether. If Marwaris like to go on betting which of two kites will fly the higher, or which of two drops of rain will first fall from the eaves of a house,

Government cannot stop them. But I think the Council will agree with me that we do not want a Monte Carlo within twelve miles of Bombay, and that we ought to have power to put down organised gambling establishments of this kind, which must exercise a most demoralising influence on the people. I may mention that the Gambling Act in Bengal (Act II of 1867) contains no such limitations as these which it is now proposed to remove from the Bombay Act. The Bill as drafted retains the limit of 3 miles from railway stations, but it has been suggested that the Bill should be amended by extending this radius to a greater distance. This is a matter which can be considered by the Select Committee to which the Bill will be referred. I now move that the Bill be read a first time.

Bill read a first time and referred to a Select Committee.

Accordingly the Bill was read a first time, and referred to a Select Committee, consisting of the Honourable Mr. Naylor, the Honourable Khán Bahádur Kázi Sháhábudin and Ráo Bahádur Máhádev Wásudev Barvé, and the mover, with instructions to report within a month. The Bill and Select Committee's report to be translated into Maráthi and Gujaráti.

Sir M. Melvill moves the first reading of Bill No. 3 of of 1887.

The Honourable Sir. M, MELVILL, in moving the first reading of Bill No. 3 of 1887, a Bill to amend Bombay Act VI of 1863, said:—Bombay Act VI of 1863 is an Act primarily passed "for the regulation of public conveyances in the town, suburbs, and harbour of Bombay." But section 34 of the Act enables the Governor in Council to extend the Act to any town or place in the Presidency of Bombay, and the Act has accordingly been extended to Poona and other towns in the Mofussil. It has, however, been found to be difficult to give effect to the provisions of the Act, because "a public conveyance" is defined in the Act as being "a carriage with two or more wheels which shall be used for the purpose of plying for hire," and Government is informed by its legal advisers that a carriage does not ply for hire, unless it is taken about the streets, or to appointed stands, with a view to its being hired. In short, a London cab, or a buggy or victoria in Bombay, plies for hire, but a similar vehicle in Poona, which is kept in a stable until it is sent for, does not ply for hire, and therefore does not ordinarily come within the provisions of the Act. The Council will, perhaps, permit me to read a letter from the District Superintendent of Police at Poona, which first led Government to consider the necessity of legislating on the subject: "I have the honour to bring to your notice the very unsatisfactory state as far as Poona is concerned of the law regarding hack carriages (Bombay Act VI of 1863). In 1883, the Legal Remembrancer to Government gave it as his opinion that the Act does not apply to carriages hired out by the month, and which do not ply for hire about the streets; and on a reference regarding a case sent up by the Police for carrying passengers without a license made by the Cantonment Magistrate, the District Magistrate has given it as his opinion that a carriage taken out from the stables, even for a short journey only, and which is neither taken about the streets nor to appointed stands for hiring is not a public conveyance within the meaning of the Act. As you are doubtless aware, there are very few, indeed it may almost be said no carriages in Poona, which strictly speaking do ply about the streets for hire, and and as regards public stands the only ones are the railway station and one at the Budhwar Chowk in the city. This year I endeavoured to start others, but the drivers of the carriages would not use them. The practice, when any one wants a carriage, is for a servant to go

to the stables and fetch one from thence. The consequence of this under the present law is that only some fifteen or twenty of the public conveyances of Poona, need, if the owners really knew it, come to me for a license, and this fact is, I fear, becoming better known every day. I carefully examine all the carriages brought up myself and reject a great many, but after all this has been done; the rejected carriages have nearly if not quite as good a chance of being hired as the ones that have been passed, the result being danger to the public from the carriages breaking down, and endless complaints both to and of the police, from the public, who take it for granted that the carriages have been licensed, a state of things which we have no power to prevent, because the carriages have been hired from the stables. Under these circumstances I would ask the favour of your moving Government to somewhat amend the preamble of Bombay Act VI of 1863, so far at any rate as the Mofussil is concerned, so that it may apply to all conveyances hired for a less period than say a week at a time, whether plying about the streets or taken direct from the stable." On receipt of this communication, Government consulted the Magistrates of the districts in which the Act had been introduced, and found that they were generally agreed that legislation was necessary. Some of them also pointed out that in one or two other particulars, besides that involved in the question of plying for hire, Bombay Act VI of 1863 was hardly suitable to Mofussil towns. Section 7 contains an enumeration of the different kinds of vehicles used in Bombay, or which were used in Bombay in 1863, and for which alone a license fee can be levied. Now some of these, omnibuses for example, are not in use in Mofussil towns, while on the other hand certain vehicles are fashionable in Mofussil towns, which are never seen in Bombay, and are therefore not included in the list given in section 7. A common vehicle in the Mofussil is the tonga, which is not in the list, while in Alibág there is a strange and curious vehicle described as a kind of van on two wheels, and carrying six, and therefore not coming within the provisions of the Act of 1863, which did not contemplate a carriage on two wheels as capable of carrying more than three persons, including the driver. Evidently in 1863, our predecessors in this Council thought that the venerable buggy of Bombay, now happily almost extinct, was the only two-wheeled vehicle of the future; while the good people of Alibág, in the progress of their civilisation, have fashioned a van, which apparently somewhat resembles the remarkable vehicles which one sees plying between Naples and Castellamare. The Bill which I submit to the Council is a very short and simple one, removing the exemption now enjoyed by vehicles which do not ply for hire in the streets, and enabling Government to apply all or any of the provisions of the Act of 1863 to all vehicles, or to any class of vehicles, ordinarily let for hire, but at the same time to exempt any class of vehicles from all or any of the said provisions. As an illustration of the desirability of having this power of exemption, I may mention that in places like Poona and Karáchi, carriages are often let out by the week or the month, and appear to the world, and are intended to appear, as private carriages, while elegant vehicles are obtained from livery stables for the purpose of going to Government House, or making a round of morning calls; and it would be painful to the feelings of the hirer of such a carriage if it had a board attached to it with a number and inscription, and if the driver had to wear a badge, as the Act requires. Government will doubtless think it desirable to exempt carriages of this description from the operation of the Act. I now move that the Bill be read a first time.

Bill read a first time.

The Bill was then read a first time.

The Honourable Sir M. MELVILL :—I hardly think it necessary to refer this Bill to a Select Committee. Two days ago I may mention I received a memorial from the Hindu Mahájan community of Karáchi in favour of the Bill, but asking that the duty of supervision be transferred from the police to the municipality. We have no intimation from any mofussil municipality or from Bombay that such a transfer is desired, and it would be unfair to saddle them with this new and cumbersome duty. I fully sympathise with the petitioners in the desire they express to prevent cruelty to animals, but it would be impossible for us to prescribe the weight to be carried by each labour cart as they desire. I think it would entail a good deal of harassing work both upon officials of the port and the police. Section 31 of Bombay Act VII of 1867 is in force in Karáchi, and it empowers the police to proceed against any one overworking an animal. The best thing for the memorialists to do would be to form themselves into a branch of the Bombay Society for the prevention of cruelty to animals.

It was decided not to refer the Bill to a Select Committee, but to take the second reading at a future meeting of the Council.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Right Honourable the Governor in Council,

A. SHEWAN,
Secretary to the Council of the Governor
of Bombay for making Laws and Regulations.

Poona, 16*th July* 1887.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Poona on Saturday, the 23rd July 1887.

PRESENT:

His Excellency the Right Honourable LORD REAY, G.C.I.E., LL.D., Governor of Bombay, *Presiding.*

The Honourable Sir M. MELVILL, K.C.I.E., C.S.I.

The Honourable J. B. RICHEY, C.S.I.

The Honourable the ADVOCATE GENERAL.

The Honourable KÁSHINA'TH TRIMBAK TELANG, C.I.E.

The Honourable F. FORBES ADAM.

The Honourable J. R. NAYLOR.

The Honourable Ráo Bahádur MAHA'DEV VA'SUDEV BARVE, C.I.E.

Mr. Richey moves the third reading of Bill No. 3 of 1884.

The Honourable Mr. RICHEY moved that Bill No. 3 of 1884, a Bill to amend the Bombay Hereditary Offices Act so far as it relates to Matádárs, be read a third time.

Bill read a third time and passed.

The motion was agreed to, and the Bill was read a third time and passed.

The Council then resumed consideration of Bill No. 7 of 1886, a Bill to declare and amend the Law relating to Toda Girás allowances.

Mr. Richey resumes his motion for the second reading of Bill No. 7 of 1886.

In resuming his motion that the Bill be read a second time the Honourable Mr. RICHEY said:—

With reference to the discussion which took place at the last meeting of the Council, I have given notice of some new amendments. The first of these relates to section 3. The object of the amendment is to give legal effect to the executive standing orders on the subject of succession to toda girás allowances. So far as this section is concerned, it is merely to give validity to existing standing orders, and as one of these orders is that, failing male heirs, the widow of the last recipient shall be allowed the annuity during life-time, this provision should be made, that the allowance shall duly be payable during life-time of the widow. The Honourable Kázi Sháhábudin called attention at the last meeting of the Council to the form of sanads issued for allowances in pursuance of the settlements in 1862-63, in which provision was made for failure of heirs in direct male line, and indicated that he was not quite sure that the discretion, which is provided in section 3, as to the continuance of these allowances to the heirs of the brother of the first recipient under British rule truly represented the existing state of the rules. It appeared to me there was no question about this. I have compared the Bill with the rules made in 1863, which are to the effect that in case of failure of heirs in the male line, if the Revenue Commissioner finds that any hardship will occur, the brother of the first recipient is to be allowed to succeed. That is

the rule, and under these rules a large number of allowances has been declared continuable through the brother of the first recipient, and many sanads have been issued since 1863 under the settlement which embodied that privilege. There is therefore no question as to this proposal properly representing the existing rules and procedure. But as we want to make the Bill as consistent as possible with the existing facts, I ask you to make an amendment to the proviso, making it read: "Provided that, on failure of such heirs, the allowance, or some portion thereof, shall whenever the Governor in Council has already so directed, or shall hereafter so direct, be continuable hereditarily to the lineal male heirs in male descent of a brother of the first recipient of such allowance under British rule." I have given notice of an amendment to substitute for the first sentence of section 6, as it appears in the Bill: "(1) Nothing in this Act applies to a toda girás allowance, which has already been alienated." This will meet the amendment in section 6, proposed by the Honourable Mr. Telang, by which the date before which the alienation should be recognised is altered from the 19th November 1886 (the date of the publication of the Act), to the date of its becoming law. With regard to the other amendments proposed in section 6, the object which should be kept in sight in these provisions is that while no *bonâ-fide* alienation is invalidated by the Act, no room should be left for people interested in securing an alienation to do so hereafter by any collusive means. Therefore, in accepting Mr. Telang's suggestion that the date of passing of the Act should be substituted for 19th November, I have also to ask that only *bonâ-fide* and complete transfers should be recognised. Therefore I propose that the test of the transfer should be that any document effecting it should be registered before the passing of the Act, and that the provisos as regards alienation shall be—"(*a*) If the instrument purporting or operating to effect such alienation has *before the date on which this Act comes into force* been registered under any law for the time being in force relating to the registration of documents; or (*b*) if the said instrument not being compulsorily registrable and not having been registered under any such law as aforesaid *has been executed before the date on which this Act comes into force* and is presented for inspection, together with a copy thereof for record, at any time within six months after the *said date*, to the Collector of the District in which such allowance is payable; or (*c*) if, when such alienation has not been effected by an instrument, proof thereof is produced within the period, and to the Collector aforesaid." Then it has been suggested that it will be useful for the Courts if the Act should provide some simple proof of the validity of the transfer, and I have therefore to move an additional amendment, which is this—"(2) *When any instrument is presented to a Collector under clause (b), he shall, before returning the same, endorse thereon, under his signature and official seal, the date of such presentation. When proof of an alienation is produced before a Collector under clause (c), he shall give to the alienee a certificate, under his signature and official seal, that the toda girás allowance so alienated is not subject to the provisions of this Act.*" Mr. Telang has given notice of another amendment to substitute "one year" for "six months." Six months are allowed for inspection. We only know of fourteen instances at present in which alienation has taken place, and it is very improbable that since the Bill was published there have been any more. It seems entirely unnecessary to make the time any longer than six months, as there is risk that proof will become more difficult and more doubtful.

The Honourable Mr. TELANG:—Having regard to the explanation given by the Honourable Mr. Richey at the last meeting of the Council, I shall ask the Council to

consider that I withdraw the first of my proposed amendments. As to the other amendments, I think (*a*) of section 6 even as now proposed should be amended.

His Excellency THE PRESIDENT:—Perhaps these remarks had better be deferred till after the motion for the second reading has been put.

Bill read a second time and considered in detail.

The motion that the Bill be read a second time was then put and agreed to, and the Council proceeded to consider it in detail.

The Honourable Mr. TELANG then withdrew the amendment he had given notice of to section 3, namely to omit all words from "to the lineal male heirs" down to the end of the section.

The Honourable Mr. RICHEY moved that section 3 be amended as follows, *viz.*:—

(1) In lines 8 and 9, omit the words "the Governor in Council may, if he thinks fit, direct that."

(2) In line 10, after the word "shall" insert: "whenever the Governor in Council has already so directed or shall hereafter so direct."

The motion was agreed to.

The Honourable Mr. RICHEY moved that for section 6 the following section be substituted, *viz.*:—

6. (1) Nothing in this Act applies to a toda girás allowance which *has already been alienated:*

(*a*) If the instrument purporting or operating to effect such alienation has *before the date on which this Act comes into force* been registered under any law for the time being in force relating to the registration of documents; or

(*b*) If the said instrument not being compulsorily registrable, and not having been registered under any such law as aforesaid, *has been executed before the date on which this Act comes into force and* is presented for inspection, together with a copy thereof for record, at any time within six months after the *said date*, to the Collector of the district in which such allowance is payable; or

(*c*) If, when such alienation has not been effected by an instrument, proof thereof is produced within the period and to the Collector aforesaid.

(2) *When any instrument is presented to a Collector under clause* (*b*), *he shall, before returning the same, endorse thereon, under his signature and official seal, the date of such presentation. When proof of an alienation is produced before a Collector under clause* (*c*), *he shall give to the alienee a certificate, under his signature and official seal, that the toda girás allowance so alienated is not subject to the provisions of this Act.*

The motion was agreed to.

The Honourable Mr. TELANG then moved that in section 6, clause (*a*), the words "is duly" should be substituted for the words "has been." He said:—My Lord, with reference to clause (*a*) of section 6, I would suggest to the Council that it is desirable that a certain change should be introduced, so that clause (*a*) should read in this way: "If the instrument

purporting or operating to effect such alienation *is duly* registered under any law for the time being in force relating to the registration of documents." I do not object to the provision that the instrument should be executed before the Act comes into force, but why should it also be registered before that time? Of course there is the danger of collusion, but there is no greater danger as regards an instrument coming under clause (*a*) than there is as regards alienations falling under clauses (*b*) and (*c*). It is also to be remembered that in no case can the instrument be registered after eight months from the date of execution. And as clauses (*b*) and (*c*) provide for six months, clause (*a*) will provide for eight months. The effect of clause (*a*) as proposed by Mr. Richey will be practically to curtail the period allowed by the general registration law, and it may, in practical operation, become a retrospective enactment. In cases of collusion, too, in such a matter as this, it should not be difficult to prove such collusion. But by clause (*a*), as now proposed, some alienations, even though not collusive, will be rendered invalid. I am willing that six months should stand. Twelve months were suggested to me by the old Registration Act. Still if Mr. Richey thinks six months should not be extended, I am quite willing to accept that. But by adopting my amendment, clauses (*a*) and (*b*) will be brought into unison.

The Honourable Mr. RICHEY: Mr. Telang's argument that the period for documents coming under (*a*) and (*b*) should be assimilated as far as possible, has some force; but it will be observed in the amended proviso (*b*) that we have worded it so as to secure that these documents shall have been executed upon a date before this Act shall come into force. Transactions provided for under (*b*) would be of very small values, and it is very unlikely that any of a high value has been begun since the first reading of the Bill; it is reasonable to give a certain amount of latitude to parties interested in any small transactions, if there are any in progress, and yet it is desirable to check any important alienation at once.

The Council divided:

Aye.	*Noes.*
The Hon. Kashinath Trimbak Telang.	The Hon. Sir M. Melvill.
	„ J. B. Richey.
	„ the Advocate General.
	„ F. Forbes Adam.
	„ J. R. Naylor.
	„ Ráo Báhádur Mahadev Wasudev Barve.

So the amendment was lost.

The Honourable Mr. TELANG then withdrew the other amendments to section 6 of which he had given notice, *viz.*, to omit the words "which was," and for the words "19th November 1886" to substitute "passing of this Act"; and in clause (*b*) for "six months" to substitute "one year."

The Honourable Mr. RICHEY then moved that the Bill be read a third time.

Bill read a third time and passed.

The motion was agreed to, and the Bill read a third time and passed.

Mr. Naylor moves the first reading of Bill No. 4 of 1887.

The Honourable Mr. NAYLOR moved the first reading of Bill No. 4 of 1887, a Bill to consolidate and amend the Law relating to the Municipal Government of the City of Bombay. He said:—Your Excellency,—I appear before this Council to-day on behalf of the city of Bombay. In saying this, I do not lay claim to be in any special sense the representative of the city. I owe to your Excellency the honour of being placed in charge of the Bill for consolidating and amending the law relating to the municipal government of that city, which now lies before us. But I describe my position in regard to this legislative project in these terms, because it seems to me to be desirable that I should clearly state at the outset that the object we have in view is the advancement of the interests of the city of Bombay. The consolidation and the amendment of municipal enactments, the extension of the municipal franchise, the promotion of local self-government, the definition of the powers and duties of the several municipal authorities are things which are, no doubt, desirable in themselves, but they are only means to an end. The end is the perfection of municipal government, the attainment, in the highest possible degree, of those conditions which will secure to the inhabitants of the city, health, convenience and comfort, and which will enable the city to maintain its place amongst the finest cities of the world, without imposing upon the people undue taxation. I am sure that I rightly interpret the intentions of Government, when I say that this was the main object with which they commissioned me, in consultation with the late Municipal Commissioner, Mr. Ollivant, to draft the Bill which is now before the Council; I can testify to the fact that the provisions of the Bill, from first to last, have been carefully designed to effect this object, and I do not doubt that the honourable members of this Council will approach its consideration and deal with it in all its stages with this object in view.

It is nearly a century ago since the first municipal enactment for the city of Bombay was passed. That was a very simple provision enacted by Parliament in the year 1793, which empowered Justices of the Peace, assembled at their General or Quarter Sessions at Bombay, "to appoint scavengers for cleaning the streets, to order watching and repairing of the streets as they shall judge necessary," and to assess houses, buildings and grounds, in order to defray the expenses, at a rate not exceeding one-twentieth of their annual value. Between that time and the present the affairs of the city of Bombay have always enjoyed a large share of the attention of the Indian Legislatures, both Supreme and Local. I need not trouble the Council with details. I will only say that at this moment there are no less than eleven Acts of the local Legislature, relating exclusively to the Bombay Municipality. If, therefore, the length of the present Bill, with its 528 sections, creates surprise, I must explain that, if passed, it will take the place of all these eleven enactments in the statute book, containing between them 417 sections, and of several rules and orders which have been passed under them, and that it, moreover, supplies provisions on many new and very important and useful matters, which the existing municipal enactments either do not deal with at all, or provide for very imperfectly. The principal of the existing enactments is Bombay Act III of 1872. That Act was passed only fifteen years ago, but its administrative provisions were not essentially different from those of the preceding Municipal Act, Bombay Act II of 1865, which again were copied, without much alteration, from two Acts passed by the Government of India for all the three presidency towns of India in 1856. The two last-mentioned Acts were prepared at a time when municipal institutions were only beginning to be tried in this country, and it was impossible for the Gov-

ernment to know what special provisions would be adapted to the peculiar requirements of oriental towns, and so it happened that, with few exceptions, the provisions of these two Acts were taken almost bodily from English statutes. Thus the Municipal law in force in Bombay for the last thirty years has been obtained almost exclusively from English sources, and but little attempt has hitherto been made to shape and adjust it to the local conditions of that city.

In the meantime, also, Bombay has been making immense strides in everything that lends importance to a city. Within it have sprung up a great number of mills and other manufactories, which whilst they are a source of employment and profit to large classes of the inhabitants, are on the other hand the cause of new species of nuisances and danger to the community at large, which it is absolutely necessary that the Municipality should have power to control. The population which in 1871 was found to be, in round numbers, 6½ lákhs, had increased in 1881 to 7¾ lákhs, and is now, probably, not far short of 8½ lákhs. The last quarter of a century has seen Bombay brought into connection by railway with Calcutta, Madras, Delhi and the Punjab, and it is now the focus towards which all the principal railway systems of this vast empire converge. The importance of this fact to Bombay may be estimated when it is remembered that the total mileage of Indian railways is now approaching 16,000 miles. The opening of the Suez Canal and the development of trade in the country have added enormously to the ocean-borne traffic which is either shipped or landed at its port. Figures, with which I have been obligingly supplied by the Collector of Customs, exemplify the immense expansion of the trade of Bombay during this period in a remarkable manner. Five and twenty years ago, *i.e.*, in the year 1862-63, the total number of steamers entered at the port of Bombay was 105, with a tonnage of about 80,000 tons; last year, 1886-87, the number entered was 1,816, with a tonnage of over 1½ millions of tons. The total value of the trade, *i.e.*, of imports and exports together, amounted in 1862-63 to a little over £59,000,000 sterling; it last year exceeded 84½ millions. And as illustrating the growth of our city in importance, comparatively with the two other presidency-towns, I may mention that Bombay's share of the total foreign trade of British India (exclusive of Government transactions), which stood at 37 per cent. in 1878-79, has since, year by year, steadily increased, till in 1885-86 it was nearly 44 per cent. Calcutta's share in 1878-79 was 44 per cent., and it has since steadily fallen off, until in 1885-86 it was only 36 per cent. The share enjoyed by Madras has in the meantime continued pretty constant at about 5 per cent.

To these statistics I may add the following, which have been kindly given to me by Mr. Charles, the present Acting Municipal Commissioner of Bombay. In 1864 the municipal revenue was a little over 15 lákhs only. In the following year it was increased to nearly 33 lákhs. In 1881 it had grown to 38¾ lákhs, and in the last year, 1886-87, it exceeded 48 lákhs. In addition to this ordinary revenue, the Municipality has raised loans during the last twenty-five years, which, including the Vehár Water works' debt due to Government, aggregate 223 lákhs; and other loans to the extent of 106 lákhs for the completion of the Tánsa Water-works, and 50 lákhs, to complete the drainage and house-connection in the city, are in early contemplation.

These figures, I think, illustrate more vividly than any works of mine could, the pre-eminent position which, during the last quarter of a century, the city of Bombay has

obtained for itself in our Indian Empire, and the magnitude of the interests confided to its municipal authorities.

The Act of 1872, under which, as I have said, the municipal affairs of the city have for the last fifteen years been conducted, was amended by Act No. IV which this Council passed in 1878, and honourable members will observe from the frequent references to the Municipal Acts of 1872 and 1878 in the margin of the Bill now before us, that these two Acts together, at present, guide and control the municipal government of the city. The amending Act of 1878 was, however, no more than a temporary measure. It left many difficulties unsolved, and the late Honourable Mr. Gibbs, who introduced it, was, I know, fully alive to the fact that in a few years an entirely new consolidating enactment would be required. In May 1881, Mr. Ollivant became Municipal Commissioner, and he found the Corporation already engaged in considering what amendments were necessary in the Municipal Acts. Honourable members will find in Government Selection No. 178 a long series of "proposals for the amendment of the Bombay Municipal Acts" extending over the years 1881 to 1885, and emanating partly from the Corporation, partly from the Town Council, and partly from the Municipal Commissioner. There is also a "Blue Book," referred to at pp. 65-66 of the above Selection, in which Mr. Ollivant, at the request of Government, submitted in November, 1882, a revised Bill embodying the recommendations theretofore made by the Corporation and the Town Council and himself, with such further modifications as his later experience of municipal administration suggested to him. In January, 1883, the Corporation appointed a Committee "to consider and report, in conjunction with the Municipal Commissioner, what amendments in the Municipal Acts may, in the opinion of the Corporation, be desirable in connection with the new local self-government scheme." A second Committee was afterwards appointed by the Corporation for this same purpose, and their report, which was generally approved by the Corporation, was submitted to Government by their chairman, who is at present the honourable member of this Council, Mr. Pherozeshah Mehta, and is printed *in extenso* at pp. 69-100 of the Government Selection No. 178. It is right that I should mention that the Commissioner, Mr. Ollivant, was absent from Bombay for the greater part of the time that this Committee sat, and that he, consequently, participated but little, if at all, in its deliberations.

But although absent from Bombay, Mr. Ollivant was, for three months in 1883, very usefully engaged in inquiring into the methods of municipal administration in England. The Corporation, with much wisdom, requested him to remain in England for three months on special duty for this purpose, and having been associated subsequently with Mr. Ollivant in the preparation of the Bill which is before us, I can bear witness to the great use which that gentleman must have made of this opportunity. When we were deputed in the early rains of 1885 to draw up a new Municipal Bill in consultation, I found in Mr. Ollivant a coadjutor, who not only was fully cognisant of every detail of the work of the Bombay Municipality, and of all its intricacies and difficulties, but one, also, who was deeply versed in the municipal and sanitary legislation of the United Kingdom and of many of her Colonies. For the completeness of the provisions on each of the numerous subjects with which this important Bill deals, and for their adaptedness to the circumstances of their city, the people of Bombay are entirely indebted to their late Municipal Commissioner; and it is a matter of very great regret that he should have been

compelled by ill-health—ill-health brought on by his too zealous labours on behalf of the city—to take furlough, before the Bill, on which he bestowed such infinite pains, could be introduced into this Council. I fear there are many valuable provisions in the Bill of which I shall be able to give but a very imperfect explanation, but of which the importance and necessity could be demonstrated by my late colleague, were he present, in a manner which would readily carry conviction. During our short official intercourse, I have, however, learnt many things, of which, I confess, I had no previous knowledge, and during the careful scrutiny which the details of the Bill will, no doubt, undergo in Select Committee, I shall endeavour to give the reasons which led us to frame its several provisions as we find them.

My Lord, the Bill which has thus been drawn by myself, under the guidance and with the able assistance of Mr. Ollivant, is the outcome of his great local experience and of his very extensive acquaintance with the municipal and sanitary laws of other parts of the world; but we have also had before us all the amendments and improvements from time to time suggested by the Corporation and the Town Council, which are to be found in the Government Selection already referred to; and it will, I think, be found, on examination, that we have generally adopted those suggestions, and that where we have not done so, it has been because more recent experience, or a fuller knowledge of facts, has satisfied us that public interests would be better served by the adoption of some other course. If I were to attempt to speak of each of the subjects dealt with in the Bill, my speech would extend to a length which at this stage of the discussion of it would be quite unwarrantable. I will only say, generally, that the object kept in view in every chapter is to secure to the citizens of Bombay the greatest possible efficiency in municipal services with the most complete possible control over expenditure. Many of the provisions in the chapters relating to drainage, water-supply, buildings, and sanitation are strict, perhaps even severe; some may even be found by the Select Committee to be unsuited to the conditions of life in the native quarters of the city; these are points to which I cordially invite the attention of the Native gentlemen who interest themselves in the Bill and of the honourable Native members of this Council. The Bill, if it should pass into law, is likely to take a permanent place in the statute-book, and although we may desire that the provisions of such an important enactment should be thorough and effectual, there is no wish to impose restrictions which would needlessly run counter to popular sentiments, or harass or annoy the people.

But there is one portion of the Bill on which honourable members will, perhaps, expect that I should submit a more full explanation, *viz.*, that part of it which regulates the future municipal constitution. This does not appear to me, in the present condition of things, to be the most important portion of the Bill; there are other portions of it which are much more urgently required, and the future successful operation of the law depends, I think, in a far greater degree upon the careful amendment of its executive provisions than upon any contemplated change in the constitution of the Municipality. But a revision of the whole law involved a reconsideration of this part of it also, and, as I have stated, the Corporation submitted in 1884 certain recommendations on this point, in connection with the impetus which was given in the time of the late Viceroy to the development of local self-government generally throughout India. Great care has been taken in drafting chapter 2 of the Bill which treats of the municipal constitution, to render

the provisions regarding the qualifications and disqualifications of electors and candidates, the conduct of elections, the appointment of the Town Council, the proceedings of the Corporation and Town Council, and the respective duties and powers of the Corporation, the Town Council and the Municipal Commissioner, clear and free from ambiguity. These are matters in which the present Municipal Acts are especially defective and no pains have been spared to make the Bill as free from such defects as possible, although I do not doubt that there may be still much room for improvement. With regard to the constitution itself, no very radical changes are proposed, and I will offer a few observations in explanation of this fact.

Your Excellency, in the mother-country the history of municipal institutions is a part of the history of the people rather than of the history of the Government. A large number of people congregated in a growing town would recognize the need for municipal regulations and for taxing themselves in order to supply public local wants, and out of this desire there would arise an application for a Royal Charter of incorporation. The burgesses, or citizens, having become a corporate body, proceed to elect from amongst themselves a council, and this council, charged with the conduct of the municipal affairs of the town appoints working committees, each with the control of a different department, and reserves to the whole body only such large questions as can be conveniently disposed of by them at occasional general meetings. All the details of the administration are settled by the committees. The history of the Bombay Municipality bears but little resemblance to those of England. Its commencement dates from that statute of 1793 which I have already mentioned, and which entrusted the duty of appointing scavengers and of ordering the watching and repairing of the streets to His Majesty's Justices of the Peace. His Majesty's Justices of the Peace at this time consisted of the Governor in Council and of covenanted civil servants and other British inhabitants of Bombay appointed by the Governor-General in Council. The number of Justices of the Peace so appointed in addition to the members of the Government was, in 1793, five; in 1798, nine; and in 1807, when the power of appointment was transferred to the local Government, sixteen. In 1812, a Court of Petty Sessions was appointed, consisting of Justices of the Peace, and including the two Police Magistrates, and the Regulations framed by this Government during the following twenty years imposed municipal functions sometimes on the Court of Petty Sessions, and sometimes on His Majesty's Justices of the Peace at their quarter sessions. In 1832 Parliament passed an Act authorising the appointment of any person not being a subject of a foreign State to be a Justice of the Peace, and as soon as the nomination of natives of this country to be Justices had been thus legalized, the Bombay Government in 1834 enacted that the Court of Petty Sessions should thenceforward consist of not less than three Justices of the Peace, of whom one should be a Police Magistrate, one a European and one a native of India. Municipal matters continued to be managed in Bombay partly by the Court of Petty Sessions, partly by the Police Magistrate, and partly by Her Majesty's Justices of the Peace in Sessions assembled, until in 1845 a Municipal Fund was for the first time established, and a Board of Conservancy was appointed to administer it. This Board consisted of seven members, *viz.* the Senior Magistrate of Police as chairman, the Collector of Bombay and two European and three Native resident Justices of the Peace elected by the Bench of Justices. It existed for thirteen years, but it was not found to work satisfactorily, and in 1858 a new experiment was tried. This consisted in vesting

the Municipal Fund in three Municipal Commissioners, one, the President, being appointed by Government, and the other two elected by Her Majesty's Justices of the Peace in Sessions assembled. These three Commissioners had very large powers and were subject to very little check or control; but, to use the words of the Honourable Mr. Cassels, who introduced the Municipal Bill of 1865 in this Council, it was found "that three Commissioners with equal powers but divided responsibility almost unavoidably obstructed and counteracted each other." At length, in 1865, this Council passed the Bill, introduced by Mr. Cassels, in which provision was made for the appointment of a highly-paid sole Municipal Commissioner in whom was vested "entire executive power and responsibility." At the same time, all Justices of the Peace for the town and island of Bombay were constituted a body corporate, with power to fix the rates of municipal taxes and to sanction or reject the Municipal Commissioner's budget. This system continued in force for seven years under the able administration of Mr. Arthur Crawford; but experience showed that the whole Bench of Justices formed too large a body for an efficient Municipal Council, and that the check on expenditure provided by the Act of 1865 was insufficient. The result was the passing of the Municipal Act of 1872, to which I have already alluded, as being the principal Act at present in force. That Act still maintained the position of the Municipal Commissioner, vesting in him "the entire executive power and responsibility for the purposes of the Act." The Bench of Justices were displaced by a Corporation of 64 members, 32 elected by rate-payers, 16 nominated by Government and 16 elected by the Justices; and a third authority was created, a Town Council, consisting of twelve members, 8 selected by the Corporation, and 4 nominated by Government, whose special function was "to secure due administration of the Municipal Fund." This is the municipal constitution as it at present exists.

The essential difference between this Municipality and those of England is that whereas the latter are the creation of the people themselves, the Bombay Municipality is distinctly the creature of English legislation, and its present constitution is the outcome of a long series of experiments. The result of the experiments is that for the last twenty-two years the city of Bombay has been under a form of municipal government which has worked smoothly and well, which has given satisfaction both to the people and to the Government, and which has effected in the aspect of Bombay, in its beauty as a city, in its conveniences, its healthiness and its cleanliness—in fact, in everything which betokens a sound municipal administration, changes which are little short of marvellous. If I should appear, in these remarks, to be using the language of exaggeration, I will only appeal to those who knew Bombay, as I knew it, five and twenty years ago. I will also quote the observation of His Excellency the Viceroy, who, in replying to the address of the Corporation in November last, said "he knew of no Municipality imbued with a more enlightened, wisely progressive and thoroughly practical spirit than the Municipality of Bombay;" and that the work of the Municipality has been thorough and not merely on the surface is evidenced by the following passage which I take from the Memorandum of the Army Sanitary Commission—a body by no means easy to please—on the Municipal Commissioner's Reports for 1885-86. The Commissioners say: "The municipal work * * * up to the present has considerably reduced the mortality from epidemics, which in other municipalities and in the country villages have, in the absence of effective sanitary work, been left year after year to inflict great loss and suffering upon the people. And these results have been obtained in, perhaps, the most unfavourable

population group to deal with in the whole Presidency and in one of the most densely populated cities anywhere to be met with."

A constitution under which such results as these have been achieved is one which should, I think, be continued. At least, it should not, in the face of previous failures, be in any way seriously altered, without grave reason. Moreover, no such alteration has been asked for. I am not aware that any application has been made by the rate-payers, or by the general public of Bombay, for any change in the municipal constitution. As I have already shown, no thought was entertained before 1883 of altering the constitution, and the recommendations of the two Committees of the Corporation appointed about that time to consider what amendments were desirable in connection with the new local self-government scheme are contained in the report which is printed at pp. 69-72 of the Government Selection No. 178. They are in effect—(1) that the number of members of the Corporation be raised from 64 to 72; (2) that the respective functions of check and control vested in the Corporation and Town Council be in no way lessened; 3 that the chairman of the Town Council be elected by that Council; (4) that the position and duties of the Commissioner remain unaltered; and (5) that his appointment continue to be made by Government. But Mr. Ollivant, for reasons which are very clearly set forth in his letter to Government, No. 2009 of 18th May, 1885, printed at pp. 101-105 of the Government Selection No. 178, was desirous of inducing the representatives of the Bombay tax-payers to take an active part in the municipal government of the city, by sharing with the Commissioner the executive power and responsibility. His idea was to assimilate the Municipality to the English models by requiring the Town Council to distribute itself into sub-committees, each of which, with the Municipal Commissioner as chairman, should have charge of one or more branches of the executive work of the Municipality. This view commended itself to me, as being an important step in the direction of real self-government, and the first draft of our Bill was devised to give effect to it. That draft proposed to deprive the Commissioner of the sole executive authority, and to vest such authority in sub-committees of the Town Council, of which the Commissioner would be the chairman. The draft was referred by Government to the Corporation for the favour of their opinion, and honourable members will find from para. 10 of their chairman's letter, No. 1943 of 1886, which is printed at pp. 105-107 of the Government Selection No. 178, that that body disapproved of the proposed change. Government did not press the new departure, when those in whose interest it was suggested were unwilling to accept it, and the Bill had therefore to be entirely recast. It appears that there does not exist in Bombay the class of gentlemen upon whom municipal institutions in England so greatly depend—gentlemen who are both able and willing to devote a considerable share of their time and attention, without remuneration or for comparatively little remuneration, to local public affairs, and to incur the responsibility which participation in the conduct of such affairs necessarily involves.

I may mention that the first draft Bill also proposed that, following English precedents, the "Corporation" should henceforward be called "the Municipal Council" and "the Town Council" "the Standing Committee." In deference to the views of the Corporation, which were in favour of retaining the old names, the existing nomenclature has been restored in the present Bill; but I venture to hope that this Council may see fit to adopt the amended names. The so-called "Corporation" is in reality

the Municipal Council, and although it is by its constitution a body corporate, there is no particular reason why its designation should proclaim this fact. If the body is designated a Council, each member of it is necessarily a Councillor, a term which not only implies dignity, but is also much more convenient and simple than the term "member of the Corporation." The ugly words "Corporator" and "Corporationer" I leave out of account altogether. The "Town Council" is a clear misnomer. The body which bears that name is not a distinct council; it is a committee selected from the members of the Corporation, and it performs vicariously the duties of the Corporation. It is, in fact, a standing committee of the Corporation, and it would seem fitting that it should be so called. The term "*Town* Council" is quite inappropriate. In England a Municipal Council is popularly called the Town Council, if it is the council of a town. But Bombay has for many years past discarded that appellation, and with every right claims to be a city. A *Town* Council in a city is evidently misnamed. Moreover, the *town* of Bombay meant originally only the Fort; when what we now recognise as the city was intended, the expression "town and island of Bombay" was used. The word "town" still survives in the term "presidency-town" and under the Government of India's enactment, Justices of the Peace are still appointed "for the town of Bombay." The Government of India in their Legislative Department have not yet recognised our claim to be a city; but that I submit is no reason why we in our local enactments should speak of a "*Town* Council" when, for all other purposes, we call Bombay a city.

In the Bill which is before us, the wishes of the Corporation have been followed, not only in this matter of nomenclature, but also in other more important particulars. Upon their suggestion, the number of members of the Corporation is proposed to be raised from 64 to 72. This is a change which, in my opinion, is inexpedient. The number of members is already very large, and the more that number is increased the greater will be the difficulty in obtaining the prompt disposal of business by the Corporation. Upon the recommendation of the Corporation, also, it is proposed that two members of that body be elected by the Fellows of the University and by the Chamber of Commerce. Another proposal of the Corporation which has been accepted is that the Town Council shall have power to elect their own chairman. In some points, however, Government have not been able to concur with the Corporation. They are, for instance, of opinion, that it will promote the despatch of business, if the Commissioner is *ex-officio* a member of the Corporation and of the Town Council; and in view of the unwillingness of the Corporation that the Town Council should share with the Commissioner the executive administration, it appears to be absolutely necessary to provide for the possible need of appointing a Deputy Municipal Commissioner. The experience of the last few years is that the work is increasing far beyond the capacity of any one officer, and although provision is made in section 67 of the Bill by which the Commissioner will be able to depute many of his duties, under his control and subject to revision by him, to Municipal officers, it is still feared that the work of the Municipal Commissioner may be too great for one man.

The only other important feature of the constitutional provisions of the Bill which I need trouble the Council to notice is the careful attempt which has been made to define the respective functions and duties of the three municipal authorities—the Corporation, the Town Council and the Commissioner. The idea that the Commissioner

should be simply the executive officer of the Corporation, obeying and carrying out the behests of that body and of the Town Council, does not appear to accord with the lines of the constitution as at present existing. The great success of the administration of the last twenty-two years is, no doubt, very largely due to the fact that "the entire executive power and responsibility" have been vested in the Commissioner, who is an officer specially selected by Government for this very important and difficult post. The history of municipalities in other parts of the world in which the administration is vested exclusively in an elective body does not encourage us to think that in a city like Bombay such a system would answer; and, as I have endeavoured to show, our own experience in Bombay teaches us that we should adhere to the system which we already have. The interests centred in Bombay are not merely local; the proper administration of its municipal affairs is a matter of vital importance to the whole presidency, to the whole of India. On all these grounds, it seems to me to be imperative, not only that the existing position and authority of the Commissioner should be maintained, but also that, in order to avoid all future conflict of authority and overlapping of jurisdiction, the respective powers and duties of the Corporation, the Town Council and the Commissioner should be explicitly defined. This is also of importance, I think for the credit and usefulness of the Corporation itself. To those who take an interest in the progress of popular institutions in this country, it is obivous that such bodies as the Corporation cannot reasonably be expected to acquit themselves satisfactorily of their public duties, unless their sphere of action is well defined. The principles upon which the division of duties and powers has been made in the Bill are stated in para. 17 of the Statement of Objects and Reasons. It is impossible for me to attemption this occasion to explain their application in detail. This is a matter which will, no doubt, receive very careful attention at the hands of the Select Committee, and it is possible that that Committee may see fit to make several alterations. I am not prepared to say that I myself concur in all the allotments of authority in the Bill, as it stands, and it is very likely that after interchange of views with the honourable members who will form the Select Committee, my opinion will change even in respect of some of the instances in which I at present think the Bill is right. But I would invite the special attention of the members to sections 66, 68, 92 and 113 and 116 of the Bill, under which the exercise by the Commissioner of any power with which the Bill will invest him is strictly limited by the provisoes—(1) that he will be bound by budget provisions; (2) that he cannot enter into any but minor contracts without the approval of the Town Council; (3) that he cannot dispose of any municipal property, exceeding in value Rs. 500, without the approval of either the Town Council or the Corporation; and (4) that he cannot draw a rupee from the Municipal Fund except on a cheque countersigned by a member of the Town Council and the Municipal Secretary, who are strictly enjoined not to countersign any cheque, until they have satisfied themselves that the Commissioner has due authority for the proposed expenditure.

The Bill has been drawn with the full knowledge that it will be very widely discussed by the public and by the Corporation, and that many changes and improvements will be suggested before it is finally passed. I am not instructed that it is the desire of Government to adhere to any particular provisions of the Bill, if it can be shown that some other would be more suitable or more workable. The object of the Bill is, I repeat, the promotion of the best interests of the city of Bombay, and not the enforcement of any fixed, unalterable views.

In conclusion, it may be convenient that I should state the course which is contemplated with respect to the progress of this Bill through Council. It will be seen from section 23, that the time prescribed for the first elections under the Bill is in January and February, 1888, and all the other dates throughout the Bill are fixed with reference to those elections. But these dates were inserted at a time when it was hoped that the Bill would be introduced into Council last rains. They will now all need to be made a year later. To permit of the first elections being made under the new law, even in January and February, 1889, it will be necessary that the Bill be passed by this Council in the ensuing cold weather. The Select Committee will, it is hoped, be able to meet in October, and to submit their report before the end of this year. If that can be accomplished, the second reading may be taken on some convenient day, during the cold weather session in Bombay.

I beg now to move that the Bill to consolidate and amend the law relating to the municipal government of the City of Bombay be read a first time.

The Honourable Mr. TELANG :—Your Excellency,—The Bill now before the Council is one of such great importance, not only to the City of Bombay, but also indirectly to the whole Presidency, that I trust I may be allowed to say a few words upon it even at this stage—only, however, as to its general principles rather than as to its details, which can scarcely be properly discussed on the present occasion. After hearing the speech of the honourable member in charge of the Bill, it is satisfactory to me to think that there is, at least to some extent, a common platform occupied by those who like, myself, are interested in the advance of popular government in Bombay and the honourable member. He seems to agree with us as to the success which the application of the principle of popular government in Bombay municipal matters has hitherto achieved At the same time I must confess that I find it impossible to perceive how this Bill, framed in the matter in which it has been framed, can harmonize with the views which the honourable member has expressed on his own behalf, as well as on behalf of Government, regarding the success of municipal government in Bombay. Looking at the Bill as a whole, I must say that I consider it to be a retrograde measure—so retrograde, indeed, that if in voting I had to make my choice merely between this Bill and the old law, I should unhesitatingly give my voice in favour of the law as it at present exists, with all its anomalies, its laxities of phraseology, and its conflicts of jurisdictions. But having regard to what the honourable member has said, and what we believe as to the intentions of Government in this matter, I think it still possible that, in the later stages of this Bill, improvements may yet be made which will make it more acceptable, not only to myself, but also to those—and they are many—who agree with me upon this. And that being so, I shall not vote against the first reading of this Bill, but ask leave to point out those of its general features to which I am inclined to take more or less strong objections.

It will be convenient to take the points in the order in which they occur in the Bill. On Chapter 2, referring to the constitution, I must say a few words. And I must state, at the outset, that I am quite prepared to take my share of responsibility as one of the members of the Corporation who rejected the proposal referred to by the Honourable Mr. Naylor as made in the draft of the Bill first published—the proposal, namely, by which the Town Council was to be converted into an executive body to act with the Municipal Commissioner. When that proposal was first made in the Corporation, as it had been made

before the publication of the original draft of this Bill, I and others strongly opposed it. And I am still of opinion, that our position was well-founded. Having regard to the circumstances of Bombay and its society, as at present constituted, I am convinced that a provision of this sort cannot possibly work well. I say that it must prove either an obstruction in the way of efficient executive action, or—and this is much more likely—a perfect sham and a delusion, preventing responsibility being imposed upon the persons on whom it ought properly to rest. As, however, this matter is not now before the Council, I will not deal further with it at present, but proceed to other matters which seem to me to call for criticism. And, first, I should like to say that I entirely approve of the addition to our municipal constituency of the University of Bombay and the Chamber of Commerce. I am sorry to see from the public prints that there is an inclination in some quarters to oppose this provision. I think the opposition is ill-advised, and I entirely approve of this part of section 5. But in regard to the other portion of section 5, making the Municipal Commissioner of Bombay one of the members of the Corporation, I must confess I take a different view from that of the framers of this Bill. It seems to me that no sufficient reason has been shown, and none can be shown, why the position of the Municipal Commissioner at the Corporation should be altered from what it is at present. The true principle which ought to guide us here is, I think, that the Municipal Commissioner should be merely the head of the Municipal Executive; and whatever important proposal he may bring forward should have to be sanctioned by the Corporation before it is carried out. It will not do, then, to make the head of the Executive an integral member of that body. I have had some conversation on this topic with our Municipal Commissioner, Mr. Ollivant, to whose ability I gladly take this opportunity of offering my tribute of appreciation. I have heard from him his views on this proposal, but have never been satisfied by them. The main reason adduced was that the Commissioner's attendance was always necessary,—that it was necessary that he should be always at hand to guide the Corporation and Town Council. But I do not know that making him a member of those bodies will secure his attendance more regularly than will his interest in his work. We cannot secure the regular attendance of members. I can speak to that from personal experience, for my attendance recently at meetings of the Corporation has, I regret to be obliged to acknowledge, been so irregular, that I fear I shall be disqualified under section 18. Besides, it seems to me, as already indicated, that the principle here is wrong. It mixes up the head of the Executive with what should be a purely deliberative body. Furthermore, when the Act of 1872 was passed, this matter was fully gone into, and the provision, as it at present exists, was generally approved. It is true, as I have said before in this Council, that I do not consider myself absolutely bound by what the Council has done on previous occasions, and I am not now asking the Council to accept without question what was done by our predecessors in 1872. But what I do say is that the arrangement made in 1872 has worked satisfactorily; it was arrived at after full discussion; and it is not in itself unjust or unfair. And I do not think we should be justified now in disturbing an arrangement of such a character. This is the first great change here proposed, and it is one, be it remembered, which the Corporation has not asked for, but has distinctly rejected in its communication to Government. If we are to be guided by those who have had experience of municipal matters, I will refer to my honourable friend Mr. Phirozeshah, who has had such experience in larger measure than most people, and who entirely agrees in the view I have expressed. Having mentioned my honourable

friend's name, I may add that I have been in communication with him about this Bill. He regrets his inability to be present in Council on this occasion. But he holds generally the same views as I do upon this whole question.

I shall pass over many of the other sections in this chapter, for they deal with matters merely of detail, upon which I may have something to say on another occasion. But there is one clause which I must strongly object to. Section 37 (*g*) provides that "if the Commissioner shall, at any time before any business or proposition is finally disposed of at a meeting, certify to the presiding authority of such meeting that the said business or proposition is of special importance, it shall not be competent to the said meeting, or to any subsequent meeting, notwithstanding anything contained in clause (*f*), to dispose of the same, unless at least twenty-five members of the Corporation, inclusive of the presiding authority, are present during such time as the said business or transaction is under consideration and until it is finally disposed of." I cannot consent to this power being given to the Commissioner. It comes to this, that the Corporation is not to be trusted to decide whether a matter is so important, as that it should not be disposed of by the number of members present on any particular occasion, though the Commissioner is to be trusted. I will venture to say, that there is no ground for such a want of confidence in the Corporation, or for reposing in the Commissioner such unlimited trust. If this clause is carried, we may have such a scene as that of the Municipal Commissioner sending members of the Municipal Corporation away, although they may have attended the meeting at considerable personal inconvenience. It reminds one of Lord Protector Cromwell sending about their business the Commons of Great Britain. I can assent to no such section which would place the Municipal Commissioner over the head of the Municipal Corporation.

Another point in Chapter 2 is a matter of detail, but one which I am apt to consider of so much importance that I should like to refer to it even on this occasion. It is dealt with in section 41 about educational grants-in-aid. Clause 2 of that section provides that "a schools' committee may be appointed under this section to administer the school-fund, as defined in section 120, to manage and provide for maintaining and suitably accommodating primary schools which vest in the Corporation or partly in the Corporation and partly in Government, and for affording aid, in accordance with the Government grant-in-aid rules from time to time in force, to private primary schools and for the promotion of primary education generally." I do not know whether I shall be considered by others to be right or wrong, but I must say that I do not think the Government grant-in-aid rules to be by any means the *ne plus ultra* of educational wisdom. We—and when I say 'we' I mean the Municipal Corporation—may, perhaps, be able to suggest alterations and improvements in them. But if we cannot, as we frequently cannot, get Government to see as we do, I do not understand why we should nevertheless be entirely bound by the rules made by Government. This provision, therefore, seems to me to be in itself unjustifiable, and it also betokens a want of confidence in the Corporation.

In the same chapter comes a provision about the appointment of a Deputy Municipal Commissioner. That appointment should, I think, be left to the Corporation, although I would not object to the appointment being made by that body subject to the confirmation of Government, as is the appointment of a Health Officer or an Executive Engineer to the Municipality. I come next to section 58, which provides among other

things, for the Municipal Commissioner serving as a member of this Council or of certain local Committees. These provisions seem to me to be open to objection. It is admitted that the Municipal Commissioner has already too much work to do, yet by this Bill we give him much more; and proceed further to impose on him a liability to do the work of the Presidency at large, when he is a paid officer of the Municipality of Bombay city. I do not see what equity the Presidency has to entitle it to such service.

I come next to what is probably the most important point in this Bill, relating to the obligatory and discretionary duties of the Corporation. We have in section 62 a large number of matters mentioned as incumbent on the Corporation. And, in the first place, it is said that the Corporation shall be bound to make "adequate" provision for them; but we are not told who is to judge of the adequacy or inadequacy of the provision made. It is the Corporation that ought to be the judge of that. Again, you find in the enumeration various matters which are dealt with in their respective places elsewhere in the Bill. For instance, take the construction and maintenance of drains It is the first of the items under section 62 incumbent on the Corporation. Yet by section 219 all drains belonging to the Corporation are to be under the control of the Commissioner, and he is to construct such drains as *he* may consider necessary In fact, he is master of the whole thing. I confess I find it impossible to harmonize sections 62 and 219. And be it remembered, again, that the Corporation, which has asked for various changes in the law, has not asked for any change in this direction. Take, again, the construction and management of water-works. Under the old law, this was expressly left to the Corporation, but now we have the Commissioner throughout, and he may do pretty much as he pleases. Look, again, at section 65, clause (2), which says: "Except in so far as authority is expressly vested by or under this Act in the Corporation or in the Town Council, or in any such committee as aforesaid, and subject, whenever it is in this Act expressly so directed, to the approval or sanction of any of the bodies aforesaid, the duty of carrying out the provisions of this Act vests exclusively in the Commissioner." The key-note of the Bill may be said to be sounded in that clause. The result of it is that the one municipal authority whose powers are deliberately left indefinite in this Bill is the Municipal Commissioner; yet it is his powers, before all others, that ought to be strictly defined. The powers of the Corporation and Town Council, on the other hand, are strictly defined, while it is the Corporation, if any authority, that within the Municipality ought to be omnipotent. I may remark, too, that it is not only the Corporation and Town Council which have their powers limited by this Bill, but even the executive Health Officer is placed on a lower footing than under the old law. Under that law he had authority, in special cases, to make reports to the Town Council direct, and to exercise some powers independently of the Commissioner. But in the present Bill all his independent authority is absorbed into that of the Commissioner.

I shall now pass over the intermediate sections to come to section 135, which is remarkable as dealing with a matter about which there has recently been some considerable feeling inside and outside the Corporation. Comparing section 135 of the Bill with section 30 of the present Act, we find that while under the latter section the Town Council has power to call for all municipal records, under section 135 of the Bill the Town Council is to have "access" only to "all the municipal accounts and to all correspondence relating thereto." Obviously the powers of the Town Council are here considerably curtailed. I do not say that the question is one entirely free from all difficulties. But

I certainly do say that this is not a satisfactory mode of dealing with those difficulties. The next section vests the appointment of municipal auditors in Government,—the Corporation no longer appointing them, as it has done hitherto. What advantage to the Municipality is to result from this provision I do not know; for I do not understand it to be contended that the audit hitherto has been unsatisfactory. I can quite understand that the Central Government should wish to examine the accounts of local bodies. I do not see anything objectionable in that. And I should probably not have objected to the change had Government not required payment for the audit thus provided for. I need not say more on this point at present, but proceed to the provisions about the annual Budget. The framers of this Bill do not seem to have had it present to their minds that its provisions in regard to the important work of considering the Budget will either deprive members of the Corporation of their Christmas holiday, or make them neglect their most important civil duty. I connot see why they should be placed in this position. The Budget is to be in the hands of members of the Corporation not later than the 22nd of December; they are to proceed to consider the same not later than the 5th of January—a date that often falls before the expiry of the holiday available to myself, for instance, and others connected with the High Court; and, before the 15th of January, the taxes are all to be finally determined. I can only say that the lot of a man who has the misfortune to be a member of the Municipal Corporation with such duties is much to be pitied.

Section 336 and following sections relating to building regulations can, in my judgment, be only characterized as providing, not for local self-government, but for autocratic government run mad. The Commissioner has power to decide how I shall build my house, of what materials, to what height, what shall be the situation and size of the rooms in it, and, after all has been done, whether I shall live in it or not. I will venture to say that autocratic government could not be reduced to an absurdity more clearly. When such interference with individual liberty was attempted under bye-laws proposed during the Municipal Commissionership of Mr. Pedder, I was one of those outside the Corporation who took part in the popular protest against it. I have not had time to compare those proposed bye-laws with the regulations proposed in this Bill; but my general idea is that those bye-laws were not more objectionable than these regulations. I will make only one other remark on these regulations by way of illustration of my general objection to them. You may provide by an Act of the Legislature for means of ventilation to all houses, but you cannot by any Act of the Legislature compel the use of such means when provided. We know that there are many houses used by our people where such means, though existing, are not availed of. This illustrates the inefficacy of such provisions interfering with individual liberty. Look, again, at section 372, clause 2. The occupier of any land is bound to cause dust, &c., to be deposited upon a part of his land which the Commissioner may appoint. Why should this be so? If a man places rubbish in any place so as to cause a nuisance to his neighbour, the law gives such neighbour a remedy. Why, then, should the Commissioner have power to come and tell me where I am to put the dust and ashes on my land? I confess the thing is beyond my comprehension. Again, sections 382 and 333 deal with buildings unfit for human habitation and overcrowded dwellings. Under these sections, the Commissioner has only got to say the buildings shall not be used, and the owner who afterwards uses them or allows them to be used becomes liable to a penalty. Under section 222 of the present Act the Commissioner has no such despotic power. The Health Officer's certificate and the Presidency Magistrate's order are now necessary for such

interference with individuals. Under the present Bill the Health Officer and Presidency Magistrate are both ignored. I do not see what there has been in the every-day life of Bombay hitherto to justify such legislation.

I came next to the provisions relating to markets. At present, the Commissioner can only establish a market with the sanction of the Corporation and Government. But, under the Bill, the Commissioner is the sole authority in that respect. To take another point—small in itself, but still of importance, and kindred to this one about the markets. Section 414 prohibits the hawking about of articles of human food without a license from the Commissioner. Under section 314 the Commissioner may summarily remove from the streets any man creating an obstruction by hawking, and seize his goods. Now I must say that I object to these provisions very strongly. There is no doubt it would be desirable, if it were possible, that all things should be purchased by all people in well-appointed markets in æsthetic buildings, with nice-looking stalls, and everything arranged in the most beautiful and symmetrical style. This would be desirable, if possible. But how does this provide for the poorer classes, to whom it is obviously a very great convenience to have their food supplies brought to their doors by these people who go about hawking their goods? The proposed arrangement belongs, perhaps, to a higher platform of civilization than those people can imagine. They cannot appreciate it; it is entirely foreign to their habits. And on behalf of these poor people, these provisions must be objected to.

The Honourable Mr. NAYLOR:—It simply prohibits hawking without a license being taken out.

The Honourable Mr. TELANG:—Yes, but the people affected would belong to the poorer classes, who have no voice to give utterance to their complaints, and no means of getting them redressed. It is easy to imagine the great oppression to which they must be exposed under the operation of such regulations as these.

Section 438 and following sections deal with sanitary measures to be taken in the event of an outbreak of any dangerous disease. The Commissioner is to take the proper steps in such a case. This is well enough, as he is the head of the Executive of the Municipality. But in the performance of his duty he is not to communicate, according to this Bill, with the chief authorities of the Municipality. His communications are outside the Municipality,—that is to say, with Government. It ought to be provided that he should also report to the Town Council and the Corporation. Again, section 516 provides that Government should call on certain Municipal authorities to do certain things. This seems to me not the proper mode of proceeding. The Government should address the Corporation, and be addressed by or on behalf of the Corporation: the chief Executive Officer or any other Municipal authority should not be dealt with by Government as if he was an independent authority.

I now come to section 474, a long section providing for penalties. This will have to be very carefully considered, for I have noticed some provisions not easy to defend. For instance, if the provisions as to notice of transfer of property under sections 148 and 149 are not complied with, a man becomes liable to a fine under section 474. Why should this be so? If notice is not given, the original owner remains liable to the Municipality. That is a sufficient safeguard for the interests of the Municipality. The last point I wish to refer to, is contained in section 515. The Commissioner is to take or withdraw from

all proceedings against any person for offences under the Act, &c. The Town Council and Corporation have nothing whatever to do with this. I am not satisfied with this provision. I know it is said that bodies, like the Town Council and Corporation, are not the most fit for dealing with such questions. There is some truth in that. But we must not forget that under the operation of rules similar to those now under notice, the Municipality has actually suffered, before now, heavy pecuniary losses. This aspect of the matter, too, is one to which special attention must be paid. I am not now in a position to say how the provision before us should be modified. But I think it necessary that some check on the Municipal Commissioner should be provided.

I do not propose to trouble the Council at this stage of the Bill with any further remarks. I will only say this, in conclusion, that, regarding the Bill as a whole, the effect it seems likely to have is to reduce the powers of the Corporation and Town Council, and to enhance those of the Commissioner, not only at the expense of those bodies, but also of the Health Officer as well. In all these respects I think the principle of the Bill is wrong. I admit that we are all anxious to secure the good government of the city, and that what we have to consider is its true interests. I admit that to conserve those interests properly we ought to have a strong Executive. But to conserve those interests it is not necessary to make the Executive independent of the higher municipal authorities. The Executive ought still to be answerable to the Town Council and Corporation. So far although we have had the various anomalies, and the conflicting jurisdictions and the laxities of phraseology to which references have been made, still we have worked on the whole successfully. The Municipal Commissioner has been the head of the Executive, no one meddling with him in that respect. The Corporation has retained the province of supervision. The Corporation has in the past been, in fact, only too glad to support the Commissioner, whether it has been consulted before or after any action taken by him. I do not say that the confidence reposed in the Commissioner has not been, in general, fully deserved. But, on the other hand, it is a mistake to suppose that there will ever be any endeavour to stretch unduly the powers of the Corporation. The tendency of this Bill, however, is, when correctly viewed, towards a material abridgement of the Corporation's powers, and towards allowing the Commissioner the amplest possible scope. This is not as it should be. It may hereafter happen that we shall get a Commissioner anxious to assert his own powers, and not careful about the due powers of other authorities. Friction will then ensue. If you want to have complete success, define the powers of the Commissioner as well as those of the other authorities fairly. Here you have restricted unduly the powers of the Corporation, while the Commissioner's powers are almost unlimited. But it is said that this must be so, because power and responsibility ought to go together. This is true enough, but I say that, under the provisions of this Bill, power and responsibility do *not* go together. They are completely divorced. The power under section 219 as I have already pointed out, does not go with the responsibility under section 62 for identical matters. Again, when it is said that the Municipal Commissioner is responsible for the condition of the city, I ask to whom is he responsible? It is to the Corporation he ought to be responsible, and then the proposition about power and responsibility going together ceases to have any application to the case. My *beau ideal* of municipal government includes a strong Executive responsible to the Corporation, and an enlightened Corporation watchful over its Executive. Under such a constitution you may give full play to the good sense of the Corporation, which has been, on the whole, pretty well shown

during the past fifteen years. But the principles of this Bill are as far from my *beau ideal* as they could well be. And I am afraid that this Bill will not accelerate, but rather retard, the approach of it. Local self-government is a sham if no trust is reposed either in the Corporation or the Town Council. I do not say that Mr. Naylor or Mr. Ollivant are actuated by a distrust of popular government, but their confidence in it is weaker than it should be. If it had been as strong as I think it ought to have been, many of the provisions of this Bill would have been very different from what they are. If the pre-eminent position of Bombay, to which reference has been made in the speech of the honourable member, requires a special mode of government, let us by all means consider that point. If popular government cannot be trusted to cope with all the necessities of that pre-eminent position, let us abolish the Municipality altogether, and let us have a strong administration, and rule by means of the Governor in Council. But if we are to have popular government, let us have it in a genuine form, with power and responsibility in the hands of those who represent the people. Considering the large expenditure which has been incurred and the great development of the city which Mr. Naylor has described as marvellous, there are grounds, in my opinion, for reposing great confidence in those representatives. There may have been blunders, but these blunders are a necessary part of our municipal education, and are not always absent under autocratic rule. We must be prepared to put up with such occasional blunders to secure eventual good government.

Such eventual good government, I hold, is more likely to be achieved under our present law, than under the law as proposed in this Bill. It will, therefore, be my duty to oppose the passing of the Bill, unless it emerges from the Select Committee's hands very much altered from its present form. I would sooner have our lax phraseology, our conflicts of jurisdiction, and our numerous anomalies, than scientific legislation, in which all the substance of self-government will be abolished or starved out. I am quite willing to have a strong Executive under a popular government. But under the proposed Bill we shall have what some people would call a benevolent despotism, but what I should call autocracy slightly tinged with bureaucracy.

I would ask leave to add one word about my friend Mr. Phirozeshâh. I wish he had been here to-day, for he is immeasurably more familiar than I am with the history and present working of our Municipality. But I know that he generally agrees with me. Although he is, of course, not pledged to everything I have said, I may state that on the general principles governing this matter he and I are agreed in opinion.

The Honourable the ADVOCATE GENERAL:—I should be sorry to give a silent vote in this matter: so will accompany my vote with a few observations. I trust that I approach the consideration of the Bill with a due sense of the responsibility which must attach to every member of this Council in dealing with it. Of course I take an interest in it as a citizen of Bombay for more than twenty years past. If Mr. Telang and I allowed professional considerations to influence our votes, we should probably not welcome the introduction of the Bill into the statute book, inasmuch as it will repeal the existing cluster of eleven Acts, which are a perfect chaos of inconsistencies, repositories, in fact, of legal conundrums, which have, in the past, substantially contributed to the precarious subsistence for which he and I toil in Bombay. But feelings of this kind are subordinated to larger considerations, and as a citizen, from many points of view, I welcome this enactment, which will replace the present unworkable law by one consolidated Act. So far as I

have formed an opinion, from the limited attention I have hitherto been able to give to the Bill, it seems to me most logical in its arrangement, lucid in its composition, and in its matter well adapted to the conditions and requirements of life in Bombay. As to details, there may be much ground for difference of opinion; and in the few observations I am making, I reserve to myself most ample liberty to alter my views on any particular section or sections; but regarded as a whole, the Bill strikes me as being in its conception an extremely satisfactory measure. It seems to me impossible, in a measure of this kind, having regard to the difficulty of drawing a hard-and-fast line between financial and executive control, to avoid anomalies. But I would unhesitatingly say that the powers proposed to be conferred on the Commissioner are, in the main, only such as are demanded under the existing conditions of society in Bombay. We must consider what is likely to produce the greatest good to the greatest number, and we must remember that the only consideration in this matter is not the education of local self-governors, who themselves are a very limited number of individuals. They have during the past decade or longer been undergoing a course of education at the cost of the general body of unobtrusive rate-payers. One result has certainly been (as Mr. Telang and Mr. Pherozeshâh no doubt would admit), that there has often been a great deal more talk than real work at meetings of the Corporation, and I apprehend that both my friends must themselves have occasionally perused the debates of that body with feelings rather of weariness than of edification. What strikes me as the object which Government has kept in view in the preparation of this Bill is this, the furtherance of the best interests of Bombay as a city. All considerations of the development and expansion of local self-government, though extremely weighty, must be subordinated to this primary object. That Government is anxious to help forward local self-government, was testified by the suggestion of a system of executive committees which was offered to the Corporation. But that scheme, which would have invested them with a very large measure indeed of executive power, was rejected, and if there are any defects in this alternative scheme, it seems hardly to lie in the mouths of those, who declined to accept additional powers, to object to what Government now offers as being retrograde legislation. I notice that the Committee of the Corporation in their report, pp. 107 and 108, are extremely curt in their rejection of the committee-scheme, assigning no reasons for it, but simply saying that the Commissioner should be the executive officer of the Corporation. As an experiment, I should have been inclined to support the scheme of committees with executive powers, but I should have done so with considerable misgivings. The reason is that the class of men who in England do this sort of work is not forthcoming in Bombay. In England there is a large class of burgesses entirely or almost entirely withdrawn from professional or commercial work while still in the prime of life, and who take a pleasure and pride in doing municipal executive work without remuneration. But the inhabitants of Bombay generally are more indifferent. When Bombay can exist with a form of government such as obtains in English towns, then by all means introduce it. But as yet Bombay is not fit for it. To me, and I believe to many other rate-payers, an increase in the powers of the Municipal Commissioner in matters of detail is acceptable; and I should be exceedingly sorry if before he could exercise his authority in closing my neighbour's cesspool, he should have to consult a body of twelve or more members. Even if there be some anomalies—and I am not prepared to say there are not—in the proposed new law, it is decidedly an improvement on the old. I admit that progress should be the Government motto and not retrogression. But

the progress should be cautious, and with due regard to the experience of the past. The well-being and the sanitary condition of the city must not be sacrificed. It is within my experience that on many occasions the action of the Town Council or Corporation has tended to hamper and baffle the Commissioner in carrying out most desirable undertakings. I remember one instance in particular. It is of recent occurrence in the case of the formation of the Ripon Road. Section 157 of the existing Municipal Act gives the Municipal Commissioner power, with the Town Council's sanction, to acquire for the purpose of constructing roads or streets not only the land on which the road or street itself is to be, but an adequate entourage to admit of the municipal body disposing of the same for sites of houses to abut on the road or street. The sales so effected would produce sufficient funds to drain, metal, and wholly to construct the road. This might have been done in the case of the Ripon Road—and Mr. Ollivant proposed to do it—but in nine cases out of ten he was prevented from doing so by the Town Council. One of the few exceptions, however, occurred in the case of an old woman, who thereupon made a grievance of being treated worse than her neighbours, and complained that she had been very unfairly dealt with, by having all or the greater part of her land taken, while in other cases only so much as was wanted for the road was taken; whereas of course the real unfairness was that all the frontage along the road was not uniformly taken up under the section, and a great economy so secured to the Municipality, without the slightest injustice to any individual. This is an instance which, in my opinion, shows that very great caution should be observed in curtailing the Commissioner's executive powers. It seems to me futile to say that he is not under the control of the Corporation and Town Council, seeing that their financial powers are so complete, and that by section 55 he is liable to dismissal upon the vote of 45 out of 72 members of the Corporation.

The Honourable Sir M. MELVILL:—The present is a case which illustrates the saying *quot homines tot sententiæ*. Mr. Telang describes the Bill as a monstrous measure, and says that if it were carried, the Corporation and Town Council would cease to exist. He says, too, that if it is not radically altered, he will have to move its rejection on the second reading. The Honourable the Advocate-General says it is an excellent measure, though perhaps subject to alteration in detail, and hopes Mr. Pherozeshah's and Mr. Telang's views upon the subject will be met as far as possible by modifications to be made before the third reading. The chief objection taken by Mr. Telang is that the Bill deprives the Corporation and the Town Council of power, and entails too much upon the Commissioner. I do not think that is altogether so. The Municipal Corporation and the Town Council have power to deal with questions in which the part of the Commissioner is very small indeed. No doubt the present Acts provide that power and responsibility shall rest with the Municipal Commissioner. But their provisions can be regarded as wider than that. They require that matters shall be dealt with with the sanction of the Town Council and Corporation. These restrictions seem to have been removed from the present Act. Of course it is open to consideration whether they should be so. For instance, the Municipal Commissioner is at present in certain cases obliged to consult the Health Officer. It is questionable whether any change is desirable in that respect. The Honourable Mr. Telang has taken objection also to the Commissioner being a member of the Town Council. Considering that he has to attend all meetings of the Corporation and Town Council, I do not see why it should be contrary to principle any more than it is for the Home Secretary to be a member of Parliament.

The Honourable Mr. TELANG :—He has to be re-elected after his appointment.

The Honourable Sir M. MELVILL:—Another objection is taken to the provision that the auditors should be appointed by Government. But it is contrary to principle that the auditors should be appointed by the person whose work is to be audited. Again it is urged that the Deputy Commissioner should be appointed by the Corporation and not by Government. I am sure that Government does not desire this as a piece of patronage. Those who are called upon to take part in any function of appointing a person to the public service, find it a very unpleasant task indeed. It has been said that if you have to make an appointment and have twelve candidates, you make eleven enemies and one ingrate. I am sure it is an unpleasant duty, and is not desired by Government, except with the best possible end in view.

The Honourable Mr. TELANG :—I do not suggest that Government wishes it as a piece of patronage.

The Honourable Sir M. MELVILL :—No, I do not say you do. It seems to me that the reason why this power should be given to Government is because Government will be best aware who is or is not qualified for the post. Moreover, Government appoint the Municipal Commissioner, and it seems reasonable that they should also appoint the person who is in training for his place. And a still more important consideration seems to me to be that the appointment should be made by the authority which can most conveniently remove the person from office. It is clearly most important that the Deputy should work harmoniously with the Commissioner. But if he fail to do so, or to work harmoniously with the Corporation, it is difficult to see what the Corporation can do. Of course it could dismiss him, but that is an extreme measure, which should be reserved for cases of grave misconduct. The Municipal Commissioner might say his Deputy was a hardworking man, conscientious and so forth, but he could not get on with him, as he was wanting in tact or discretion. In such a case it would be perfectly easy for Government to transfer him to another appointment. It would be difficult for the Corporation to find a position to which to transfer a man drawing a monthly salary of twelve or fifteen hundred rupees. I do not think it necessary at this stage of the Bill to make any further remarks; no doubt the details will be fully and carefully considered by the Select Committee.

His Excellency the PRESIDENT :—I wish only to make one observation with reference to the concluding remarks of the Honourable Mr. Telang's interesting discourse about the *beau ideal* of local self-government. Now whoever may be responsible for the fact that his *beau ideal* is not more of a reality, it certainly is not the Government of Bombay. The honourable member who in a very able speech introduced this Bill recalled to our memory that a proposal was made to the Corporation on behalf of Government which bore a close resemblance to the ideal placed before us by my honourable friend. That proposal was made by Government in real earnest, and as far as I am concerned, with a sincere wish that the experiment should have a fair trial and I may add—perhaps because I have not been so long in the presidency as the Honourable the Advocate-General—without any misgiving. What I had read of the debates of the Town Council and of the Corporation led me to the conclusion that the interests of the town of Bombay might very well be entrusted to working members of these bodies. I do not wish to criticise the reasons which brought about the refusal of the offer of Government. Perhaps

on that occasion, as on another occasion connected with educational reform, Government was slightly in advance of public opinion, and too sanguine as to the capacity for self-government at present available. *Timeo Danaos et dona ferentes* may in this case have been prompted by a laudable sense of modesty. But under these circumstances the honourable member cannot accuse Government of having, in the intial stages of this reform, shown a retrograde disposition. Quite the contrary has been proved. Government was so progressive that the Corporation was not prepared to follow it. I am not contending that the diffidence of the Corporation was unwise. But our original offer should guarantee us from any taunt that we are imbued with retrograde proclivities. Whatever illustrations the honourable member has given as to defective detail, none of them touch on irremediable points. His conclusion was pitched in rather a higher tone than the arguments in the body of the speech warranted. So long as the Corporation and the Town Council have the right to control expenditure, the Municipal Commissioner cannot degenerate into an "autocrat." It should not be forgotten that the Municipal Commissioner being an officer of Government is responsible to Government, and Government is as directly interested in the welfare of Bombay and in its wise administration as any member of the Corporation or of the Town Council. Besides, I cannot conceive that any Government would entrust the administration of Bombay to a Commissioner who could not act harmoniously with the Town Council and the Corporation. No constitution can secure good administration; but the fact is that a strong executive, such as is required in all large cities, is quite compatible with the exercise of proper control by the representatives of those for whose benefit it is instituted. To one sentence in the Honourable Mr. Telang's speech I must take decided objection, that in which it is implied that the Corporation should be an omnipotent assembly and the ultimate master of the destinies of the city of Bombay. I do not see why an assembly should be omnipotent, and I think it undesirable for the same reasons that omnipotence of individuals is to be deprecated. It is certainly contrary to the genius of the constitution of Great Britain; and in those countries where local self-government has reached its highest pitch of perfection—in the Low Countries—after centuries of experience a careful series of checks has been designed to prevent abuses. The Municipal Council checks the Executive in towns and villages, and the Council itself is checked by representatives of the districts—or as we should call them collectorates. The Central Government has a further residuary control. I think the Acts of their Legislatures have been translated, and I shall be very glad to give them to my honourable friend.

The object of municipal legislation is to secure to the rate-payers sound finance, a methodical extension of buildings, good roads, fair sanitary conditions, good schools, medical aid, not to mention other matters. Such legislation cannot but make the discretion of individuals subject to limitations warranted by public requirements, but it also should prevent any section of the community being neglected by those sections which happen at the time to be most influential in the Corporation.

I should not vote in favour of this Bill if I thought it a retrograde measure, and I trust that it will emerge from our deliberations as a measure calculated to secure to Bombay a strong but not an arbitrary executive as well as a thoroughly representative Corporation.

The Honourable Mr. TELANG:—I should like to offer an explanation with reference to one of my propositions which has been misunderstood. I do not want the Corporation

to be omnipotent in the sense supposed. Certainly it should be under supervision; and I would not object to some restrictions being devised for this purpose. For instance, as to buildings, I would not let even the Corporation interfere with an individual in that respect to the extent proposed in this Bill.

The Bill was then read a first time, and on the motion of the Honourable Mr. NAYLOR it was resolved that the Bill be referred to a Select Committee, consisting of the Honourable Sir M. Melvill, the Honourable the Advocate General, the Honourable Messrs. Telang and Mehta, the Honourable Khán Bahádur Kázi Shahábudin, and the mover, with instructions to report by the 1st January, 1888.

Bill read a first time and referred to a Select Committee.

On the motion of the Honourable Sir M. MELVILL it was ordered that Bill No. 3 of 1887, a Bill to amend Bombay Act No. VI of 1863, should be translated into Maráthi and Gujaráti, and that the translations should be published in the *Bombay Government Gazette*.

Translation of Bill No. 3 of 1887.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Right Honourable the Governor in Council,

A. SHEWAN,

Secretary to the Council of the Governor of Bombay for making Laws and Regulations.

Poona, 23rd July 1887.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Poona on Monday the 10th October, 1887.

PRESENT:

His Excellency the Right Honourable LORD REAY, G C.I.E., LL.D., Governor of Bombay, *Presiding.*
The Honourable J. B. RICHEY, C.S.I.
The Honourable J. R. NAYLOR.
The Honourable the ADVOCATE GENERAL.
The Honourable KASHINATH TRIMBAK TELANG, C.I.E.
The Honourable Khán Bahádur KAZI SHAHABUDIN, C I.E.
The Honourable Ráo Bahádur MAHADEV WASUDEV BARVE, C.I.E.
The Honourable PHEROZESHAH MERVANJI MEHTA.

Speech by His Excellency the President on the deaths of Sir. M. Melvill and Mr. Dayaram Jethmal.

His Excellency the PRESIDENT said:—Since our last meeting this Council has lost two of its members. In the Honourable Sir Maxwell Melvill we had a colleague whose calm and sound judgment inspired the highest confidence. Very few men had a greater knowledge of the various needs of the Presidency, for the prosperity of which he laboured so hard and so faithfully. I doubt if Bombay ever had a Member of Council who was so single-minded in his devotion to its interests. The chief characteristic of the late honourable member's work was its thoroughness and finish. Whether he had to settle important questions of Forest or of Abkári policy, or to decide upon a comparatively insignificant matter affecting the humblest individual, never did my late friend rest until he had satisfied himself that every point had been considered. As an instance of this I may mention the case of some Mehwási Patels in the Kálol Táluka of the Panch Maháls, on whose behalf the late honourable member took infinite pains as soon as doubts arose about the justice of a former settlement of their rights. The acuteness of certain minds is only too apt to develope into obstinacy or one-sidedness. In my late honourable friend's method of dealing with intricate questions nothing was more remarkable than his extraordinary fairness. No argument that could be urged on either side was suppressed, and his minutes always contained a full record of the *pros* and *cons*. Always conciliatory, always ready to waive minor points, there was only one thing which he could not tolerate—unreality. Too modest himself, self-assertion seemed to him a breach of good taste which his refined nature abhorred. Theories did not attract him, and I can hardly recollect a single minute in which a doctrinaire idea made its appearance. His mind was too versatile to run into any special groove, and his perception was so quick that he invariably detected the practical demerits of a theoretical solution. I have often wondered in reading his minutes what Sir M. Melvill would have done if he had been a Professor. He would probably have adopted the course which Savigny tells us the Roman jurists took, who did not indulge in definitions, but in illustrations ("*verbi causa*"). He was an ideal admininistrator without other ambition than that

of promoting the happiness of the people of India, and his conception of the means by which that object could be accomplished was essentially practical, because founded on the existing state of things. On the dignity of Government, and the loyalty of its servants, he held very strong opinions, which were the natural result of the great pride he felt in belonging to the Bombay Civil Service. In the affairs of the town of Bombay, of which he had so long been a resident, he took a direct and personal interest, and to that city as well as to the Presidency his loss is irreparable. Having paid this tribute to his memory in your name, I can only say for myself that I sincerely mourn the loss of a true friend.

In the Honourable Mr. Dayaram Jethmal we have lost a thoroughly efficient and upright member, who during the short time he was with us had produced a most favourable impression and who filled a most important place on account of his intimate acquaintance with the province of Sind, in which Government and this Council are deeply interested. He was so universally respected in Sind that everything he said on its behalf commanded our attention, and to me personally it was a pleasure to discuss Sind affairs with the late member whose name is associated with many useful institutions in that part of the Presidency, over which I may say we are keeping a most careful watch. We are supplying Sind—whilst fully recognising its special characteristics—with some of our best administrators, in order that it may rapidly attain that development which our late colleague so earnestly endeavoured to secure for it.

The Honourable Mr. TELANG:—On behalf of the Additional Members of the Council I would like to express our concurrence in what has fallen from your Excellency. It is not necessary to add anything to what your Excellency has said, but we desire to express our sympathy with the relatives of the deceased members of Council whose death we lament.

Papers presented to the Council.

The following papers were presented to the Council:—

(1) Report of the Select Committee appointed to consider and report on the Bill to amend Bombay Act No. III of 1866.

(2) Letter from the Secretary to the Hitachintak Sabha, Vengurla, No. 47, dated 2nd August, 1887, offering certain observations on Bill No. 2 of 1887.

(3) Petition from Dádábhoy Hormusji and others (without date) praying that Bill No. 2 of 1887 may not be passed.

Mr. Naylor moves the second reading of Bill No. 2 of 1887.

The Honourable Mr. NAYLOR in moving the second reading of Bill No. 2 of 1887, a Bill to amend Bombay Act No. III of 1866, said:—Your Excellency, I have to move the second reading of the Bill to amend Bombay Act No. III of 1866, the object of which was stated when introduced by the late Sir Maxwell Melvill to be "the removal of the limitations imposed by what he might call the Mofussil Gambling Act, Bombay Act III of 1866, in consequence of which gambling cannot be put down in towns which are more than three miles distant from a railway-station, unless they contain five thousand inhabitants and a resident Magistrate. The result is that a great amount of gambling goes on within a few miles of Bombay, which the authorities are powerless to check." The law as to gambling, as it at present stands, is different for Bombay from what it is for the Mofussil. The provisions for Bombay are contained in two old Acts of the Indian Legislature, *viz.*, Act No. XIII of 1856 and Act No. XLVIII of 1860; the provisions for the Mofussil in Bombay Act No. III of 1866. But although the Acts for

Bombay and the Mofussil are separate, they are in substance very much the same. In fact, for the greater part they are word for word the same. In the opinion of the Select Committee, it is desirable that the opportunity should be taken to consolidate all these provisions regarding gambling, and the Bill prepared by them effects this purpose. This amended Bill, which is now before the Council, will extend to Bombay and the island of Sálsette and to all places within three miles from any railway-station-house. So far as it affects the city of Bombay and railway-station-houses and places within three miles of any railway-station the law will remain as at present. With regard to the island of Sálsette, I must explain that the late Sir Maxwell Melvill pointed out in his speech on the introduction of the Bill that it had been suggested that the limit of three miles from any railway-station was insufficient and should be extended to ten miles. This matter has been considered by the Select Committee, and it was decided by them not to accept the suggestion to extend the limit of three miles. The consequence of such an extension would be that it would still be possible for people to evade the Act by taking short journeys beyond the ten miles' limit, and, on the other hand, the extended radius would include a large number of villages in which there was no necessity for the Act to have operation. The Committee therefore came to the conclusion that it would be better to retain the three miles' limit, and leave it to Government to extend the Act to places beyond that limit as it became necessary to do so. But as Sálsette is so easily approachable from Bombay by either of the two railways which intersect that island, it was considered necessary to include the whole island in the area to which the provisions of the Act will apply without express extension by Government. The object with which the Bill was originally introduced has also been kept in sight by the Select Committee. So long as Government was restricted as to the sort of place to which the operation of the Act might be extended, effect could not be given to that object. All that it was necessary for people to do was to find some place without a resident magistrate and whose inhabitants numbered less than 5,000. In such a place they might have carried on their gambling operations quite beyond the reach of the law. I am also informed that there are many such places in this presidency where fairs are occasionally held at which gambling goes on, which it is thought desirable that Government should have power to suppress. The present Bill, as drawn by the Select Committee, makes the Act applicable to the entire presidency, and as it thus enables Government to prevent evasion of its provisions by extending it from time to time to any place in the presidency, I trust it will meet with the approval of the Council.

Three memorials regarding the Bill have been presented, two in favour of and one against it. The first memorial is that of Mr. Desái of Thána, dated 29th January 1887, who approves the proposal that the limit of three miles be extended. He says :—" It is, I believe, a well known fact that the provisions of the law (sections 56 and 66 of Act XIII of 1856), which prevent gambling in the city of Bombay, are frequently evaded by persons living in that city by resorting, for the purpose of gambling, to places like Chembur in the Sálsette and Nirmal in the Bassein tálukas of the Thána collectorate. These two places are, I am told, a little more than seven miles distant from the railway-stations. To prevent gambling in these and other villages, not very far from railway-stations, it is, I think, necessary to extend the provisions of the Act (No. III of 1886) to all places surrounding railway-station-houses and being not more than eight miles from any part of such station-houses. I would, therefore, respectfully propose to substitute the

words 'eight miles,' for the words 'three miles' in section 1 of the Bill." If that suggestion were acted upon, people would repair to places just over the eight miles and the same evasion of the Act would continue. It has therefore been considered best to leave Government power to determine to what places the Act shall at any time be extended. The second part of the memorial contains a suggestion with regard to the power of the police to search houses in order to ascertain whether they are common gaming-houses within the meaning of the Act. It is suggested that to section 5 of the existing Mofussil Act there be added the provision of the Code of Criminal Procedure that such searches shall be made in the presence of two or more respectable persons. This suggestion was considered by the Select Committee, but after discussion it was decided not to adopt it. If the proposal were adopted, the Committee felt it would be very difficult, if not almost impossible, for the police to pounce upon gamblers, as is generally necessary, and to seize them and their instruments of gaming in the very act. Those instruments are so very easy to conceal and carry away that unless the police can act promptly and catch the offenders whilst they are actually engaged in gambling, a successful prosecution is nearly impossible. For this reason, it appeared to the Committee that any such restriction as was imposed by other laws with regard to the search of houses could not safely be imposed here. The Committee were also not aware that any complaint of unfair or improper proceedings in the search of houses supposed to be common gaming-houses had been made since the law against gambling had been in force in this presidency.

The second memorial was from the Sabha of Vengurla in the Ratnágiri District. They say:—"Now that a bill to extend the sphere of Act No. III of 1866 for ten miles from the station has been introduced by the Honourable Mr. Justice Melvill, I am directed by the Sabha to bring to the notice of the honourable members of the Council that the working of the present law is not as satisfactory as it ought to be to suppress the evils caused by gambling. This city of Vengurla being greatly oppressed by the prevalence of gambling the Sabha exerted their labours with the Government, and Government were pleased to extend the Act to this station by Resolution No. 7289, dated 30th October 1884. But the law having its force for only three miles round this station, the Act had no sooner come into force here than gambling broke out at Araoli and Shiroda, two very rising villages, not more than five or six miles from this station. The Sabha, therefore, think that the extent limit of ten miles proposed by the Honourable Justice Melvill is quite expedient and trust that the Bill introduced by him be passed into law." These memorialists have somewhat misconceived Sir Maxwell Melvill's intentions, but their object would be sufficiently achieved by the Bill as now drawn. Their representation furnishes, however, an illustration of the necessity for empowering Government to extend the provisions of the Act, whenever from time to time they may find it necessary, to places where there are no resident magistrates and in which the inhabitants number less than five thousand; as both Araoli and Shiroda are places within that category.

The third memorial was from Dadabhai Hormusji, Bhaoo Khumaji Patel, and other persons who are owners or are interested in the gaming-houses in the island of Sálsette which were described by the late Sir Maxwell Melvill, and which were the cause of the introduction of the Bill. These memorialists say:—"Your humble petitioners beg to submit that there does not seem any necessity for amending Act III of 1866, which for the last nearly twenty-one years seems to have worked

fairly and to have attained the object for which it was passed. The object of those who framed Act III of 1866 was, as your petitioners believe, not to put a stop to gambling altogether, but to prevent the vice spreading in large and populous cities, or rather in cities and towns which contained five thousand or more than five thousand inhabitants. This restriction had the desired effect, and for the last twenty or twenty-one years none of the inhabitants of the aforesaid town or place where people assemble for the purpose of having a game at cards or dice, and at which some money is put at stake, have ever complained to Government or any other authority either against those who so assemble or against those who keep houses for such people to assemble." Further on they say:—"Your petitioners beg to state that, as far as they are aware, no offence of a serious nature has ever been committed within the aforesaid villages ever since the passing of the said Act, nor have any of the villagers from the aforesaid places suffered any injury to their person or property from the presence of those who have frequented places for gambling. On the contrary, your petitioners beg to state that owing to the fact of persons coming in large numbers, shop-keepers and others have derived much benefit, and which fact also has benefited the villagers as they find commodities for their daily use within their easy reach for which the villagers had formerly to go a long distance to procure the same." In another paragraph they observe: "Your petitioners are informed that the Bill to amend Act III of 1866 having been introduced in your Excellency's Council by the honourable mover was referred to the Select Committee for report, which has been already published, and from a perusal thereof it is evident that the Committee have gone much further than even the honourable proposer, for while the latter proposed to extend the radius from three to ten miles, the Select Committee propose to include the whole of Sálsette within the prohibited districts and thus put a stop to gambling altogether." In short, these memorialists complain that the Bill, as it is now before the Council, will leave them no loophole whatever for evading its provisions. That is obviously the principal object of our legislation. And, as regards gambling, although we do not seek to attempt what would be impossible, *viz.*, to put a stop to it altogether, we do seek to prevent the existence of organised gambling establishments, and we do this not only because their existence is a cause of annoyance to the respectable residents of the neighbourhood, but also because anything which facilitates the assembling together of persons for the purpose of gambling, tends to public demoralisation. With these remarks, Your Excellency, I beg to propose the second reading of the Bill.

The Honourable Mr. TELANG:—I am informed that the people of the same class as those who were described by the mover of this Bill have been exercising their wits to find out how to frustrate the working of the Act when passed, and one of the ways which seems to have suggested itself to their ingenuity is that they might go into Bombay harbour and play in boats. I do not know whether this Bill would cover gambling in such places but I presume that inside the limit of three miles from the coast they would come under the Act. If not, the Council should expressly legislate for such offences. If these were included in the Bill, it would prevent this particular mode of running a coach and four through the Act when passed.

The Honourable Mr. NAYLOR:—The Act will apply to the city of Bombay, which is defined in the Bombay General Clauses Act to include the area within the ordinary original civil jurisdiction of the High Court. I speak subject to correction by the

Honourable Advocate General, but I believe I am right in saying that that definition includes the harbour.

The Honourable Advocate General replied in the affirmative and added that Mr. Telang's objection was thus met.

Bill read a second time, considered in detail, and read a third time and passed.

The Bill having been then read a second time was considered in detail, after which it was read a third time and passed.

Mr. Naylor moves the second reading of Bill No. 3 of 1887.

The Honourable Mr. NAYLOR in moving the second reading of Bill No. 3 of 1887, a Bill to amend Bombay Act No. VI of 1863, said:—Your Excellency, this Bill was not referred to a Select Committee and no memorials concerning it have been received. Its object was very fully explained when the Bill was introduced by Sir Maxwell Melvill, and I have only now to ask that it be read a second time. I have, however, a slight amendment to propose when the Bill is considered in detail.

Bill read a second time and considered in detail.

The motion was agreed to and the Council proceeded to consider the Bill in detail.

The Honourable Mr. NAYLOR:—Bombay Act VI of 1863 was framed originally for the city and port of Bombay only; but it was thought that it might be convenient to extend its provisions to other towns and places in this presidency and a section was therefore inserted at the end of the Act (section 34), enabling Government, by notification in the official Gazette, to extend its provisions to any such town or place. Considerable use has been made of that section and the Act is now in force in several towns in the mofussil of this presidency. Amongst other localities to which it has been thought desirable to extend the Act are certain roads connecting railway-stations with adjacent towns. Thus, it has been extended to the road, six miles in length, between the Násik station on the G. I. P. Railway and the town of Násik, as well as to that town itself. It was obviously very important to regulate the conveyances employed on that road, more important, in fact, than to do so in the town, where conveyances are little used. Similarly the Act has been extended to the road between Ahmednagar and its railway-station and to the road between the Dhárwár town and cantonment and the Dhárwár railway-station. It has also been extended to the road between Bhiwndi in the Thána district and certain other places in the táluka of the same name. At present it is in contemplation to extend it to the road from the new Wathár station on the S. M. Railway to Wái.

But section 34 of the Act authorizes the Governor in Council to extend it only to "towns or places," and as it is, perhaps, rather a straining of language to call a road such as I have described a "place," doubt has been entertained whether the extension of the Act to these roads is quite legal. It is thought desirable that this opportunity should be taken both of preventing any such doubt arising in the future and also of legalising what has been done in the past. I, therefore, move the following amendments, *viz.*, in section 1, line 1, for "paragraph" substitute "paragraphs" and at the end of the section add the following:—

> "In this section the word 'place' shall be deemed to include and to have always included a road between two towns or places."

These amendments were agreed to.

The Honourable Mr. NAYLOR :—As the amendment which has been made in the Bill is, perhaps, rather more than a mere verbal amendment, I will now ask Your Excellency to suspend the operation of Rule 30 in order that the Bill be read a third time without further delay.

Mr. Naylor moves the third reading of the Bill.

The said Rule was accordingly suspended by His Excellency the President and the Bill as amended was read a third time and passed.

Standing orders suspended and Bill read a third time and passed.

His Excellency the President then adjourned the Council.

By order of His Excellency the Right Honourable the Governor in Council,

A. SHEWAN,
Acting Secretary to the Council of the Governor of Bombay for making Laws and Regulations.

Poona, 10th October, 1887.

PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS,

1888.

VOLUME XXVI.

Published by the Authority of His Excellency the Governor.

Bombay:
PRINTED AT THE GOVERNMENT CENTRAL PRESS.

1889.

CONTENTS.

CONTENTS.

INDEX

TO THE

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR OF BOMBAY ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS.

Volume XXVI.

PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

FOR THE

PURPOSE OF MAKING LAWS AND REGULATIONS.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Bombay on Wednesday, the 7th day of March, 1888.

PRESENT.

His Excellency the Right Honourable Lord REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding.*

Lieut.-General His Royal Highness the DUKE OF CONNAUGHT, K.G., K.T., K.P., G.C.I.E., G.C.S.I., G.C.M.G., C.B., A.D.C.

The Honourable J. B. RICHEY, C.S.I.

The Honourable R. WEST.

The Honourable the ADVOCATE-GENERAL.

The Honourable KASHINATH TRIMBAK TELANG, C.I.E.

The Honourable F. FORBES ADAM, C.I.E.

The Honourable J. R. NAYLOR.

The Honourable Ráo Bahádur MAHADEV WASUDEV BARVE, C.I.E.

The Honourable PHEROZESHAH MERVANJI MEHTA, M.A

Papers presented to the Council.

The following papers were presented to the Council :—

1. Letter from the Secretary to the Government of India, Legislative Department, No. 1678, dated 6th October, 1887, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend the law for the periodical inspection and the management by competent Engineers of Boilers and Prime-movers in the Presidency of Bombay.

2. Letter from the Chairman, Municipal Corporation, Bombay, No. 1413, dated 25th October, 1887, submitting observations on the City of Bombay Municipal Bill.

3. Letter from the Secretary to the Government of India, Legislative Department, No. 1820, dated 27th October, 1887, stating that the assent of His Excellency the Viceroy and Governor General to the Bill to declare and amend the Law relating to Toda Giras allowances has for the present been withheld.

4. Letter from the Honorary Secretaries of the Bombay Rate-payers, and Residents' Association, dated 2nd December, 1887, submitting observations on the City of Bombay Municipal Bill.

5. Letter from the Secretary to the Government of India, Legislative Department, No. 2034, dated 21st December, 1887, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend Bombay Act No. VI of 1863.

6. Letter from the Secretary to the Government of India, Legislative Department, No. 2035, dated 21st December, 1887, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to consolidate and amend the Law for the prevention of Gambling in the Presidency of Bombay.

7. Report of the Select Committee appointed to consider and report on the Bill to consolidate and amend the Law relating to the Municipal Government of the City of Bombay.

8. Letter from the Secretary to the Government of India, Legislative Department, No. 74, dated 19th January, 1888, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend the Bombay Hereditary Offices Act so far as it relates to Matadars.

9. Letter from the Chairman, Municipal Corporation, Bombay, No. 2428, dated 2nd March, 1888, submitting the views of the Corporation, regarding the amended Municipal Bill No. IV of 1887.

The City of Bombay Municipal Bill.

The Honourable Mr. NAYLOR moved the second reading of the City of Bombay Municipal Bill, and in so doing said:—Your Excellency,—In proposing the second reading of the Bill to consolidate and amend the law relating to the municipal government of the city of Bombay, I do not think it is necessary that I should trouble the Council with many remarks. I explained, when asking the Council to read the Bill the first time, what its objects were. Since then, it has been very carefully considered and amended by the Select Committee appointed by the Council for this purpose, and the result of their labours is before us in the shape of an unusually lengthy report and of an amended Bill, which bears evidence on every page of it of the thoroughness of the Committee's work. The lamented death of Sir Maxwell Melvill reduced the numbers of the Select Committee from six to five, and it is a circumstance worthy of mention that of the five members of the Committee who remained, the majority were Indian gentlemen. This is, I believe, the first occasion in the history of this Council on which this has occurred. Another happy feature of the composition of the Select Committee is, that of the three Indian gentlemen who, with the late acting Advocate-General and myself, constituted it, one was a Hindu, one a Mahomedan, and the third a Pársi. A more completely representative committee could scarcely have been named on whatever principle nominations to this Council might be made; and when I add that two of my Indian colleagues are members of the present Municipal Corporation, that one of them was for a consi-

Mr. Naylor moves the second reading of Bill No. 4 of 1887.

derable period the very highly respected chairman of that body, and that three of the members of the Committee were lawyers of long standing, who enjoy a large practice in the city of Bombay, I think I shall have said more than enough to satisfy the other honourable members of this Council that the Bill, in the shape in which it has left the hands of the Select Committee, is worthy, as to all matters on which the members of that Committee were unanimous, of their ready assent and acceptance. The Committee were greatly assisted in their labours by the very large amount of criticism to which the Bill has been subjected outside of this Council. Independently of the legal opinions of eminent solicitors and, in one instance, of counsel, which have been obtained and published regarding the provisions of the Bill, the Corporation forwarded to Government a very lengthy exposition of their views and wishes with regard to it, and an elaborate table of suggested additions and amendments. It was obviously impossible for the Select Committee, in their report, to give the reasons which led them either to adopt or not to adopt each of the innumerable suggestions thus submitted for their consideration, but each one of those suggestions was carefully weighed and discussed, and disposed of in accordance with the views of a majority.

Your Excellency, the outcome of the Committee's labours appears to me to be that the scope, the form, and the general provisions of the Bill as introduced, have been accepted, but that large and important changes have been made in two directions. In the first place, endeavour has been made to give to the citizens of Bombay, through their representatives, the Municipal Council and the Standing Committee, as large a measure of self-government as is compatible with the system of the institution with which we have to deal and with the safeguards ordinarily retained in legislation concerning local bodies. And, in the second place, every provision of the Bill which may tend to the annoyance or inconvenience of residents of the city, or to the injury of their just rights and privileges, has been carefully reviewed for the purpose of so modifying it, or of hedging it in with such precautions, as to deprive it, as far as is reasonably possible, of any objectionable operation. I would like to say a few words on each of these two points. The test of the extent to which the Bill confers the right of self-government is to be sought in the powers with which it invests the Council and the Standing Committee. Honourable members are in possession of a set of printed tables, which exhibit the powers vested in each of the municipal authorities and in Government under the existing law and under the amended Bill respectively. In the case of Government, those tables show, that of the existing 49 powers which the Governor in Council exercises, 29 only have been continued to him under the Bill, 8 have been abrogated, 7 have been transferred to the Council, 3 to the Standing Committee, and 2 to the Commissioner. Amongst the powers which have not been continued to Government are the following important ones: to disallow rules framed by the Corporation or the Town Council for the conduct of their business; to appoint the Chairman of the Town Council; to prescribe new scales of rates and prices for water-supply; to sanction the rates of license-fees; to sanction the construction of new water-works and the provision of new places for disposal of the dead. It is true that the Bill confers 21 new powers on Government, but these almost all concern matters which have no place at all in the present Municipal Acts. In only two instances are powers conferred by the Bill on Government which at present vest in the Corporation. These are (1) the appointment of auditors of the municipal accounts, and (2) the sanctioning of rules for granting pensions to municipal officers and servants; and the

transfer of each of these powers has been proposed for special reasons. The Municipal Corporation have under the present Acts only 19 powers expressly conferred upon them. Under the Bill, 58 are conferred on the Council; and of these, 15 have been continued out of the Corporation's present 19 powers. Of the remaining 4 powers of the Corporation under the existing law, 2 have been transferred by the Bill, as I have just stated, to Government; the other 2, which related to the carrying out of improvements in public streets and the enlargement of drains, have been transferred to the Commissioner, in accordance with the general principle that the entire executive power vests in that authority. The Town Council has 55 express powers under the present Acts. Of these 15 are transferred by the Bill to the Council and 11 to the Commissioner. Under the Bill, 80 powers are conferred on the Standing Committee, of which 52 are new powers not possessed by the Town Council. The Commissioner has 119 powers under the existing law. The Bill proposes to deprive him of 18 of these, by transferring 4 to the Council, 13 to the Standing Committee, and 1 to the Chief Presidency Magistrate. Under the Bill, the Commissioner will have 183 powers, of which 82 will be such as he does not possess under the present law. Of these 82 powers, 65 are entirely new, *i.e.*, they do not exist at all in the present Acts, 2 are transferred from Government, 4 from the Corporation, and 10 from the Town Council. The 2 transferred from Government are such as can be exercised by the Commissioner with more convenience to the public than by Government. Of the 4 transferred from the Corporation, I have already explained that 2 belong to him as being a part of the executive power which vests solely in him. The other 2 relate to the disposal of municipal property up to a limited value or extent, as to which the present Acts make no express provision, but the power of disposal vests, presumably, in the Corporation alone. The 10 powers transferred to the Commissioner from the Town Council are of a miscellaneous nature; they are such as, for one reason or other, have appeared to vest more fittingly in the Commissioner than in the Standing Committee. In one instance, the transfer from the Town Council to the Commissioner is due to an oversight, which I shall ask the Council, when we are considering the Bill in detail, to set right. The redistribution of powers in the Bill has been made with reference to the principles explained in para. 51 of the Select Committee's report. In the existing Acts it is difficult to trace any principle upon which powers were conferred on the several municipal authorities. Hence it is inevitable that there should be many interchanges in the Bill. But the brief examination of the tables, into which I have entered, clearly indicates that the powers, both of the Council and of the Standing Committee, are very considerably increased by the Bill, partly by divesting Government and the Commissioner of powers hitherto vested in them, and partly by conferring on those two bodies important new powers. It would occupy much time to pursue this subject in detail; and as honourable members have, no doubt, examined the Bill for themselves, it would serve no useful purpose for me to do so. I will only add on this point that the Bill, if it be passed in substantially its present shape, will add largely to the authority of the Council and of the Standing Committee, without depriving the Government, on the one hand, of the controlling power which should properly belong to some authority superior to the Council; or the Commissioner, on the other hand, of the several powers which, as the executive authority of the Municipality, it is essential for him to possess. With regard to the portions of the Bill which concern the convenience, rights, and privileges of the people, it will be remembered that, when moving the first reading of the

Bill, I specially invited the attention of native gentlemen, who interest themselves in the matter, to the provisions in the chapters relating to drainage, water-supply, buildings, and sanitation, with a view to the correction of anything in them which might be likely to operate with undue severity. My honourable friend, Mr. Telang, has given much consideration to these chapters, and we have introduced several amendments in them at his suggestion, which, I trust, will render their operation as little irksome to the people, whose interests my honourable friend has so much at heart, as is possible But, after all is done which can reasonably be done in this direction, it is inevitable that large powers be left in the hands of the executive officers, and it will, of course, sometimes happen that those powers will be abused, or used without due consideration. Against such a contingency the readiest remedy in a large city like Bombay is publicity ; and with the rapidly growing intelligence of the citizens of Bombay, it is not probable, I think, that there will be much toleration of a misuse by executive municipal officers and servants of the authority with which the law must necessarily invest them for the accomplishment of its purposes. But in large matters, where private rights and interests are likely to be affected by any measure which the Municipal Commissioner is minded to carry out, or by any order which he proposes to enforce, an additional safeguard can be obtained by requiring that he shall not take action without the previous approval of the Standing Committee. In many instances, therefore, the Select Committee have inserted this proviso, where it was not previously inserted ; and upon the whole it will, I think, be apparent to the Council that very little has been left undone by the Select Committee, which could be done, to render the executive provisions of the Bill reasonably unobjectionable. I am afraid that the large number of amendments, of which notice has been given for discussion when we proceed to consider the Bill in detail, may give rise to an impression that the work of the Select Committee is not by any means so complete as I have described it. I must, however, explain that some of those amendments relate to points which were not brought forward in Select Committee at all, and which, if they had been brought forward there, would probably have been satisfactorily disposed of by the Committee. The rest of the amendments concern points which were very fully considered in Select Committee, but upon which we were unfortunately unable to come to an unanimous decision. The only course, in that case, was for the members of the Committee, who were in a minority, to reserve to themselves the right to take the opinion of the full Council on any disputed question, which they deemed to be of material importance. With regard to a Bill of such length, and concerning matters of such great local interest as this one, it was to be expected that there would be great diversity of opinion ; and I esteem myself fortunate in having met with unanimity upon so large a portion of the measure as that is which is not challenged by any of the amendments before us. The proper time for stating my views upon the several amendments will be when they are moved and explained by the honourable members who have respectively given notice of them, and I will not now anticipate what I shall then have to say. My duty at present is to ask the Council to accept the Bill, as amended by the Select Committee, as a measure which, subject to any alterations which may be hereafter imported into it by this Council, will adequately meet the wants of this large and ever-increasing city, will place its municipal government upon a sound, effective and satisfactory footing, and will enhance the importance and power for good of the assembly, principally elected by the votes of the residents of the city, which is at the head of the municipal constitution. I regret that the

final views of His Excellency the Governor General in Council upon the question of jurisdiction in municipal civil cases, which is referred to in para. 64 of the Select Committee's report, have not yet been received. It is understood, however, that a letter from the Government of India is now on its way on the subject, and I hope that, before the Council has completed the consideration of the Bill in detail, it will be possible to inform honourable members of the manner in which the legal difficulties in this matter are to be met. I beg now to propose that the Bill No. 4 of 1887 be read a second time.

The Honourable the ADVOCATE-GENERAL said:—Your Excellency,—I had not the advantage of being present when the Bill was introduced, but I should like to take the opportunity of saying a few words upon its general principles before we proceed to discusss its amendments in detail. I think it is necessary to be a member of the legal profession to appreciate a Bill of such immense complexity. I do not think there are ten men in the profession in England who would have ventured to undertake to draft it. Therefore, I feel sure that the honourable member will not consider the amendments proposed to the Bill as involving any unfair criticism of the conclusions he has arrived at; for I think it is only by the discussion of such amendments that one can reach a satisfactory result in dealing with such a complicated mass of details. Of the fact recited in the preamble that it is necessary to amend the Bill for the better government of Bombay, no men can feel more absolutely convinced than those who practise in the High Court, and have struggled to arrive at an intelligent interpretation of the stratified series of enactments which at present exist. There are one or two sections on which no one can put any interpretation whatever; therefore we think it will be a great advantage to all of us, especially those who have to deal with the interpretation of those sections, to have intelligible sections substituted for them. I think this Bill halts, and unnecessarily so, between two opinions. The time will probably come hereafter when the Municipality will be able to conduct its own affairs entirely, and may fairly claim to appoint such officers as the Municipal Commissioner. At present that power is not asked for, and it would be unwise to force upon the Municipality a power for which they have not asked; but I fear the result will be to introduce an element of friction into the Bill. We shall modify this as much as possible by amendments. It has been modified to a great extent by the Select Committee, who, I think, have proceeded on a perfectly correct principle as to the distribution of powers; but that that division of powers has not, in the opinion of members of the Council, been completely carried out on the principle laid down by the Committee, is evidenced by the various amendments proposed. Considering the immense complexity of the measure, it would be crediting any man with superhuman powers to assume that the distribution of powers made by him could obtain unqualified assent from all parties interested. It is too sanguine to suppose that the distribution made by this Council will do it; but I hope we shall go a long way towards it, and that by the time the Bill leaves the Council the various functionaries will have those powers allotted to them which the 51st section of the report of the Select Committee suggests they should have. I do not think this is the time, as Mr. Naylor said, to consider the amendments in detail; but, perhaps, it may be as well to say something on the principle of the amendments. Those I propose myself fall into three classes—the first being on the question of constitution. I have the misfortune of not being able to agree with the names the honourable member who drafted the Bill has given to the Municipal body. I purpose moving, and in this I shall have the support of everybody in Bombay, whether European or Native, with whom I have conversed on

the subject, that, instead of styling the Municipal body the Town Council, it shall be called the Corporation; and I think I shall be able to show when we come to details that it is owing to a misapprehension of the English law and practice on the subject that any change was made in that respect. I am in favour of calling the Town Council the Standing Committee of the Corporation: that change of designation emphasises a very important constitutional point. I think a very great deal of harm was done by the old name. There is a great deal in a name, a very high authority to the contrary notwithstanding; and the designation of Town Council very often led that body to consider itself a sort of House of Lords—a distinct body from the Corporation, and occasionally at rivalry with it. I agree with the honourable member that the position they should occupy is that which the change of name will provide. I propose a further change of name; I do not know whether it will meet with the approval of the Council; but, in order to bring into prominence what I consider is the true position, I propose to restore the old name of mayor instead of that of either chairman or president. It existed in this city many years before either president or chairman were ever dreamt of, and this would bring the nomenclature into unison with that prevailing, not only in England, but on the Continent of Europe. Then, there is a second class of amendments I have to move, the object of which is to effectuate the distinctions which the Committee has drawn as to the assignation of powers, and to correct the assignation when not in accordance with that principle. I have a third class of amendments, which refers to the interests of the general body of citizens, whom the honourable member has already mentioned, who have no official representative. A great deal has been done for them, but more remains to be done. These amendments refer to certain matters of law—matters which have been forced upon my attention by what I have myself seen in the High Court—the harsh way in which certain provisions, which are re-introduced in the present Bill, are at present worked, and the manner in which the private interest of private persons has been sacrificed without any corresponding advantage to the Municipality. The excessive powers given have frequently led the Municipality into disastrous litigation, and the High Court has had to correct its errors in the exercise of the too extensive powers under existing Acts.

The Honourable Mr. PHEROZESHAH MEHTA:—Your Excellency,—The Bill for the Council is of such great importance, as well as of such great local and general interest, and it is so likely, if passed into law, to enjoy a tenure of some permanenacy, that I think it desirable that I should state the reasons for which I find myself able to vote for its second reading. I believe there are still several objectionable features clinging to it in emerging from the operation which it has undergone at the hands of the Select Committee. But I have great faith in the liberal tendencies of your Lordship's Government, and I am extremely hopeful that the detailed discussion in Council will succeed in removing a great many of these objectionable features. The Bill has been introduced for the purpose of accomplishing two main objects One of them is the consolidation of the several Municipal enactments relating to Bombay spread over the statute-book, and the arrangement of the different provisions on a logical and systematic method. With regard to this object, I think your Lordship's Government may well congratulate themselves on the excellence and thoroughness of the work done in this respect by the honourable member in charge of this Bill. I should have preferred to have left it to so many honourable members whom I see before me infinitely better qualified than myself to speak on this point. But I have had practical experience of the difficulties

and inconveniences of the present state of the Municipal law in regard to order and arrangement, and I have had the opportunity of closely and minutely studying the Bill when in Select Committee. I think it is therefore not inappropriate that I should bear my testimony, for whatever it may be worth, to the success with which the task of consolidation and arrangement has been performed. Such a work required great ability and great industry, and both seem to me to have been unsparingly bestowed to make it as complete as possible. I anticipate, my Lord, great benefits and advantages from it in the way of easily understanding and working the law. But, my Lord, I should have unhesitatingly sacrificed all these benefits and advantages if the Bill was to pass as originally framed and introduced in Council. For, in its original form, I cannot but regard it as a distinctly retrograde measure. I am aware that this description of it is disputed. But that it is a true and correct description can, I think, be shown without much difficulty. The constitutional portion of our Municipal law is rightly considered to be its most important portion; it is the keystone of the whole arch, for, however excellent and elaborate the other provisions, they would be useless unless the forces to work them were properly and judiciously organized. Now it can be affirmed, without fear of serious contradiction, that the constitutional lines on which our Municipal administration has been carried on since the present Act was passed, have been these:—That the Corporation, with the help of the Town Council, was the supreme administrative body, with the Commissioner as its sole executive officer invested with full executive power and responsibility, that the Corporation had the fullest control over the Budget, which it exercised —not simply generally, but by constant criticism and supervision, and in a way to bring home to the Commissioner that he was constantly responsible to the Corporation for the due discharge of his duties. Whether fully or clearly expressed in the Act or not, these have been the lines on which the Municipal administration of the last fifteen years has been conducted. If we may judge from the debate that took place in Council on the Bill of 1872, something like this was intended by its framers. In the somewhat animated debate that took place on the third reading of that Bill, Mr. Rogers, then one of the Executive Council, explained that "a great deal of the mistrust as to the power of the Municipal Commissioner has, I think, arisen from the wording of section 42," but the words "entire executive power and responsibility for the purposes of this Act shall be vested in the Commissioner" do not mean to imply that he can do as he likes. He is simply the executive officer of the Corporation, with the power to carry out all that he is ordered to do by the Corporation, who must provide him with the necessary funds. The measure of 1872 was brought in, because the previous constitution provided by Act II of 1865 had signally broken down. And when I say that the present Bill in its original form was a retrograde measure, what I substantially mean to say is that it goes back to the discredited principles of 1865, in regard to the position of the Commissioner in the constitutional scheme. The statement of the constitutional principles of the Bill bears a remarkable resemblance to the statement of the principles of the Act of 1865. It is clear from the statement of objects and reasons, as well as the speech of the honourable member in introducing the Bill, that its object and intention was to place the Municipal administration of the city in the hands of the Commissioner, controlled only generally by "the power of the purse" given to the Corporation. It was frankly admitted by the honourable member, in the discussion in the Select Committee, that it was intended the Corporation were to have no powers of criticism, initiation, or supervision, and that after the Budget

grants were sanctioned, the less they met and talked the better. It is impossible not to be reminded by this account of the constitutional scheme of the Bill, of the striking resemblance it bears to the account given of the constitutional scheme of the Act of 1865. The Honourable Mr. Cassels, who introduced the Bill of 1865, described the Municipal constitution that was to be created by it in the following words :—"This Bill vests all Municipal property in Bombay in the Bench of Justices, which is for this purpose made a body corporate, having perpetual succession and a Common Seal. The justices will, therefore, exercise complete control over the Municipal fund, and the Commissioner will annually submit to the Bench a budget of estimated receipts and disbursements which the Bench may alter or modify as they deem fit, and after the Budget has been voted, no new works are to be commenced by the Commissioner without further order from the Bench. In this manner the justices will hold the purse strings, and will exercise a minute supervision over the details of all income and expenditure; but they will not be allowed so far to interfere with the responsible executive officer as to order any works to be undertaken which he has not first proposed, the initiative in this respect being reserved for the Commissioner. But should the Commissioner not faithfully and energetically perform his duties, he can at any time be removed on a suitable representation from the Bench." This passage may well be accepted as a brief *resumé* of the constitutional features, and the arguments in their support of the present Bill as originally introduced. Thus, I think, it cannot be gainsaid, that so far it must be regarded as a retrograde measure, endeavouring to go back from the principles of the legislation of 1872 to those of the legislation of 1865 Now, my Lord, I am ready to admit that it may be wise sometimes to retrace steps in the light of experience Then, let us see how the constitution on the lines described by Mr. Cassels worked in actual practice; how the power of the purse was sufficient to restrain the Commissioner. Everything was done to secure it a fair trial. One of the ablest officers of the Bombay Civil Service was appointed Commissioner. The Bench was at the time composed of some of the wealthiest, the most educated, and the most enlightened members of the Bombay community, European and Native. And what was the result? I believe some at least of the honourable members of this Council cannot have forgotten the intense excitement in which the whole city was thrown in 1871 by the complete, and, according to some, most disastrous, financial breakdown of the system. I well remember the great meetings that were held in the Town Hall to consider the situation, and the sensation that was created when the chairman of the Finance Committee of the Bench, Mr Hamilton Maxwell, got up and announced that the Municipality were bankrupt! I was one of those who in those days, at the risk of incurring some unpopularity or rather the certainty of it, tried to obtain recognition of the services which the Commissioner had undoubtedly performed; but, after the enquiries made by Mr. Hope's Committee, it was impossible to deny that the system had ended in a complete financial failure, and that it was abundantly established that the general power of the purse and the control of the Budget had by themselves proved utterly impotent to hold the Commissioner within legal bounds, and to restrain him from bringing the city to the very brink of bankruptcy. Such was the proved result of the legislation of 1865 after a trial of six years. Let us now turn to the results of the legislation of 1872, with an elected Corporation and a Commissioner, no longer its master, but its servant, after a trial now of fifteen years. The Council need not be alarmed that I will detain it by a repetition of the numerous acknowledgments of its signal success, elicited from all quarters, and especially from the

successive heads of this Government as well as of the Government of India. The Honourable Mr. Naylor has himself fully admitted it. But he seems to labour under the impression, which, I know, is popular in some quarters, that the credit of this success is mainly due to the Commissioner. "The great success of the administration of the last twenty years," said the Honourable Mr. Naylor in his introductory speech, "is, no doubt, very largely due to the fact that the entire executive power and responsibility have been vested in the Commissioner, who is an officer specially selected by Government for this very important and difficult post." The true history, however, of this success is very different. We have seen that the result of the administration of the first six years was failure and disaster brought about by the exceptionally able officer selected by Government to wield the entire executive power and responsibility. With regard to the last fifteen years, I emphatically say that the success has been due to the fact that the Corporation has exercised constant control, criticism, and supervision, and, in many important matters, to their direct initiation. I am aware, my Lord, of the charge, not unfrequently made against the Corporation, of more talk than work. I cannot help saying that nothing can be more a superficial view of the matter. It may be quite true that we sometimes do talk a certain amount of nonsense, but where on earth is the body or assembly free from this failing? And is it not that it is generally after wading through a certain amount of confusion of thought and knowledge that you ultimately arrive at sound and practical conclusions? The success of the municipal administration for the last fifteen years is, in spite of its alleged talking proclivities, due to the Corporation in three ways:—1st, it has prevented the Commissioner from embarking on hasty, ill-considered and inappropriate schemes by its constant criticism. The fear of this criticism, reasonable and unreasonable, has done more useful negative work than is generally known or imagined. 2ndly, it has introduced great reforms in the executive departments. And, 3rdly, it has directly initiated great undertakings for the improvement and sanitation of the city. I will mention only two or three of the most prominent instances. The re-organization of the Assessment Department has been justly recognized as one of the most important events of Mr. Ollivant's administration, bringing a very large increase of revenue. Now it is not generally known that this re-organization was forced on the Executive by the action of the Corporation, led by one of their members, now unhappily deceased, the late Mr. Goculdass Jugmohundas, whose persistent efforts to expose the shortcomings of the department were at first strenuously opposed. A reform in the Engineering Department was brought about in the same way. The greatest work that the Corporation has yet undertaken—the construction of the Tánsa Water Works—was undertaken by it, not at the initiation of the Municipal Commissioner, but of one of its own members. I could multiply these instances, but I think I have said enough to show that the credit of this remarkable success justly belongs, in the main, to the constitutional scheme under which the Corporation carries on the administration by the hands of its executive officer, constantly and continuously controlling, criticizing, supervising, and directing him. To revert from a scheme of such promise and performance to the discredited principles of the Act of 1865 would be a blunder indeed. But I am afraid, my Lord, I have taken up the time of the Council by talking of a dream that is dreamed and gone. Now a change, so to say, has come over the spirit of the dream, and I am glad to acknowledge that the Bill, as it comes back amended in Select Committee, is framed on sound constitutional principles. I can even go further and say that the amended Bill has fully and clearly embodied the princi-

ples which were perhaps only timidly and tentatively indicated in the Act of 1872. In my opinion, my Lord, the constitutional part of the Bill is now placed upon a satisfactory footing. When I say that, I do not forget that there are several objectionable features clinging to it, as I have said before. The proper time to refer to them in detail will come when the Council proceeds to the detailed discussion of the Bill. But I think, my Lord, I should now refer to two or three of the most important, as they may be said to affect the principle of the Bill. One of the most important of these is contained in section 65, which I consider the keystone of the constitutional part of the Bill. Clause 3 (*c*) of that section gives over the whole power of the Corporation to the Commissioner in cases of what are called pressing emergency. In the first place, such a provision is excessive, even for the purpose for which it is designed; for it is difficult to conceive any case of emergency in which the Commissioner can possibly require to exercise all the powers of the Corporation,—for instance, that of levying taxes, &c. In the second place, such a provision has not been shown to be necessary by experience; no Corporation would refuse to ratify the acts of a Commissioner in a case of real emergency. The bursting of the Vehár dam is usually cited for the necessity of such a power, but the Corporation immediately sanctioned whatever was required to be done. On the other hand, experience has shown that such a power is liable to extraordinary abuse. It happens that just as there is a case the one way, there is a case the other. I am aware that the power is to be exercised subject to the sanction of the Town Council. Now, my Lord, the Commissioner in 1883 actually got the Town Council to pass this resolution, which I quote from the record of that year: "That the Corporation be recommended to sanction the payment, from surplus cash balance, of Rs. 2,768, to meet the cost of the following works urgently required for the new police quarters at Byculla:—Screen wall for women's latrines, Rs. 390; rebuilding boundary wall fallen down at the Jewish Synagogue and forming wall of lean-to sheds, Rs. 544; pavement and drain required for waste water after the cleaning down of fire-engine, Rs. 112, roof to cover way between the main stable, Rs. 685; venetians to Police Commissioner's Office, Rs. 127; roofing verandah in front of guard room, Rs. 910; total Rs. 2,768." I should mention that as a matter of fact the money had been already spent on the ground of urgency. My Lord, I think this shows that such a power is liable to be abused for irregular action. The next most important feature of an objectional character is contained in section 37, clauses (*u*) and (*v*), and is in reference to the position of the Commissioner in the Corporation. Section 43 of the present Act provides that the Commissioner shall have the right of being present at all meetings of the Corporation, but he shall not be at liberty to vote upon or move a resolution. The Bill, as originally framed, qualified him to be a member of the Corporation for all purposes. This was strongly objected to in the Select Committee, and it was decided to abandon the proviso. But it seems that the majority of the Committee were disposed to poke a little fun at the other members, and after withdrawing the original proviso, they straightway proceeded to present them with a hydra-headed monster: they gave powers in clause (*v*), by which the Commissioner was made into a wonderful embodiment of 72 members rolled up in one. He could jump up immediately every time a member sat down, to answer him and correct him. But, seriously, my Lord, those who have any experience of managing meetings know that such a privilege would be subversive of all order and discipline, and such a Commissioner would be an intolerable nuisance. Then, my Lord, I object most strenuously to the portion of the Bill creating a Deputy Commissioner. It utterly mars the integrity of the constitutional scheme

which renders the Commissioner the *sole* executive officer, for the purpose of attaching to him sole and undivided responsibility. If it is made out that there is more work thrown on the Commissioner than he can attend to, the remedy is to give him the necessary assistance in whatever departments he may require it. The creation of a Deputy Commissioner would be only destructive of his proper position and responsibility in the constitutional scheme. These are some of the most objectionable features still surviving, but I trust that the detailed discussion in Council will lead to their elimination. Before I conclude, I should like to say a word as to the proposal of vesting executive power in sub-committees of the Council, with the Commissioner as chairman. It is said that this proposal was rejected, because the citizens of Bombay were diffident as to their capacity for real local self-government. Such is not the reason, however. I have been connected with the discussion of this question ever since 1871. In the public discussions of that time, the reformers asked for an executive Town Council. I then ventured to point out that such a remedy would be worse than the disease in a paper I read on the Municipal reform question of 1871 before the Bombay Branch of the East-Indian Association. The matter was again discussed in 1884 by the Corporation, and again when the first draft of the Bill was sent to it by Government. I took an active part in the discussions on both occasions, and the proposal I have referred to was rejected, not because we were diffident of the capacity of real local self-government, but because it was held that real local self-government did not consist in the direct exercise of executive powers by the Corporation, by themselves or by committees. It is now, my Lord, nearly five years since the Corporation embarked on the enterprise of obtaining a further extension and strengthening of their free Municipal institutions. They were well justified in their ambition, for it is now matter of history that it was their success that suggested and secured for the whole of India the remarkable development of local self-government that was inaugurated in the time of the late Viceroy. They appointed committees, they worked hard at it themselves, and they sent up representations to Government. At one time matters looked rather gloomy. It seemed as if they were destined to look as foolish as the discontented frogs in the fable who went to pray to the gods for something better than king Log. But the alarm was only momentary. Such fears are now altogether dissipated. With the bill in its amended form, and as I trust it will be further amended in Council, the citizens of Bombay will have good reason to be thankful to your Lordship's Government for a measure which will embody provisions for further extending and strengthening their municipal institutions as wisely and liberally conceded as, I may be pardoned for saying with some pride, they have been richly deserved.

The Honourable Mr. FORBES ADAM :—Your Excellency,—When this Bill was first introduced to your Council by the Honourable Mr. Naylor in August last, I took no part in the debate that followed. In the first place, I felt that some of my colleagues possessed a much more intimate knowledge of municipal affairs than myself, and were much better able to give expression to the opinion of the public and the Corporation; and secondly, I was aware that it was your Excellency's intention not to hurry matters, but to give ample time to members of the Corporation, the public, and the press, to represent their views; and thirdly, that you proposed to refer the Bill to a Select Committee.

Although I have never had the privilege of being a member of the Corporation, I, in common with every intelligent citizen of Bombay, have taken a deep interest indirectly

in municipal affairs. I have always kept myself conversant, through the press, with municipal debates, and although I have been often told that debates, as reported, are considerably cut down and that I did not read all the talking that occurred, yet I have never thought, so far as I could judge, that there appeared to be more talking than was necessary to bring out full information on the various subjects discussed—information required by many who entered on discussions in comparative ignorance of the question to be decided, and certainly not more talking than we know takes place in most other deliberative assemblies.

I have also from time to time had the advantage of conversations with those most closely interested in municipal management in Bombay and questions relating thereto.

I confess that long ago I was of opinion that a series of committees, with the Municipal Commissioner as the chairman of each committee, was the best means of educating members of the Corporation in the details of municipal duties and the best way to get the work properly carried on. But that idea did not find favour with the majority of the Corporation, and I have since arrived at the conclusion that the majority were right. It is evident that a Commissioner, sitting permanently as chairman on each committee, would have exercised a too preponderating influence; there would have been a mixing of administrative and executive functions; the Commissioner would have exercised a greater power than it would be wise to place in one man's hands. The proposal was a new departure on fresh lines. The Corporation preferred a development on old lines; and, as I understand it, Mr. Ollivant was sent by them to Poona to prepare the framework of a Bill. I have heard it stated that he was sent to prepare a Bill in keeping with the expressed views of the Corporation. But I feel sure Mr. Ollivant did not so consider it. His mission, as he took it, must have been to prepare a Bill on lines as he thought best calculated to procure good government and efficient administration of the city. Putting myself in his place, I can sympathise with his point of view. He was a zealous, hard-working officer, anxious to do well for the city, and what he wanted to do he thought was what was best in the interests of the city to do. An ardent officer, no doubt, he had often found himself hindered and delayed by having to consult and carry with him a majority of a deliberative body. He preferred to be left as free as possible subject to budget restrictions. That Commissioners should be able to decide for themselves and act promptly he considered sound and right. But while I can sympathise in some measure with Mr. Ollivant, I can see no reason why the Bill, as originally prepared, should have been accepted, even as a basis, by Government. There was something to say for standing still, a great deal to say for moving forward, but absolutely nothing to say for going back. And I consider the Bill as first introduced decidedly a retrograde measure. A Select Committee has since carefully examined it, and modified its provisions. Yet I am inclined to agree with the observations of the Honourable the Advocate-General that they have rather halted in their improvements. They have laid down the principle that the Corporation is the governing body, but all sections do not clearly bear this out. It seems to me to be now neither fish, flesh, nor fowl. I do not propose to detain the Council by going into the sections *seriatim*. I will only observe generally that it is possible so further to amend the Bill as to preserve this great principle consistently throughout without running danger of in any way interfering with the Commissioner in the unfettered performance of his executive duties. I would like to refer briefly to one or two points of detail which as I see they are dealt with in the amendments on the notice paper will be

gone into more fully hereafter. I do not see any necessity of putting the power of the Corporation into the hands of the Commissioner in cases of emergency. The power is immense. I cannot conceive any case arising that would justify such a transfer of power. And there is great danger of abuse. I agree with the Honourable Mr. Mehta, that it is not desirable that the Commissioner should have permission to speak as often as he chooses during debates or to move resolutions. His presence at meetings is perhaps necessary, so that he may supply the facts that are in his possession and give information; but unless expressly called on by the Chairman, I think he may do this in one speech, and more must usually be uncalled for. The Bill provides that the Commissioner be a member of the Legislative Council and the Port Trust Board. No one will pretend to say that the duties that fall on members of the Legislative Council are arduous or such that break down a man's health. This is certainly no reflection on the Council. But still great stress has been laid on his labours as Commissioner, and why should they be added to? It seems to me useless, as useless as it would be, to make the Commissioner of Police, the Presidency Magistrate, or the Chairman of the Port Trustees a member of Council. As regards the Port Trust, there is a great deal of work to be done. Most of it has nothing to do with municipal affairs. It may be an advantage to the Port Trustees to have among them a gentleman of the ability and talents of a Commission, but what is the benefit to the Municipality? I believe the Chairman of the Port Trust holds a different view, but after five years' Port Trust experience my opinion is that there is not much municipal work that is advanced by the presence of the Commissioner on the Board. The actual work is chiefly done by correspondence, and if business is sometimes facilitated by the interchange of views between the Commissioner and the Chairman of the Trust, these views could just as well be interchanged were the Commissioner not a member of the Port Trust Board. There is another matter I would touch on. It has been repeatedly referred to at meetings of the Corporation. That is that the Commissioner should be bound to produce any papers asked for by the Corporation. I cannot conceive any occasion arising when it would seriously interfere with the interests of the Corporation to produce papers when asked for. On the contrary I can quite imagine occasions on which their non-production might be extremely detrimental to city interests. Discretion as to the production should rest, not with the Commissioner, but with the Corporation.

I come to another part of the Bill having reference to the Health Officer and the Executive Engineer. Any one who has had any thing to do with large concerns, must be fully aware of the immense importance of having one executive head—it is absolutely necessary for the smooth working of any large concern, and considering the relationship between the Health Officer, the Executive Engineer, and the Commissioner, to make him their head, and the man to whom all matters should be referred, and through whom they must approach the Council is important. But I can understand occasions arising in which it might not work advantageously for the Municipality. For instance, I can imagine a case in which the Municipal Commissioner wishes certain work done in a certain way by the Executive Engineer; but the latter, holding contrary views as to the manner in which it should be carried out, might not be able to reach the ears of the Corporation, who, if they were acquainted with both sides of the question, might favour the opinion of the Engineer. Therefore, making due provision for constituting the Commissioner the head, it would be wise to have some means by which the Engineer could have power to approach the Corporation when he desired to do so. The Health Officer has that power,

and I never heard that it worked badly. Your Excellency, I should like to say a few words as to the control of the Budget. My own opinion is that all unexpended balances should lapse at the end of the year, and be dealt with in the new Budget. My reason for thinking so is that by so doing you keep all works in progress prominently before the members of the Corporation. I believe it good for the welfare of Bombay and the benefit of the rate-payers that unexpended balances should lapse. While I am also of opinion that transfers above Rs. 500 from one Budget head to another should not be expended without the sanction of the Corporation. With regard to the Controller, I share the opinion, which I have several times heard expressed by the Corporation, namely, that he should be independent of the gentleman whose accounts he controls. I think this is very necessary. It is done by all public bodies with which I am acquainted. He should be appointed by the Council, and should be responsible to the Council, and in this way a thorough check kept on the municipal accounts. Regarding Chapter 20, I should like to observe that I agree with the absolute necessity of Government retaining full control in their own hands. I am certain that Government will not seek to interfere, except in very grave cases, and the less Government interferes the better. I believe Bombay will be best managed by the rate-payers themselves. At the same time, however, I must add, that when Government wish to approach a municipal officer for the purpose of obtaining information concerning the work of the Municipality, they should do so through the Corporation, the governing body, and through the Corporation only. Your Excellency, I have heard it said that if the Bill should be amended so as to bring it into consonance with the views of the Corporation, that it would be very difficult indeed to get a member of H. M.'s Civil Service to serve as Municipal Commissioner. I cannot conceive why that should be so. Any man might be proud of such a position, of managing the executive work of this great city and identifying himself with its growth and development, and I do not think really Government will ever find any difficulty in getting a suitable man when wanted. But should this surmise prove well founded, I am sure that it would be possible to find a man outside the Service well fitted to take the post. A member of the Civil Service, no matter how able he may be, coming to Bombay for the first time has still a great deal to learn, and must learn it at the expense of the Corporation and rate-payers. But it is quite possible to go into a wider field, and get a man with the necessary knowledge and experience who in previous years has obtained that knowledge and experience at the expense of some one else. I have also heard it said that if the Bill be passed amended in consonance with the views of the Corporation, that the municipal affairs of Bombay will not be properly managed, that things will remain at a stand-still. Your Excellency, I take leave to doubt this. I think any one who has watched the conduct of municipal affairs in Bombay during the past ten years must have been exceedingly pleased with the steadily increasing business capacity shown by the members of the Corporation. I think that they show greater accuracy in debate, that debates are less prolonged than formerly, that members are capable of initiating and giving effect to large schemes of improvement. I have never heard it said that any work sent up by the Commissioner to the Council or Corporation has ever been unduly delayed. I believe there are no arrears of work. My Lord, I believe, if the Bill be passed in its present form, it may ere long give rise to friction and dissatisfaction, and lead to a call for fresh legislation. But I am of opinion that if this Council pass the Bill in keeping with the views expressed by the Corporation, the representatives of the rate-payers, it will remain for many years to come a monument of wise and liberal and far-seeing legislation.

The Honourable Mr. WEST :—Your Excellency,—When recently I had the honour of being made a member of your Excellency's Government, the subject, which is a very important and wide one, was wholly new to me. But under the able instruction and the valuable suggestions of my honourable friend, Mr. Naylor, I have endeavoured to gather a general idea of the ruling principles of that measure. I think that with the modification it has received at the hands of the Committee it may generally be accepted as one which will not only carry out the views of the Government for the amelioration of the municipal condition of Bombay, but will afford the citizens of Bombay a better means of transacting public business and give them a greater interest in municipal affairs than they have hitherto had. I am, therefore, much gratified to find so great a consensus of opinion on the part of independent members of this Council, favourable to the general principles embodied in it, especially as they have been more or less modified by the recommendation of the Select Committee. For my own part I think there are two or three important places in which a concession to public opinion may properly be made, more especially as your Excellency's Government, on fuller consideration of the Bill in its varied aspects and its connection with the general system of administration, has arrived at the conclusion that these changes are in themselves desirable. The general principle of the Bill, however, is apparently recognised, and according to this that the legislative and initiative force of the constitution is centred chiefly in the Municipality. It is they who are to organise the policy of the city, but the executive power is to be vested in, and exercised by the Municipal Commissioner. When one comes to details one will find this measure, as in every measure, points in which it is impossible to say precisely where darkness merges into day or day into darkness. You will find some matters which will, in the opinion of some, fall within the jurisdiction of the Corporation, which, from another point of view, will fall under the cognisance of the Commissioner. What is wanted, however, is that business shall be promoted rather than obstructed ; and I apprehend that no amount of legislation can anticipate all the uncertainties of the future. Cases in which there will be possible conflictions of authority are inevitable. I believe, however, that His Excellency's Council is prepared to give the fullest attention to the amendments, which are extremely numerous. In some instances they are not quite irreconcileable with one another, and it would be better if members would confer together as to what is to be done, so that some time may be saved. An adjustment of alterations that are given notice of by more than one member might be arranged. Such as are likely to be carried are those which are consistent with the principles of the Bill. The measure may well be passed, and it will be an honour to the very able and distinguished gentleman who has brought it before this Council.

The Honourable Mr. NAYLOR :—Your Excellency,—Without wishing to detain the Council at all, I should like to make a few observations. I may say at once that it does not appear to be necessary to anticipate now what I shall have to say in reply to the various proposals for the amendment of the Bill ; I think I shall be saving the time of the Council if I reserve my remarks until those amendments are submitted. With regard to the Bill, as originally introduced, I wish to say, in the absence of Mr. Ollivant, who contributed so largely to the completeness of the measure, that certainly nothing was further from his mind than the idea that he was deputed to prepare a Bill in accordance with the views of the Corporation. I have not the least reason to suppose that he for a moment understood that his functions were thus limited ; and I do not think he would have accepted the position upon such an understanding. He devoted himself to the pre-

paration of the first draft Bill with great zeal and did his best to produce such a measure as would be satisfactory to all parties and for the good of the city. As to the present form of the Bill, I can only repeat what I said when it was brought forward, that our object was, as far as our power went, to introduce a Bill which would perpetuate the present system of municipal administration, but shorn of all its difficulties, which have given, or were likely to give rise to friction and misunderstanding.

Bill read a second time and considered in detail.

The Bill was then read a second time and considered in detail.

The Honourable the ADVOCATE-GENERAL moved that in section 3, clause (*b*), the words "as constituted under the Bombay Municipal Acts of 1872 and 1878" be omitted, and that clause (*c*) be omitted.

That in section 5, clause (2,) lines 15 and 16, the word *Council* be omitted and the word *Corporation* inserted in lieu thereof; and that throughout the Act the word *Corporation* be substituted for the word *Council*.

In so doing the honourable gentleman said:—Your Excellency,—With reference to the change which I propose, it will be seen from the report and the long letter received from the Corporation that, although they do not attach very great importance to the change, they dislike it. What they say is this: The Corporation do not consider the change of name of any consequence, though they would perhaps be inclined to retain the old names to which the citizens have been accustomed. They also say that there is no sufficient reason for the change. That is sufficient reason for us to retain them. I do not think any serious question of principle can be said to be involved; what you want is names the people like. It is not merely the members of the present Corporation who feel this preference, but there is not a single person to whom the suggestion has been made who does not prefer the old title. I think myself that the history of the Corporation points towards its retention. The Select Committee say it is only for some sixteen or seventeen years that the name has been used; but still that is the whole life of the Corporation, and I do not see why we should make a break in its history. Beyond this I myself think there is a certain principle in keeping old names, and in the present instance the name of Corporation keeps the Municipality of Bombay in touch with the other Municipalities established in the Empire. I think the honourable mover has mistaken the English law on the subject. Originally the Act was drawn by one who preceded me in office—a gentleman who had come out to India with very considerable experience of England and English law—and the terms he used were in accordance with the English law. I see the Committee refer to the English Municipal Corporation Act of 1882. It seems we have not followed the usual course adopted in England under that Act, namely the incorporation of the mayor, aldermen and burgesses of a borough, or the mayor, aldermen and citizens of a city. We ought to find another term instead of that of Council which in England is not the whole of the Corporation, but only their delegates. What you do here is to incorporate your seventy-two members. They are your Corporation, and I think in that more important name ought to be swallowed up the other. They discharge the duties of the Municipal Corporation and the Council, and you may select either of these two names. To my own mind it seems preferable to select the more important one—the Corporation—that is the universal term by which such bodies are known in England, and, no doubt, any one acquainted with English municipal life will acquiesce. The mayor,

aldermen and burgesses were the original designation of a Corporation, but the full title is not used, so that what occurs to me is that you are introducing a distinction—which, I think, is an unhappy distinction—between the municipal corporations at home and this Municipal Corporation, which in time, we hope, may take its place as the Municipal Corporation of one of the greatest cities of the world, standing next only to the Municipal Corporation of the city of London itself. One instance of the popularity of the name—it may seem a trivial matter—is that, in cathedrals, seats are specially allotted for the members of the Town Council, but they are known as the Corporation seats. Of course, the name is not an important matter, but we should adopt that what is wished by the people themselves. What the Corporation wishes is to retain the old name, and not to be known by any other; and for this reason I propose the amendment.

The Honourable Mr. NAYLOR :—Your Excellency,—It is not a matter of serious importance whether we call the body the Corporation, or whether it be called, as is proposed in the Bill, the Municipal Council. Honourable members, who were present when the Bill was read a first time, will remember that I then stated the reason of the proposed change of the name. The Select Committee were unanimous in adopting it. The honourable members, who sat on that committee, to a large extent, represented the city of Bombay, and I should think their opinions will be accepted as a sure test of the popularity of the change. Yet it is on the question of popularity that the Honourable the Advocate-General bases his amendment. It is true the Corporation has expressed its desire to retain the name Corporation, but the term Municipal Council is more dignified and more suitable to the body which we propose to constitute. The inconvenience of the term Corporation comes out strongly when we try to give a name to a member of that body. We then are compelled to have recourse to the word Corporator or Corporationer—terms which are not pleasant to pronounce and are ugly names to bear. As regards the historical use of the word Corporation, perhaps the Honourable the Advocate-General has not read my remarks in introducing the Bill. I then explained that there is a broad distinction between the Corporation here and municipal corporations at home. A corporation at home consists of the mayor, aldermen and burgesses. Here it is a body elected by the burgesses. But although the representative body of this city is so elected, it is and will continue to be a corporation. Nevertheless it is not necessary that whenever we speak of it we should announce the fact that it is a corporation; it seems to me much better that we should have a proper name for it. The corresponding deliberative assemblies are always called Municipal Council or Town Council in England, and it is better, in my opinion, to give the Bombay body the name of the Municipal Council of Bombay.

The Honourable Mr. PHEROZESHAH MEHTA :—Your Excellency,—It is true that I voted in Select Committee for the adoption of the term 'Council' for the old name of 'Corporation'. But I did so, as a sort of compromise, to secure the present Town Council being designated 'the Standing Committee,' as it really is. I have always entertained a strong objection to that body being called by its present name, which is not only inappropriate, but suggestive of an altogether misleading connotation for practical purposes. If the alteration in that respect be not disturbed, I have a very strong sentiment in favour of the retention of the name 'Corporation' for the larger body, by which name it has been now known for so many years, and cherished by its members and the citizens of Bombay with some pride.

The Honourable Mr. FORBES ADAM :—I think the Council should give way in this matter, as they do not lay great stress upon its importance. Corporation is an inconvenient name, but if they are prepared to give in to that inconvenience, I do not see why the Council should not study their wishes.

The Honourable the ADVOCATE-GENERAL :—I do not propose to change the name of Councillors for the individual members of the Corporation, and I do not see why the Corporation should not consist of Councillors.

The Honourable Mr. WEST :—There is no clause which provides for the designation of Councillors, that I am aware of, except as a simple derivative from Council.

The Honourable the ADVOCATE-GENERAL :—It has been introduced in connection with the election of Councillors.

The Honourable Mr. WEST :—If the suggestion of the learned Advocate-General were adopted, it would necessitate the introduction of a clause to cover that designation.

The Honourable the ADVOCATE-GENERAL :—Certainly, and it would necessitate certain consequential amendments. I should be prepared to introduce a simple definition clause to cover that designation.

His Excellency the PRESIDENT :—The matter is not of great importance and involves no principle, and I admit that personally I prefer to keep the names by which public bodies have been designated. I agree with the argument used by the Honourable the Advocate-General that it is not desirable, unless some strong cause is shown, to disturb the titular continuity of an institution which has given satisfaction to the public. Inconveniences may arise from a break of gauge, and, therefore, I would advise the honourable mover of this Bill to accept the conservative amendment of the Honourable the Advocate-General, which seems to be supported by a pretty unanimous wish of those who are most directly interested, and which does not prevent us from changing the individual designation of the members. We can obtain a Corporation composed of Councillors.

The Honourable Mr. NAYLOR :—I have pleasure, your Excellency, in accepting this suggestion.

His Excellency the PRESIDENT :—Then we need not divide upon the question.

The Honourable Mr. WEST :—Under the existing circumstances it will be necessary to provide a clause defining Councillors.

The Honourable the ADVOCATE-GENERAL :—I do not know. I think clause (1) of section 5,—the Corporation shall consist of 72 Councillors—will be quite sufficient definition.

The Honourable Mr. WEST :—It might be well to define more specifically who is and who is not a Councillor. Might I make an oral suggestion that a Councillor means a member of the Corporation duly elected or otherwise appointed.

The Honourable the ADVOCATE-GENERAL :—I do not think we could possibly improve upon that.

The Honourable Mr. WEST :—Then I understand you do not move anything with respect to clause (*c*).

The Honourable the ADVOCATE-GENERAL :—The honourable member is quite right. I jumped to the hasty conclusion that (*c*) followed (*b*) (Laughter.)

The Honourable Mr WEST :—Then (*c*) stands.

The amendment was therefore accepted, except as regards clause (*c*).

The Honourable the ADVOCATE-GENERAL then moved "that in section 17, clause (3) be omitted." In so doing the honourable gentleman remarked :—Your Excellency, this is purely a matter of drafting. There is no objection to the Police Commissioner being a member of the Corporation, and I should be very sorry to deprive the Corporation of so useful a member. For many years past there has been no such objection, so no such clause as this is necessary. It is an unnecessary clause, and therefore likely to do harm. It might be suggested the principle that *expressio unius est exclusio alterius* that the Advocate-General of Bombay being Advocate-General is disqualified from being a member. I do not think the present holder of that office has any desire to add to his onerous duties. But I believe my predecessors, the Honourable Mr. Justice Bayley and Mr. Scoble, were members.

The Honourable Mr. NAYLOR :—I can only say, with regard to this point, that some few years ago a question did arise in the Corporation, which was keenly discussed, as to whether the Police Commissioner was qualified or not under the present Acts. I believe in the face of legal doubts Sir Frank Souter has continued to hold office in the Corporation, and is generally considered to be one of their most useful members. The Bill, as first drafted, did not contain the sub-section to which the Honourable the Advocate-General refers. It was inserted by the Select Committee in deference to a wish expressed by the Corporation themselves, in consequence of the legal doubt to which I have alluded. Some three or four years ago, when the Corporation submitted certain draft clauses to Government, there was one among them to the same effect as this sub-section. I do not myself think that the Commissioner of Police could be held to be disqualified under the Bill as originally drafted, but it was considered by some members of the Select Committee that, in case any legal doubt should arise, this clause would remove it. Sub-section (3) was introduced in consequence.

The Honourable Mr. WEST :—I may observe that it is quite possible, looking at the matter in the abstract, that in this Bill before us clause (3) may have been introduced by a wise and far-seeing forecast, to meet an emergency when the Commissioner of Police may be employed by, or on behalf of, the Municipality. That is a possibility of the future. It would not be a bad thing to have the clause retained, particularly as it has been recommended by the Select Committee. Were we not to do so it might lead to the supposition that the Honourable the Advocate-General is wrong, and lead to some trouble for the Judges of the Small Causes Court.

The Honourable Mr. PHEROZESHAH MEHTA :— I think it would be perhaps desirable to let the proviso remain. A question was raised at one time as to the eligibility of the Commissioner of Police for membership, in consequence of the note to section 60 in the present Act to the effect 'Police Commissioner to be under the Municipal Commissioner.' I concur in the view that it is desirable that the Police Commissioner should be eligible for membership, for instead of the Commissioner, as it is argued, having undue influence over the members of the Corporation I believe the fact is that he is more amenable to the influence of the Corporation by being a member of that body than otherwise. The chances of harmonious co-operation are thereby improved

The Honourable Mr. TELANG :—The Corporation also suggests that the clause should be struck out, but for exactly the opposite reason to that which is urged by the Honourable the Advocate-General.

His Excellency the PRESIDENT:—Do we need to divide upon the matter ?

The Honourable the ADVOCATE-GENERAL:—I dislike the clause; but if the Council wishes to retain it, I withdraw my amendment.

The amendment was accordingly withdrawn.

The Honourable Mr. PHEROZESHAH MEHTA moved that in section 27, line 44, the word "or" be omitted, and that sub-clause (*iii*) of clause (*e*) be omitted. The Honourable gentleman said:—Your Excellency,—What I object to in this section is the word 'notoriously.' It leaves the Commissioner free to judge by mere report, and to act on hearsay. He would probably act on the information of some subordinate officer, and an entire election would be in danger of being set aside, if the report turns out unfounded in fact.

The Honourable Mr. WEST:—Then, perhaps, it would meet your views if we drop out "notoriously".

The Honourable Mr. PHEROZESHAH MEHTA:—Yes, that was the whole of the amendment I at first intended to propose. But the Honourable Mr. Naylor preferred that in that case the whole of the section should be given up, and I had no objection to meet his wishes so far.

The Honourable Mr. NAYLOR:—The reason for the Honourable Mr. Mehta's bringing forward his amendment in the shape in which it stands was to place the Council in a position to judge, whether the clause in question should be entirely omitted, or whether only the word "notoriously" should be expunged. The procedure that the Bill provides is, that a candidate for election must be nominated by two persons qualified to vote, and unless a person is so nominated within the specified time, he cannot appear for election as a candidate. Now it occurred to the framers that it would occasionally happen that a person who was obviously and clearly disqualified might be nominated, and if no power were given to the Commissioner to refuse to accept his nomination the election proceedings would have to be carried on, and the returns of the election would have to be made in due course, and the results declared, and after all an election petition would have to be filed before the Chief Judge of the Small Causes Court to set aside the election on account of the invalid nomination which it would have been more convenient that the Commissioner should have been able to set aside in the first instance. Of course, it would be very convenient if we could have a tribunal to determine, once for all before the election takes place, whether each of the nominations is valid. But such an inquiry would occupy a considerable amount of time, and necessitate taking a good deal of evidence, and we thought it more expedient that it should generally be made after the conclusion of the election-proceedings. But where a candidate is notoriously disqualified, we thought the Commissioner should have power to decline to allow him to stand.

The Honourable the ADVOCATE-GENERAL:—The word "notoriously" alters the whole section.

The Honourable Mr. WEST:—That is what Mr. Mehta has stated. Why not susbtitute the word "patently", which means obviously, or without any room for reasonable dispute.

The Honourable Mr. PHEROZESHAH MEHTA:—Well, I do not see why the word 'notoriously' should alone not be taken out.

The Honourable Mr. WEST:—It should be something clear. But if you simply strike out "notoriously", the result will not be very different.

The Honourable Mr. PHEROZESHAH MEHTA:—A subordinate might give the Commissioner some hasty information, which would cause him to strike out the name of the candidate, and the result might be to upset the whole election.

The Honourable Mr. FORBES ADAM:—I do not profess to be a lawyer, but would it not do to say "after due enquiries"?

The Honourable the ADVOCATE-GENERAL:—A great deal would depend on the good sense of the Commissioner. If he had good sense, he would not accept any information without having satisfied himself as to the information being reliable. I do not see any objection to expunging the word.

The Honourable Mr. NAYLOR:—Then perhaps it will be well to take out "notoriously" and for the Honourable Mr. Mehta to withdraw his amendment.

The word "notoriously" was accordingly expunged, and the rest of the amendment withdrawn.

The Honourable Mr. TELANG:—I move an amendment, your Excellency, to clause 37, page 23. as to the publication of nominations in the newspapers. This is one of the suggestions of the Corporation, and they point out that the term "local newspapers" may be interpreted to mean the whole of them.

The Honourable Mr. NAYLOR:—Your Excellency,—Before the honourable gentleman's amendment is considered, I wish to speak to a point of order. I have not the least desire to prevent any amendment which any honourable member thinks proper to propose from being considered by this Council. But it is only fair to myself and other members of the Council who may be desirous of discussing it that every amendment to be proposed should be given notice of in distinct terms. The honourable member has, I understand, given a general notice of his intention to bring forward proposals in conformity with all the recommendations of the Corporation contained in their recent letter which is before us; but it would be better that we should know precisely the points he wishes us to discuss. The Corporation's letter and suggested amendments have apparently been drawn by an amateur hand, and there are some of the latter which the honourable gentleman will find it unnecessary to bring before the Council, if he will examine them himself.

His Excellency the PRESIDENT:—I suppose the honourable member will admit he gave notice rather late.

The Honourable Mr. TELANG:—I sent the notice in on Saturday, your Excellency, and that is quite within time, according to the rules. I could not have sent in the notice earlier, as the Corporation's letter was only despatched on Friday evening, I believe. What I want is that the Corporation's suggestions should be considered before the Bill is passed.

His Excellency the PRESIDENT:—These amendments were not introduced two clear days before this sitting, but I understand that as they reached the honourable member himself rather late, his excuse is that he is moving them by proxy. I trust that the mover of the Bill, who shows such a complete mastery of its contents, will not insist on

the objection he had a right to raise, and that he will allow the honourable member to proceed, as I am informed that he will take care to put them into proper form.

The Honourable Mr. NAYLOR :—If the honourable member will kindly undertake that before the next meeting on this Bill his additional proposals shall be sent in in due form to the Secretary in time to be printed, I shall have no objection.

The Honourable Mr. Telang :—That depends on when the next meeting may be held.

His Excellency the PRESIDENT :—We are not likely to exhaust the whole matter at our next meeting, which will be on Saturday, and the honourable member can easily have the necessary amendments ready for that day.

The Honourable Mr. NAYLOR :—Then I waive my objection for to-day.

The Honourable Mr. TELANG :—The amendment is not a very important one ; it only necessitates the removal of the article "the" in clause 2 of section 28.

The Honourable Mr. NAYLOR :—This is one of those proposals to which I take objection, because had the honourable member looked into it himself, he would have found it unnecessary to raise the question. There is a section explaining this—section 484.

The Honourable Mr. PHEROZESHAH MEHTA :—Yes, it is a matter which was cleared up before the Select Committee.

The Honourable Mr. TELANG :—Yes, I see that is quite satisfactory.

The amendment was thereupon withdrawn.

The Honourable Mr. PHEROZESHAH MEHTA moved that in section 36, lines 16 and 17, the words "within fifteen days" be substituted for the words "as soon as conveniently may be." He said :—Your Excellency,—I propose this amendment, not, *as I need hardly say*, out of any want of confidence in the Government, but because I think that when you are introducing a definite system, it is preferable to prescribe a definite period.

The Honourable Mr. NAYLOR :—I doubt the necessity for the limitation ; but I have no great objection to the amendment.

The Honourable Mr. WEST :—Some quibbler after the election might raise an objection, that a candidate had not been nominated within fifteen days, and that the nomination was therefore invalid. I do not think the quibbler's objection would be admitted by the High Court. But difficulties might arise. Government when required to fill up a vacancy might not always be able to do it promptly. There would doubtless be a great many cases in which the specified time could not be strictly complied with.

His Excellency the PRESIDENT :—I have some experience of the subject. It is not always the fault of Government that a vacancy is not filled up quite so soon as it might be : first of all we have to consult those who know what element requires representation. Then what happens is this : a gentleman is invited to serve on the Corporation and for some reason or other he refuses. If he stated his refusal by return of post, there would be no difficulty—we should at once issue another invitation. To this fresh invitation we do not always receive an early reply. The condition which the amendment imposes would not be practicable. I therefore agree that it would not be wise to limit the time.

The Honourable Mr. PHEROZESHAH MEHTA :—Then I do not press the amendment.

It was accordingly withdrawn.

The Honourable Mr. PHEROZESHAH MEHTA :—Your Excellency, I move that in section 37, clause (*a*), lines 12 to 15, the words "one ordinary meeting in each month" be substituted for the words commencing with "five" and ending with "March". We know that the Corporation has to meet very many more times than five in the year. Indeed, for some time past, the average has been two per week. For years past, as has been shown, the work of the Corporation has required a meeting at least once a week. I think it is therefore right and proper that the provision in the section should be nearer the fact. I propose that there shall be one ordinary meeting per month.

The Honourable Mr. NAYLOR :—I have no objection to amend the clause in the manner proposed. The object of the clause is, I think, to indicate that it is not the intention of the Legislature that the Corporation shall be constantly meeting. But this intention will also be apparent if the clause is altered as the honourable gentleman suggests.

The amendment was adopted without dividing.

The Honourable Mr. PHEROZESHAH MEHTA moved that in section 37, clause (*c*), line 33, the words "absent from the city or" be omitted, remarking, the Chairman is not bound to be constantly in Bombay. If he should happen to be, say, at Mátherán during the vacation, there is no reason why he should not fix the time for a meeting and come down on the appointed day.

The Honourable Mr. NAYLOR :—I have no objection to this proposal.

The words were accordingly struck out.

The Honourable Mr. PHEROZESHAH MEHTA moved that in section 37, clauses (*j*), (*l*), the following words, having reference to meetings of the Council to be called on requisitions of urgency, be omitted, *viz.:* in clause (*j*), lines 102—110, the words from "but in cases of urgency" down to "practicable"; in clause (*l*), lines 127 and 128, the words "other than a meeting called on a requisition of urgency";

The honourable gentleman said :—This amendment involves a question of *considerable* practical importance, and is one of those which I had specially in mind in my remarks on the second reading. It will be observed that the clause as it stands empowers a meeting to be called on the requisition of four members of the Town Council without practically any notice at all, for the words are, that it can be called "upon such notice as having regard to the urgency *shall be practicable.*" A notice of a few hours would be legally sufficient under such a provision. Remembering the character of the buisness to be transacted by the Corporation, I can hardly conceive any business of such urgency that it cannot afford to wait for a period of seven days; and it must not be forgotten that the President is empowered to call *special* meetings whenever he thinks fit. The absence of such a clause in the present Act has never at any time caused any serious inconvenience. While, on the one hand, the occasions for the need of such a provision would arise most rarely, if at all, it is, on the other, if introduced in the Act, liable to be misused for snatching resolutions without sufficient deliberation; and we know that casuistry enables even honest-minded people to permit themselves to indulge in irregular action, when they take a prejudiced or exaggerated view of the importance of some matter. I have also a great dislike to business being transacted without sufficient time for deliberation and understanding. I propose that all that portion of the section which relates to urgency meetings should be struck out, as it is likely to do more mischief than good.

The Honourable Mr. NAYLOR :—Your Excellency,—This is one of several provisions which have been inserted with a view to facilitate the disposal of business, and to enable the Corporation to cope with any contingency which may at any time occur. We have just passed an amendment proposed by the Honourable Mr. Mehta, that ordinary meetings shall be held, once in each calendar month, and it is possible under this provision there may not be a meeting for six or seven weeks. If during that time urgent work should arise, it might be extremely inconvenient that it should have to be put off until the next ordinary meeting. It would be much more practical if, on the requisition of four members of the Standing Committee, the President should be able to call a special meeting for the disposal of such urgent business as is proposed in this clause. I think the supposition that, at a special meeting so called, matters not really urgent might be unexpectedly brought forward and disposed of in the absence of a sufficient number of members is one which this Council can scarcely entertain.

The Honourable the ADVOCATE-GENERAL :—Considering the functions of the Corporation, I cannot conceive a case arising which would necessitate the calling of a meeting with less than seven days' notice. As I find, on reading the report of the Corporation, that they dislike these urgency meetings, and as I find that such is the view of the representatives of the Corporation here, as well as of other citizens whose views have been expressed by the Honourable Mr. Forbes Adam, I think it would be well to accept the amendment.

The Honourable Mr. WEST :—Perhaps I may be allowed to suggest another phase of the question. It may occur that a majority of the Standing Committee were opposed to the proposition to be brought forward—then their influence would counterbalance any attempt to hasty disposal of the business by those who were not so well acquainted with the subject introduced at such urgency meeting.

The Honourable Mr. PHEROZESHAH MEHTA :—But at a meeting called on a requisition of urgency, those members who might be able to understand or deal with the matter properly, might not be able to attend.

The Honourable Mr. WEST :—Would it not be better to substitute three days for six

The Honourable Mr. PHEROZESHAH MEHTA :—Very well, I should have less objection if notice of some reasonable period was given.

The Honourable Mr. WEST :—Mr. Naylor thinks two days sufficient.

The Honourable the ADVOCATE-GENERAL :—Let the clause be amended so as to provide for three days' notice.

This was agreed to, clause (*j*) standing as in the Bill amended by the Select Committee, except that the word 'not' was introduced before the word 'less' in line 108, the words 'three clear' were substituted for the words 'seven', and the words in italics were omitted.

The Honourable Mr. PHEROZESHAH MEHTA moved :—That in section 37, clause (*m*), the following words, having reference to the power of the standing committee or commissioner to bring forward urgent business at a meeting, without notice, be omitted, *viz.*,

in lines 148 to 152, the words which are printed in italics ;

The honourable gentleman remarked :—I have a much stronger objection to this portion of the section than even to that we have just discussed. It gives power to the Commissioner to spring important business on the Corporation *without any notice at all.*

It is not unlikely that the composition of a particular meeting as being favourable to a certain view may become an important element in judging whether a particular matter was of an urgent character or not. And, as I have said before, even honest people allow themselves to be led away by sophistry on occasions. I think it is not fair to the Commissioner to place him in a position of such temptation. All the reasons which I gave for my previous proposal apply to this, only with greater force.

The Honourable the ADVOCATE-GENERAL :—It seems to follow the other as a corollary.

The Honourable Mr. NAYLOR :—The motion, which has just been carried, as regards clause (*j*), appears to me to render the honourable member's consequential amendment in clause (*l*) unnecessary. On this clause I trust that the motion will not be accepted.

The Honourable Mr. WEST :—It has been agreed that urgency meetings shall be called at three days' notice, and this clause merely requires amendment to meet that.

His Excellency the PRESIDENT :—Clause (*l*) ?

The Honourable Mr. PHEROZSHAH MEHTA :—That, your Excellency, is only a technical matter, and will follow (*j*).

The Honourable Mr. WEST :—It seems to follow (*j*), and that has been provided for.

The Honourable Mr. TELANG :—The words must come out.

The Honourable Mr. WEST :—Do you want the words struck out or left in ?

The Honourable Mr. PHEROZESHAH MEHTA :—Struck out.

The Honourable Mr. TELANG :—And at urgency meetings no other business than that which is urgent will be dealt with.

The Honourable Mr. NAYLOR :—Yes, that is so. Then the proposals may be accepted, and the words struck out.

The words in italics in clause (*l*) were accordingly struck out and the amendment as to clause (*m*) withdrawn.

The Honourable Mr. PHEROZESHAH MEHTA :—Then the amendment I propose to clause (*n*) will also drop. Urgency meetings remain subject to three days' notice.

The Honourable Mr. PHEROZESHAH MEHTA then moved to omit from section 37, clause (*m*), in lines 156 to 162 the words "or which is not," &c., down to the end of the clause.

The Honourable Mr. NAYLOR :—It seems to me that this provision is of greater practical utility than the last. It may often happen that the Standing Committee is to meet on the same day as the meeting of the Corporation takes place, and some urgent business may then arise which the Standing Committee may think necessary to bring immediately before the Corporation. It has been suggested that business, which is said to be urgent, but which is not really so, may be kept in hand and brought forward when it is seen that it is likely to be accepted without opposition. I have a better opinion of human nature than to suppose that any such artifice would be resorted to or be permitted by a meeting even if attempted ; but if the honourable member's amendment is not accepted by the Council, as I trust it will not be, I shall then propose the motion No. 1, which stands in my name, which will have the effect of preventing any such thing happening. The proposal which I shall make will be that no such urgent business shall be brought forward unless two-thirds of the members present at the time assent to its being brought forward.

The Honourable the ADVOCATE-GENERAL :—Honourable Mr. Naylor and myself propose amendments having reference to this subject. Honourable Mr. Naylor proposes two-thirds, and I propose three-quarters. I think this shows there is good reason for making a provision of the kind. Perhaps, Honourable Mr. Mehta will make it agree with one of his amendments.

The Honourable Mr. PHEROZESHAH MEHTA :—It must be remembered that, with regard to such business as that to which the Honourable Mr. Naylor has referred, the same practice, which at present exists, can be still followed. A member of the Council, or, for the matter of that, any member of the Corporation can always tack on such business, by giving three days' notice, to *the business of* any meeting already called. Resolutions and recommendations of the Town Council are constantly brought before the Corporation at present in this way. Every needful facility thus exists for the expeditious transaction of business.

The Honourable Mr. WEST :—I think that perhaps it may occur that a majority of the members present at an urgency meeting may not have that amount of special knowledge which the subject requires, yet the Corporation, being composed of high-minded men full of civic patriotism, will not be devoid of common sense, and will know whether a subject is sprung upon them or not, and will be able to circumvent any attempt to hurry through the business. And whether you have three-fourths or two-thirds, they must be credited, at least, with honest intentions. If not consciously competent to deal with the subject they will adjourn.

The Honourable Mr. TELANG :—Without notice you might have even three-quarters of the members present devoid of the special knowledge desirable. It is not necessarily, or even mainly, a question of dishonest intention at all.

The Honourable Mr. PHEROZESHAH MEHTA :—I have asked the Honourable Mr. Naylor to point out any specific case in which such a provision for the disposal of urgent business would be necessary.

The Honourable Mr. NAYLOR :—It would be rather difficult to know where to make enquiries as to whether such cases have occurred—Mr. Ollivant being away, and Mr. Charles comparatively new to the work. The Honourable the Advocate-General's amendment, which requires a majority greater by one-twelfth than mine does, can do no harm, and I beg the Council to accept his proposal instead of mine.

The Honourable Mr. FORBES ADAM :—I think it is a very strong argument in favour of removing the clause altogether.

The Honourable Mr. NAYLOR :—I withdraw my motion as to the two-thirds, and will vote for the Honourable the Advocate-General's three-quarters instead.

The Honourable Mr. PHEROZESHAH MEHTA :—I am unable to drop my amendment in favour of the Honourable the Advocate-General's proposal, as I think it of considerable practical importance. The Advocate-General's proposal would not remove my objections to the clause as it stands. Perhaps I can best explain what I mean by putting a particular case. The quorum as now fixed is 20. A quorum is necessary before business could be commenced, but very frequently a meeting continues to transact business after the attendance of members has dwindled to a very small number—to fifteen and even twelve members. If important business is sprung upon the meeting at such a stage, the

proposed safeguard of the concurrence of three-fourths of the members present might mean only the concurrence of 9 or 10 members. Now I place every confidence in the Corporation as a body acting compactly and deliberately; but after all it must not be forgotten that, like all bodies organized of various materials, the Corporation is a miscellaneous body composed of different elements, and such bodies should never, as far as possible, be unnecessarily placed in a position in which they might be called upon to do business in a hasty or ill-considered manner.

His Excellency the PRESIDENT:—I fear the honourable member places us in a very awkward position. Government is quite prepared to trust the members of the Corporation, whatever be the number of members present, and we are not prepared to believe that they will steal a march on their absent and, perhaps, better-informed colleagues. But the honourable member with his greater experience raises a warning note, and his candour reflects the very greatest credit upon him. I am therefore bound to ask the honourable mover of the Bill whether he will disregard the fear of the honourable member. Government is quite prepared to give the power of that section to such members of the Corporation as may be represented by three-fourths of twenty, trusting that they will not rush through important matters, and that they will only deal with urgent unimportant cases. It is an inherent right in every meeting to decide what business shall be taken subject to a quorum being present.

The Honourable Mr. PHEROZESHAH MEHTA:—I should like, your Excellency, to explain, once for all, the position I take up in this matter. I shall always be foremost in standing up for the collective wisdom and good sense of the Corporation, taken all in all. But I don't feel bound to set it up as an infallible body. I have no doubt that it will be liable to commit blunders now and then, and what I say is that you should not increase the chances of committing blunders by calling upon it to act under unfavourable circumstances, as would assuredly be the case if you afford facilities to a very slender minority to transact business of which no notice has been given.

The Honourable Mr. TELANG:—I may point out that the Corporation themselves object to this portion of the clause.

The Council then divided:—

Ayes.	*Noes.*
The Honourable Pherozeshah Mervanji Mehta.	Lieutenant-General His Royal Highness the Duke of Connaught.
The Honourable F. Forbes Adam.	The Honourable J. B. Richey.
The Honourable Kashinath Trimbak Telang.	The Honourable R. West.
	The Honourable the Advocate-General.
	The Honourable J. R. Naylor.
	The Honourable Ráo Bahádur Mahadev Wasudev Barve.

So the amendment was lost.

The Honourable Mr. NAYLOR:—Then I beg to propose formally the motion No. 1 which stands in my name, three-quarters being substituted for two-thirds, the proposal thus altered being, that at the end of clause (*n*) the following words be added: "pro-

"vided that no such urgent business as aforesaid shall be brought before any meeting "unless at least three-fourths of the councillors present at such meeting, such three- "fourths being not less than fifteen in number, assent to its being brought forward "thereat; "and that in clause (2) after the words 'every question,' the words "other than "the question whether the Standing Committee or the Commissioner shall be permitted "to bring urgent business before a meeting without notice" be added.

This was agreed to.

The Honourable Mr. WEST moved:—That in section 37, clause (*u*), line 275, the following words be inserted after the word "councillor," *viz.*, "and, with the consent of a majority of the councillors present, ascertained by a show of hands, without discussion, may at any time make a statement or explanation of facts."

The honourable gentleman, in introducing the amendment, said:—The clause to which I have given notice of amendment is obviously one which goes to the very centre of the constitutional principles of this Bill, and is a matter of great importance to the Corporation, the Commissioner and the public at large. Your Excellency has considered this matter very carefully, and it has appeared to your Excellency in Council that although on many occasions it may be desirable that the Commissioner should have an opportunity of disclosing to the Corporation the real and existing state of facts when there has been some illusory statement, or at least an erroneous statement put before them, by somebody in possession of a half truth relating to public matters concerning the Corporation, yet it appears undesirable, on full consideration, that he should have the right to interpose his voice as often as he pleases, even in correcting facts, but it is considered it is quite safe to leave it to the discretion of the Council itself, whether or not those facts shall be stated. In constitutional countries, on the Continent especially, a minister in charge of any particular matter, especially matters of finance or administration leading into a discussion of infinite detail, has a right, at any period of the debate, to get up and put the House right on any matter on which he considers it has been misinformed. So that there was a good analogy on which the section, as it now stands, could be based. In the American constitution a different line is adopted—the Secretary, or, as we should name him in England, Home Secretary, or the Foreign Secretary, may give information to Congress when invited to do so by the Congress itself. The Commissioner should have an opportunity of making any explanation of facts, though he should not be in a position to force his explanations upon the Corporation, which might come at the heat of the moment and plunge the body into personal discussions—sometimes rather warm discussions. There is this consideration, that if the Commissioner does get up and happens to run counter, in any way, to the general feeling of the Council on any point, although he has a right to speak, the members have an equal right not to listen, and they may exercise it. Thus instead of any good it may possibly lead to an increase of irritation between the two constituents that the Council represents—taking the Commissioner as representing the practical side and the members the theoretical side. He should, however, have an opportunity, with the assent of the Corporation, of laying statements of facts before them, and in many cases they will desire such statements; but, on the other hand, he should have no authority to force his opinions upon them under the guise of supplying deficiencies or of correction of fact. I am glad of the opportunity of proposing this amendment, which stands in my name. I understand, after conference with Honourable

Mr. Mehta, that if this amendment is adopted, his mind will be satisfied on the subject, and it will follow necessarily that clause (*d*) will have to be expunged.

The Honourable Mr. PHEROZESHAH MEHTA :—I think the Honourable Mr. West's amendment substantially meets the object I had in view in giving notice of my amendments to these clauses (*u* and *v*), which was to restore the position of the Commissioner to what it is under section 43 of the present Act. I have no objection to the limited power of giving an explanation as proposed by the Honourable Mr. West. My only hesitation in the matter arises from the consideration whether the proper place for it is not in the Rules of Procedure of the Corporation. It strikes me that that is its appropriate place, not the Act itself.

The Honourable Mr. WEST :—This matter has been considered lately by me from the very point of view suggested by the honourable member. If in the Act you make no allowance for the Commissioner coming forward to speak in the Council, an objection might be made that you are going beyond the terms of the Act in allowing a stranger to speak. You might just as well make a rule that any one who keeps a shop in Rampart Row shall be permitted to speak.

The Honourable Mr. PHEROZESHAH MEHTA :—I am content to accept the amendment.

The Honourable Mr. WEST's amendment was then adopted, and clause (*v*) expunged.

The Honourable the ADVOCATE-GENERAL proposed :—That in *section* 39, clause (1), line 6, the word *president* be omitted and the word *mayor* inserted, and that throughout the Act the word *mayor* be substituted for the word *president*.

He said :—Your Excellency,—This question is also one about a name. As I have said, even in names it is best to choose the best one, and the substitution I propose of mayor instead of president is, I think, an acceptable one. There was a mayor of Bombay in the last century, but he was superseded by the recorder. Considering the importance of the city of Bombay, I think it only right when its head is called upon to take his part, as Sir Henry Morland had to do, among mayors of English boroughs and the Lord Mayor of the city of London he should enjoy as great dignity as any one of them. In Scotland, of course, they retain the old French word "provost" to describe their mayors; and in France the word "prefect" takes its place. Our mayor might even become Lord Mayor of Bombay, considering the relative importance of the city.

The Honourable Mr. NAYLOR :—This suggestion has come upon us with some surprise. It has not up to now been put forward by any one in Bombay. We all wish to see the head of the Municipality of Bombay enjoying all the dignity which properly appertains to any one in so high a position. But the designation now proposed is one which is not used in India, and one which to strangers would prove misleading. Certain powers are enjoyed by the President of the Corporation, but he does not possess such powers as would properly belong to a Mayor. Looking to the nature and duties of his office, he is certainly much more properly designated President of the Corporation than Mayor. I shall vote against the change.

The Honourable Mr. PHEROZESHAH MEHTA :—I remember when your Lordship came out you anticipated this point by addressing the Chairman of the Corporation as Mayor. (Laughter.)

The Honourable Mr. WEST :—The designation would be inappropriate. The mover has himself furnished an instance that it is not necessary to call him either lord provost,

which would be quite as well as lord mayor, or to give him any other designation. It strikes me that the learned the Honourable the Advocate-General's argument rather tells against himself. He has himself quoted an instance in which the president of the Corporation of Bombay proved that it was not necessary to be either Lord Provost or Lord Mayor, and he has shown that neither designation is necessary to make the position dignified. The designation "mayor" would be entirely misleading, and, therefore, should be rather avoided than accepted.

The Honourable Mr. TELANG :—I was told by an European friend, within the last hour or two, that a mayor would be expected to give various entertainments, which would make the office of mayor a very onerous honour indeed.

The amendment, being put to the vote, was lost.

The Honourable the ADVOCATE-GENERAL moved :—That in *section* 42 after the word *of* in line 2, the words "the mayor and" be inserted, and at the commencement of *section* 44 the words "the President shall be the chairman of" be inserted; that after the word *Committee* in line 2 the word *who* shall be inserted; and that in the remainder of the section the word *deputy* shall be prefixed to the word *chairman* wherever it occurs.

The honourable gentleman said :—My reason for proposing this amendment is that the Standing Committee are simply delegates of the Corporation, whose proper head is the head of the Corporation.

The Honourable Mr. NAYLOR :—Looking at the proposal on its merits I should be inclined to think it will be more fitting for the Standing Committee to appoint their own Chairman, and that the President of the Corporation should continue to be what he always has been—speaker of the assembly, and I can see no advantage which would arise from his being *ex-officio* chairman of the Standing Committee. It would be better for the President of the Corporation to have matters come before him in that capacity, without any previous knowledge as to what had gone on with regard to them in the Standing Committee.

The Honourable Mr. PHEROZESHAH MEHTA :—I attach great importance to the point mentioned by the Honourable the Advocate-General, that the position of the Standing Committee should be emphasised as much as possible. But I am not quite clear as to whether the course he suggests is a desirable one. The functions and qualifications of the Chairman of the Corporation and of that of the Town Council are very different. We elect the Chairman of the Corporation for performing very different functions from those required to be performed by the Chairman of the Town Council. I think it would be preferable to leave the matter to the discretion of the members to elect whom they like.

The Honourable Mr. TELANG :—I take the same view of the matter. I sympathise very much with the Advocate-General's desire to minimize friction between the Corporation and Standing Committee. But there are also weighty considerations on the other side. I think the practice, which obtained some years ago and has been recently revived, is a very good one—that the Chairman of the Town Council should introduce in the Corporation the proposals of the Town Council, and especially those relating to the Budget. This practice will have to be discontinued if the chairman of the two bodies is one and the same person, because the chairman of the Corporation does not ordinarily take part in debates, which also, I think, is a very proper rule.

The Honourable the ADVOCATE-GENERAL :—As men of practical experience of the Corporation do not seem to think my amendment desirable, I ask leave to withdraw it.

The Honourable Mr. PHEROZESHAH MEHTA moved :—That the following be substituted for clause (*g*) of section 49, *viz.* :—

"(*g*) the Standing Committee may from time to time appoint out of their own body such and so many sub-committees consisting of such number of persons, and may refer to such sub-committees, for inquiry and report or for opinion, such subjects connected with the exercise of the powers or the performance of the duties of the Standing Committee under this Act, as they think fit."

The honourable gentleman remarked :—Your Excellency, it will be observed that the amended clause I propose differs from clause *g*, as it stands in this that it does not empower the Standing Committee to delegate its powers of final decision to sub-committees. It can still appoint sub-committees for enquiry, information and report. The powers and functions imposed upon the Standing Committee are such, and it is so constituted that it should proceed to final decision in its full collective capacity. To permit it to entrust them to a sub-committee would be to remove the safeguards which lie in the varied composition of the body so as to bring a sufficient number of different points of view and of interests to bear upon the final decision of a question. I consider it hazardous to allow such powers of final decision to be delegated to small sub-committees, of which the quorums may be still smaller.

The Honourable Mr. NAYLOR :—No amendment has taken me more by surprise than this one. Clause (*g*) as it stands in the original Bill was passed through Select Committee without being in any way challenged. It is simply a reproduction of a section which is in the present Acts, and has been in operation for the last sixteen years. Not only so, but it is a clause of such a nature as finds a place in every enactment of this description. It is always provided that a body may delegate any portion of its duties or powers to a sub-committee, with such instructions and such restrictions as it thinks fit to impose. All the municipal boards in the provinces have this provision in their law and if I am not mistaken, it has been acted upon very largely. The Town Council have not yet, I believe, made use of it, although it has had the power. When the first draft of this Bill was prepared, it was proposed, as has already been stated to the Council, that the executive work of the Municipality should be carried on by sub-committees presided over by the Municipal Commissioner. That proposal was negatived by the Corporation, and has not been carried any further. But this clause will enable the Standing Committee to appoint sub-committees from time to time if they think fit. It may prove necessary in order to carry out the multifarious duties which will hereafter devolve on the Standing Committee to arrange for their discharge by means of such sub-divisions of labour as this clause authorizes.

The Honourable Mr. PHEROZESHAH MEHTA :—The very fact, your Excellency, mentioned by Mr. Naylor is my explanation why this amendment did not suggest itself to me earlier, *viz.*, that a similar provision in the present Acts has always been a dead letter. During the last fifteen years, ever since the present Act has been in operation, the Town Council has never appointed a sub-committee to which it has delegated its powers of final decision on any question, though it has often appointed sub-committees for enquiry and report. So that when I went through the Bill, I did not scan this clause very jealously, under the impression that it did not go beyond the limited interpretation which practice

had put upon it. With regard to there being a similar provision in the Acts concerning municipal bodies in the Mofussil, it must be remembered that their constitutional scheme is radically different from ours; they are bodies possessing executive functions which they can only discharge by means of executive committees. The analogy would only mislead. As to the argument about division of labour, what I object is not division of work, but delegation of responsibility. I do not believe in the division of labour which leads to division in the performance of an obligation or a duty.

The Honourable Mr. TELANG :—I think it is well to remember that there is considerable financial power belonging to the Standing Committee, and I do not think it would be at all desirable to give up to a small committee of that body the power of finally deciding these financial matters. I shall vote against the amendment.

The Honourable Mr. WEST :—I would suggest there is a way in which both views may be met. This section may be allowed to stand with the proviso that the sub-committee's decision be subject to any bye-law which may be drafted by the Corporation. This would be flexible enough to meet any necessity. On the sub-committees you may have experts, whose opinions will be of great value ; and if this bye-law is drafted, it would, I think, satisfy both parties.

The Honourable the ADVOCATE-GENERAL :—Then we will reserve the point for the third reading. It is very probable the change may be made.

The Honourable Mr. WEST :—Seeing what the general feeling here is, it may fairly be anticipated that the amendment will be carried. Mr. Naylor thinks the spirit of the section should be preserved.

Clause (*g*) was thereupon allowed to stand subject to the modification suggested by the Honourable Mr. West.

The further consideration of the Bill was then adjourned till Saturday, the 10th March, at noon, and the Council proceeded with the other business of the day.

The Sind Village Officers' Act Amendment Bill.

The Honourable Mr. RICHEY, in introducing Bill No. 5 of 1887, a Bill to amend the Sind Village Officers' Act, 1887, said :—Your Excellency,—

Mr. Richey moves the first reading of Bill No. 5 of 1887.

It will be remembered that Act IV of 1881 provided for the levying of a cess in the towns of Sind for the payment of village officers out of the funds of this cess. Under the Financial Code, officers payable from local funds have no claim for pension or gratuity from the general revenues. Some of the village officers in Sind were already on pensionary services when this local fund was created, and as they were thereupon payable from the local fund, their pensionary rights became imperilled. This Government laid their case before the Government of India, and they suggested we should amend the Act so as to allow the pensionary claim to fall upon the cess fund. I propose at the same time to provide in the Bill that the cess fund should be chargeable to petty contingencies, incidental on the enlarged establishment under the Act. As the law stood, the authority for the appointment and dismissal of subordinate village officers and defining their duties, was vested in the Commissioner of Sind ; this duty had in practice to be delegated to the collectors or subordinate officers. Provision is also made that rewards may be charged on the cess fund in case of valuable services by police officers. I have to ask the Council to give this Bill a first reading.

Bill read a first time.

The Bill was then read a first time.

The Bill to amend the Bombay Local Boards Act and the Bombay District Municipal Act Amendment Act.

Mr. Richey moves the first reading of Bill No. 1 of 1888.

The Honourable Mr. RICHEY, in moving the first reading of Bill No. 1 of 1888, a Bill to further amend the Bombay Local Boards Act, 1884, and the Bombay District Municipal Act Amendment Act, 1884, said :—

Your Excellency,—Under the provisions of the Bombay Act of 1884 for the appointment of Local Boards, it was necessary for the Collector on the occasion of approaching elections of members of Local Boards to frame two lists under section 20 of that Act—one list showing all persons qualified in a *táluka* to be members of the Local Board, and another list, No. 2, showing groups of the various villages and the number of persons qualified to vote. Then after the lists had been drawn up it was necessary for the Collector to publish them, under section 21, at least two months before the day fixed for the election of members of the Local Boards. Under section 16*b* the date for election has to be not sooner than three months and not later than one month before the elected members take office. Therefore we have after the publication of the lists two months before the date of the election, and the election one month before the members come into office—three months in all before taking office. Now the members elected under the first procedure taken under this Act of 1884 took office for three years. Their office has been expiring during the last few months, and the Collectors have been busy since last rains in preparing these lists and getting them printed and published, and according to the publication of the lists they have to determine the date of election. We have got a report from the Collector of Násik saying he had allowed himself six months before the terms of office of the existing Local Board members would expire, to prepare, and print, and publish his lists before the new members should take office. Out of that time three months went, as I have described under these two sections, that brought him from the 1st of September to the 1st of December. Three months from that date exactly brings him to the time of the expiry of office of the Local Board members, who go out on the 29th of February, to provide for their successors by the 1st of March. When his calculations were made, he thought that the lists could be framed during September and October, and printed in November. They did not, however, come into Násik until the 8th of November, and then there was such an enormous amount of printing matter, that working the press at his disposal night and day he could not get them ready in time to get them out three months before the members should have to take charge. I have asked him to send me details of the actual work to see how far the responsibility for anything dilatory may go. But it seems that the whole difficulty has arisen owing to the inability of the district officers to get the work completed. It appears there are in Násik eleven *tálukás* which form six groups, thus in this one collectorate there are sixty-six different lists of voters, 9,850 members qualified to serve, each of whose claims had to be examined. The preparation of these lists involved 15,124 of printed foolscap sheets of persons qualified to serve on the Local Board, and the sixty-six lists of voters occupying 65,038 foolscap sheets had to be printed. This shows the necessity for amendment of these matters of procedure, and in asking the Council to give the Governor in Council power to allow for such contingencies, by a continuance in office of Boards already constituted, opportunity has been taken also to provide for any similar difficulty

which may arise in Municipal elections. In this particular instance, the machinery we inadequate, and there is a certain degree of risk to which, of course, paper records are liable, which must be provided for. Unless some provision, such as is now proposed, is made, there is a risk of having the elections invalidated in case it is not held on a certain day, or a member has to go out of office and his successor cannot be duly qualified, because some list has been lost by a careless peon, or the press has caught fire. These serious and awkward contingencies should be provided for by allowing members to continue in office between their exit and the entry of the new members. This provision has been anticipated in the case of Násik by an order which at present is *ultra vires*. Therefore, we have inserted a clause to cover it. Whenever the Governor in Council has to exercise this power, we propose that he shall specify his reason for so doing I have to ask your Excellency for the first reading of this Bill.

Bill read a first time

The Bill was then read a first time.

Standing orders suspended and Bill read a second and a third time and passed.

The Honourable Mr. RICHEY then moved that the standing orders should be suspended, in order that the Bill might be read a second and third time at once. The standing orders were accordingly suspended, and the Bill was read a second and third time and passed.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Right Honourable the Governor in Council,

J. J. HEATON,

Acting Secretary to the Council of His Excellency the Governor of Bombay for making Laws and Regulations

Bombay, 7th March 1888.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Bombay on Saturday, the 10th day of March, 1887.

PRESENT:

His Excellency the Right Honourable Lord REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding.*

Lieut.-General His Royal Highness the DUKE OF CONNAUGHT, K.G., K.T., K.P., G.C.I.E., G.C.S.I., G.C.M.G., C.B., A.D.C.

The Honourable J. B. RICHEY, C.S.I.

The Honourable R. WEST.

The Honourable the ADVOCATE GENERAL.

The Honourable KASHINATH TRIMBAK TELANG, C.I.E.

The Honourable F. FORBES ADAM, C.I.E.

The Honourable J. R. NAYLOR.

The Honourable Ráo Bahádur MAHADEV WASUDEV BARVE, C.I.E.

The Honourable PHEROZESHAH MERVANJI MEHTA, M.A.

The City of Bombay Municipal Bill.

Consideration of the City of Bombay Municipal Bill in detail.

The Honourable Mr. Pherozeshah Mehta moved that "sections 56 and 57 be omitted, "together with all references to a Deputy Municipal Commis- "sioner in every other part of the Bill", and said :—Your Excellency,—I beg to propose the omission of all the sections relating to the creation of the new appointment of a Deputy Municipal Commissioner. Though section 56 is in form an empowering section only, it will not be disputed that the provision is made with the view of its being set in motion very soon after the Bill is passed. The burden of proving the necessity for creating such a place lies on those who bring forward the new proposal. It will be remembered that a Deputy Municipal Commissioner is unknown to the Acts of 1872 and 1878. The short Act of 1885, though general in form, was passed only for a temporary and different purpose, and my honourable friend Mr. Telang, who was then on the Council, was distinctly assured that it was passed without prejudice to the full discussion of the question if it was thought desirable to incorporate such a measure in the Municipal Bill which was about to be drafted. The object of that short Act was to enable Mr Ollivant to go out of Bombay on special duty, and it was thought undesirable that during a short absence the direction of municipal affairs should entirely pass into other hands. That object was essentially different from the present one, which is to give the Commissioner a permanent deputy to assist him in the discharge of his duties while he is fully engaged on the work himself. Such a deputy has been utterly unknown to our municipal law, and I confess I am not satisfied with the reasons which have been advanced to justify the new measure. The question has been more than once carefully discussed by the Corporation, and on every occasion it came to the conclusion by large majorities that it was undesir-

able and unnecessary to have a Deputy Municipal Commissioner of the sort now proposed. The sole reason given for providing a deputy is that the work has so increased that a single individual cannot perform it. Now there is a certain haziness about this argument which it were well to bear in mind. I remember the time when such a complaint was first started, but it was in reference not to the legitimate work of the Municipal Commissioner, but with regard to a mass of mechanical and routine work, such as the signing of an enormous number of documents by the Commissioner's own hands, which was legally required to be done by him by the peculiar wording of some of the sections of the Municipal Acts. Up to very recent times that was mainly the complaint. So far as such work was concerned, and a large amount of other work now done by the Commissioner, the Council will remember that the Bill has provided a special and extensive remedy. Section 67 enables the Commissioner to delegate a large portion of his work to subordinate officers, and I will ask the attention of the Council to the long list of sections in respect of which the work can be so delegated. The Commissioner will be thus relieved of an immense amount of work. Now I have asked over and over again for some figures, some statistics, some detailed account of the sudden increase of the work of the Commissioner, not of the sort for which a remedy is already provided, but of work to which he must *legitimately* attend himself; but beyond vague and general assurances no detailed evidence of it has up to the present moment been produced. But assuming for a moment that the work has increased, I deny that the remedy proposed is the right or proper one and in conformity with the constitutional arrangements for the purpose. According to those arrangements the Commissioner is to have deputies for special classes of work, and I believe it was pointed out in the debates on the Bill of 1872 that the Health Officer and the Executive Engineer were Deputy Commissioners for special purposes. If the work has increased in reference to any of the great municipal departments, let that be established, and the departments can be strengthened. The Corporation has always been ready to give such assistance to the Commissioner whenever he showed that there was temporary or permanent need for it. They gave a personal assistant to Mr. Ollivant; they also gave him a special officer to do special work in the re-organization of the Assessment Department. And I have no doubt that if a case for any further assistance was made out, the Corporation would sanction it. But there is no need for a special provision for that purpose, and the proposal to create a general Deputy Commissioner seems to me to be an utterly inappropriate remedy. So far, I have tried to show that the proposal to create a Deputy Commissioner is not proved or justified on the grounds urged for it. But I have a strong objection of a positive character to urge against it. To have a Deputy Municipal Commissioner would be to mar and destroy the integrity of the constitutional principle on which so much stress has always been laid, *viz.* that there shall be a *sole* Municipal Commissioner vested with full executive power and responsibility. The essential part of the principle lies in the executive officer being the sole officer, so that responsibility may unquestionably attach to him. To give him another officer to whom he can make over certain general duties would be certainly to divide that responsibility; and divided responsibility is no responsibility at all. It would thus be a grave infringement of a most important constitutional principle, and I view with alarm all trifling with important constitutional principles. I have also another practical objection to urge against the measure. As the section stands, the appointment is vested in the Governor in Council.

It is not improbable that the place may come to be systematically given to a junior Civilian, who, bearing in mind the salary that is to be attached to it, will consider himself entitled to have a lien on the Commissionership. In his speech on the first reading of the Bill, the late Sir M. Melvill indirectly indicated the position of the Deputy Commissioner as an officer in training for the place of Commissioner. Now the practical result of such an arrangement would be generally to place the Commissionership in the hands of a junior Civilian, when it is admitted that it is of the utmost importance that the place should always be filled by an officer of long standing and great experience. Under the system at present prevailing, the officers who are appointed Municipal Commissioners seldom continue to act for more than two years on an average; several have acted for much shorter periods. At one time the place changed hands about three times in the course of a few weeks. There is therefore every reason to fear that the Commissionership under the present proposal would constantly pass into the hands of a junior Civilian—a contingency the possibility of which is deprecated on all hands. It is for these reasons that I oppose the creation of the new place of Deputy Municipal Commissioner.

The Honourable Mr. NAYLOR:—Your Excellency,—The arguments which the honourable member has addressed to the Council may be divided into two parts—in the first, his arguments are intended to show that there is no necessity for a Deputy Commissioner, and that there never will be any such necessity; and in the second place he argues that such an appointment would clash with the constitutional principles upon which the Bill is based.

With regard to the first statement that the Deputy Commissioner is not needed, I may mention to the Council that it is now three years since I was deputed by Government, in consultation with Mr. Ollivant, to draft this Bill, and during that time I have been associated constantly both with the present Municipal Commissioner and his predecessor, Mr. Ollivant, and if anybody has had an opportunity of learning what the work of the Commissioner amounts to, and what it requires of the person who holds that office, it is I; and I must say that I have been very greatly impressed with the enormous amount of work which devolves upon him. In the first place, he is the responsible executive officer of the Municipality, and a very large amount of outdoor work falls upon him in the way of inspection, of ascertaining local wants and of hearing complaints, both against municipal officers and with respect to demands for sanitary repairs and improvements. Bombay, honourable gentlemen are well aware, is a very large city, and the distances in it are very considerable. If, therefore, the Commissioner has to rise in the morning and go to the other end of the city towards Máhím or Parel and inspect anything going on there he has a long journey to make before he gets to the spot. The inspection of two or three places in a morning takes up considerable time, and if he does his work with anything like thoroughness he cannot be back home before 10 or 11 o'clock, and by that time may well be fairly exhausted. Having performed this portion of his duty, he is not immediately fit for indoor duty. Were outdoor occupation even confined to the mornings, there would be less difficulty in finding leisure for office work; but I understand it is frequently desirable that he should go morning and evening to inspect works. Having reached his office as soon as may be after the outdoor work of the morning is over and the body has been refreshed, the Commissioner has frequent calls upon him for consultations with heads of departments concerning works—important works going on inside and outside of the city; consultations with his solicitors—the municipal solicitors—regarding cases for Civil or Criminal Courts which have to be heard; consultations with gentlemen from outside, who come with com-

plaints and applications of all sorts and descriptions; consultations with members of the Corporation and Town Council, who come to him seeking information; in addition to all which, on one afternoon a week there is a meeting of the Town Council, at which, if it is not absolutely necessary, it is at least extremely desirable that he should be present. Then, also, as we have been told, there are meetings of the Corporation which now-a-days are becoming extremely frequent, their average number being something like two per week. Though it is not absolutely necessary for him to attend them, yet his presence is very much to the interest of the Corporation. As a matter of fact, both the present Commissioner and his predecessor have made a point of being present at them whenever possible. After all these duties are completed, there still remains what I may term the office work,—and gentlemen who have any experience of such work can very well imagine what an amount of it there must be in connection with such a very large concern as the Municipality of this city. Now I am not prepared to say, or to give figures, to show how the work of the Municipal Commissioner has increased of late years. But if honourable members will reflect how rapid has been the increase of the city, it must be patent to them that the increase of work has been very great indeed. The population has greatly increased. The care and closeness with which the members of the Corporation as a body inquire into matters affecting municipal government is, I am happy to state, very much on the increase. The works which are now under construction are on a scale and of a number which in past years have had no parallel whatever. Thus in many ways it is obvious to any one who thinks over the matter that the work of the present must be very considerably greater than it was ten or fifteen years ago. And to all these arguments I can add, as I said at the beginning, my own personal impression that the work of the office at this present moment is far beyond the powers of endurance especially in a trying climate like that of Bombay, of any ordinary individual. I am quite prepared to admit that in the altered circumstances which will obtain when this Bill comes into operation, the work of the Municipal Commissioner may become less, and the demands upon him personally may be decreased; but that is a small chance to look forward to. There are indeed very many reasons for thinking that the work will not decrease, but rather go on increasing. But whatever may be in the future, I think I have shown sufficient reasons for holding that it is at least very probable that on some future occasion, and perhaps not a very distant occasion, not merely the Government, but the Corporation also, will be satisfied that the work devolving upon the Commissioner is greater than can reasonably or fairly be expected of one person.

In supporting section 56, which provides for the appointment of a Deputy Commissioner, it is not necessary for me to establish that a Deputy Commissioner is actually needed at present or ever will be needed. All that it is necessary for me to establish is that it is very possible that such an officer may be needed, and I think the facts I have adduced are more than sufficient to establish such a possibility. I think, moreover, that I have established not only the possibility but the probability—a considerable probability —that such an officer will be needed. The section, as it stands, does not say that such an officer is necessary, or will ever be necessary; but it empowers the Governor in Council—if, after consulting the Corporation and the Commissioner, he shall at any time consider that such an addition to the strength of the Municipal Executive is requisite, to supply the necessary addition. It is a cautious provision which provides for a contingency which may arise, and in my opinion, is likely to arise.

Possibly the Governor in Council may never be persuaded that the appointment of such an officer is necessary for the ordinary execution of the duties of the Municipal Commissioner. But even if this be so, this section will still be useful in that it will enable the Governor in Council to provide temporarily, as he did a year or two ago, for the appointment of a Deputy Municipal Commissioner during the absence of the Commissioner on special duty. On the occasion to which I refer the Corporation were desirous that the Municipal Commissioner should be relieved for a time from his ordinary duties, and have power to depute them to a gentleman who was specially appointed for the purpose, who should exercise them under the control and supervision of the Commissioner. For this purpose a special Act was passed and the Commissioner, Mr. Ollivant, repaired to Poona and there in consultation with myself prepared this Municipal Bill. Perhaps the Corporation may not again feel inclined to trust the Municipal Commissioner on such another special errand, but it is conceivable that other occasions may arise when they may desire their Commissioner to be relieved from his ordinary duties to consult with the authorities on some large engineering scheme which Government may have in view—or some other matter in which the Corporation may be interested If any such occasion should arise, here is the machinery by which it may be provided for. On this ground also I ask the Council to accept the proposals embodied in these two sections.

With regard to the second argument of the Honourable Mr Mehta—namely, that the appointment of a Deputy Commissioner will be objectionable on the ground that it cuts at the root of the theory on which the Municipal Commissioner exists, that he is to be the sole executive officer and should be vested with sole responsibility—I would reply that to my mind the appointment of a Deputy Commissioner cannot in any way affect the position of the Municipal Commissioner towards the Corporation. Whether the Commissioner be aided by an assistant in each department supplied by the votes of the Corporation, as the honourable gentleman suggested at the second reading, or by a Deputy Commissioner appointed by the Governor in Council under this section, the responsibility of the Commissioner for the carrying out of the executive work of the Municipality will remain precisely the same. An assistant would act under the orders of the Commissioner, obeying his behests, receiving special and general orders from the Commissioner, and the Commissioner would be responsible for his assistant's acts done under his instructions. The proposed Deputy Commissioner is to be subordinate to the Commissioner and subject to his general directions, that is to say, that the Deputy Commissioner is not to strike out a line of his own, but to look for his instructions to the Commissioner and to carry them out and to give effect to the orders and policy of his chief. If those orders and policy are wrong the responsible person will be the Commissioner. I think there is no difference, and can be no difference, between the position of the Deputy Commissioner and one or more assistants appointed by the Corporation, as far as regards the responsibility of the Commissioner; but there will be a very considerable and important difference in another respect. The officers whom the Corporation may appoint, or whose appointment the Corporation may sanction, will be officers of the same class as all the Commissioner's assistants are—officers receiving a salary of from Rs. 300 to Rs. 500, whereas the officer who, as we propose, may be appointed under section 56, is to receive a monthly salary not exceeding Rs. 1,500 and not less than Rs. 1,200, as Government shall determine. The object of having such a man is that he may be one with previous experience and of

high standing, one fit and capable of taking part with the Commissioner in the exercise of the powers and the performance of the duties of that authority.

Then as regards the remark that was dropped by the late Sir Maxwell Melvill to the effect that the Deputy Commissioner would be a young officer in training for the Commissionership. That was a thought which occurred to Sir Maxwell Melvill at the time, and I think not unnaturally. It is the one complaint I have heard against the appointment of the Commissioner, that he is usually brought from the provinces without any previous knowledge of Bombay or of the special class of work which will devolve upon him in his new appointment; and that, consequently, he is for some time engaged at the expense of the Corporation in learning his work. This objection I have heard made against the present system, and it is one which it must be admitted has some force. If, however, it should hereafter prove necessary to appoint a permanent Deputy Commissioner, then if that officer turns out to be apt at his duties and one worthy of promotion to the position, I cannot say that the Governor in Council would exercise an unwise discretion in appointing him, after he had obtained sufficient experience in the lower grade of Deputy Commissioner. There is nothing in the Bill which will lead the Deputy Commissioner to think that he is in training for the Commissionership, or that he will have a vested right to succeed to that office. The Governor in Council, in exercise of his discretion, will look to the fitness of individual claimants, as he always has done hitherto, and appoint the one who is best qualified.

I cannot think that any of the grounds which the Honourable Mr. Mehta has brought forward are of sufficient force to induce this Council to approve of the omission of these sections and thereby to deprive the Governor in Council of the power, whenever the necessity arises, of supplementing the *personnel* of the executive branch of the Municipality.

The Honourable Mr. FORBES ADAM :—Your Excellency,—After the very able and clear way in which the arguments of one side and the other have been stated by the Honourable Mr. Mehta and the Honourable Mr. Naylor, I will not take up the time of the Council at any length. But after listening to Mr. Naylor there are one or two points which I would like to lay before the Council. Mr. Naylor told us of the work which falls upon the Commissioner, and specified several minor details. He also spoke of the very large and important works which are now going on, on a larger scale than was ever known before in the history of Bombay. But, Your Excellency, I do not think these large and important works, which it appears to me must necessarily occupy a large portion of the Municipal Commissioner's time requiring a great deal of thought and attention, are likely to increase. I should rather take the opposite view and say that they would most probably diminish in a year or two. Bombay by this large water scheme at Tansa Lake will have secured a sufficient supply for an immeasurable period, and a large drainage scheme has been thought out and will be completed in the course of a few years. There are other important matters of a similar nature which, in a certain time, will come to an end. Therefore, the great works will no doubt cease to trouble the Commissioner, and if I might criticise what Mr. Naylor has said, it does not seem to me that his arguments show any strong reasons why the care of minor works and the labor connected with the superintendence of large works when completed and in operation should not be properly and fitly deputed by the Commissioner to assistants in contradistinction to a deputy. It seems to me—and I speak with experience, if one may compare small things with great, in con-

nection with a large business firm—that it is quite possible that the Municipal Commissioner should depute a very great part of his day's work and his inspection work to subordinates and thus save a great deal of time. I am sure the Corporation will never grudge the necessary assistance. I do not say that the honourable gentleman has overstated the amount of work devolving upon the Municipal Commissioner. I have had the privilege of the acquaintance of both Mr. Ollivant and the present Commissioner, and I know that both these are diligent and efficient officers who are required to work hard. Still I think it quite possible for them to depute a certain quantity of work, to enable them to accomplish the duties required of them, without overburdening or overtaxing themselves. I don't think it desirable that an important officer should be overburdened in this climate. He should have time for daily recreation, but he should so depute his work to competent subordinates that he shall not be so overburdened. What the Honourable Mr. Mehta has said in regard to the appointment of a deputy possibly interfering with the constitution and uniformity of the Bill I don't wish to speak about. What I would like to lay stress upon is that I do not see, having very carefully listened to the remarks of the Honourable Mr. Naylor, the necessity, so far as the work of the Municipal Commissioner is concerned, for the appointment of a Deputy Municipal Commissioner.

The Honourable Mr. WEST:—Your Excellency,—When I first took this Bill into consideration my opinion was not in favour of the proposal that it should be open to the Governor in Council to appoint a Deputy Commissioner. I was not so well acquainted then as I am now with the actual business devolving upon the Municipal Commissioner, and I must confess that on a fuller study of the subject I think the power should vest in the Government subject to the conditions and qualifications specified in section 56. It appears to be admitted by the Honourable Mr. Forbes Adam that the Commissioner has a very heavy task. The Honourable Mr. Mehta has partly suggested that the work is not so heavy as is generally thought, but if it is, he says,—so I understand him,—that the Commissioner may relieve himself of it by a practical delegation, under the law as it stands, by handing over minor or less important duties to existing subordinates or subordinates who could be appointed for a particular purpose by the Corporation. This is the way in which the Honourable Mr. Mehta thinks the Commissioner could be sufficiently relieved. Under the Act, as it stands, there is in section 67 provision made for the delegation of duties or the dispersion of the work of the Commissioner to a certain extent to his subordinates. That section, if honourable members will look at it, is a reproduction in great part of the existing provisions of the Acts now in force. The Commissioner can disperse his functions of the lower kinds among some of his subordinates, yet in spite of that the Commissioner, who is a most industrious and hardworking official, declares that what remains is too much for one person. The Honourable Mr. Forbes Adam has said in reply to the suggestion made by the Honourable Mr. Naylor on the subject of important public works that it is to be expected that when the Tansa scheme is carried out and the drainage scheme completed, the work will very considerably diminish. That is a fancy with which legislators in every age are deluded. We are always putting before ourselves the idea that by and bye our work will be accomplished, and that we shall be able to take matters very easily. But that time in my experience has never arrived, and I doubt whether it ever will arrive, or at least, not before human progress has lapsed into a state of decay. It is inevitable in a great and growing community like this that the wants of people will

increase, as their horizon widens and their ideas rise upwards. Thus I venture to speak in a prophetic strain, as I anticipate that whilst intelligence is growing the wants and desires of the people grow, and the Corporation will find that other great works will become necessary. Thus the work of the Municipal Commissioner of Bombay is not likely to diminish; for, even if it do not greatly increase, the work entailed by the large schemes at present under construction will be great. Though the constructive part will be over, surely the administration will not be at an end. It is necessary, I think, that the power, if we are not to have fresh and odious legislation on municipal matters every year, should be in the hands of the Governor in Council to appoint a deputy when the necessity becomes evident. The Corporation is not likely to receive the proposal, if one is made to it on this point, in absolute silence, and if there be good reason why he should not be appointed, the Corporation, to judge from the past, will not be ashamed to state what that reason is. A love of patronage, nepotism as it is called, cannot be urged against Government. I hold that Government should not and would not appoint without the full assent of the Corporation, or such overwhelmingly good reasons for making the appointment, that it may be properly and fairly made in the public interest, even though the Corporation at the time should not desire it. In the clause about consulting the Council, I find, are some words I would see omitted. I do not see why the Commissioner should be a balance against the Corporation in this way, and I think the words are entirely superfluous. The Governor in Council ought to consult any one who he thinks can give him the advice necessary, and since he cannot be prevented from asking questions he should be under no compulsion to consult the Commissioner on such an occasion. The words to my mind are not desirable and should be omitted. It has been said that an assistant would do the work equally well. Be it so, but whether you call the gentleman assistant or whether you call him deputy, the real point is what are the functions he has to perform. Is it desirable that besides the deputation which exists under section 67 there should be a further deputation? Now it has been found that the duties of the Commissioner are of such a character that they cannot well be delegated to officers of comparatively low rank. It is desirable, therefore, that the possibility should exist of the Commissioner having, when the occasion arises, the assistance of a gentleman of nearly his own social and official status, inferior to him only in comparative jumority. If the deputation is to be made to that gentleman I cannot at all see how the Commissioner's responsibility would therefore necessarily be divided or in any way impaired. If gentlemen are familiar with the sections of the old Bombay Regulations, they will find in Regulation 16 of 1827 that the juniors attached to Collectors are called assistants. A Collector might depute to his assistant such duties as he might think fit, and as a matter of fact the Collector did depute, and does still, under the altered circumstances, certain portion of his district work. Yet, when it leads to an action in the Courts, the Collector's responsibility remains undivided. He is made responsible, and so it would be, I take it, with the Commissioner. In section 57 I would suggest we make a verbal alteration, say "subject to his orders." With this addition, I think no sound objection can be raised to the clause as it stands. Then, under section 57, the appointment will always be subject to consultation with the Corporation. There will be no real fear that the powers of appointment of a deputy will be seriously abused. It is desirable, in my opinion, that the Municipal Commissioner of Bombay should not be an official worked to death or anything like it. When one considers the very great importance of the functions he has to perform, the necessity for a wise forecast in many instances, the desirability of

considering with great care and with a fair balance of mind the systems which are worked in other countries and other cities, from which valuable hints may be derived, and which may save this Corporation many lákhs of rupees,—I think it is necessary, from a purely intellectual point of view, that the Commissioner should be a man having some leisure. It is desirable he should have leisure, for excess of work produces irritability. I see that the Honourable Mr. Telang smiles at that. I hope not from the result of any intercourse with former Judges of the High Court. But he knows that it produces a degree of irritability which is not favourable to courteous and kindly intercourse. The Commissioner, being an officer who must be in personal communication with many people, should be of a patient and kindly disposition, or the citizens of Bombay and the members of the Corporation might discover the truth of what I say—that if overworked the gentleman with whom they sought interview might not give their business that calm and courteous consideration they would like. The result might indeed be a general obstruction of public business. Therefore, I do not think we should say "here is a gentleman very well paid; let us get out of him everything we can; he shall not have an assistant. If he does, it shall be an assistant of comparatively low rank, who shall only give him help in small details, leaving all important matters to the Commissioner's individual management" I would remark with reference to one other point on which the Honourable Mr. Mehta dwelt, and which he says is worthy of consideration, I cannot say that I have been convinced by his argument. He seems to think that the officer who is appointed Deputy Commissioner will look forward to succeeding to the Commissioner, and that such promotion would be expected. The Act does not contemplate this. The deputy may be an excellent officer, and if he shows himself, after having been in office for a certain time, particularly well qualified to be Commissioner, then I ask why should he not be appointed Commissioner. He is the very man who should be. But, on the other hand, if he shows that he is not so qualified he will not be promoted. As to his being a junior civilian, I can assure Mr. Mehta that, on the salary contemplated, it would be possible to obtain at this moment several gentlemen of pretty well established competence who are senior in the ranks of the service to the position occupied by Mr. Ollivant when he was directly appointed Municipal Commissioner. Therefore, it is not likely that the Corporation or the community will be saddled with some young gentleman who is put here to swallow up their funds and simply learn his work. It is not necessary that he should be a member of the Government Civil Service at all. It is quite possible that he may be found in another class altogether, a man who may occupy a comparatively lower position, who may have a moral claim to promotion, and, looking at the subject from that point of view, it also seems to be fitting that the power should rest in the hands of the Governor in Council with the safeguards which the Act provides.

The Honourable Mr. RICHEY:—Your Excellency,—The honourable mover of this amendment, in the opening of his speech, said he sought for some figures or facts in support of the case put forward for an assistant to the Municipal Commissioner. Well, that seems to me very natural. Probably, more might be done to satisfy the honourable member. Such hasty inquiries, as I have been able to make since this point was introduced, have given me some data which may be interesting to the Council. I think you may take it that an executive officer's duties are very much in proportion to the amount of money he has to spend. We know that the superior executive of the Municipality has not increased since the Act of 1872, and in that Act, as the Honourable Mr. West has pointed out, there is a provision which is contained in the present Bill for the dispersion

of certain minor duties among subordinates. Since the enactment of 1872, the current income of the Municipality has increased from something under 30 lákhs to 49 lákhs. That seems to me to speak almost without admitting of an answer as to the enormous increase of the duties and responsibilities of the chief of the executive. Besides the current revenue there is a very large expenditure going on in loan works, which involves an immense amount of correspondence and harassing references. With regard to what the Honourable Mr. Forbes Adam said, that when these works were finished they would then cause the Commissioner a decrease of work, the Honourable Mr. West has answered this. Besides the continuation and growth of work which we must look for, as the Honourable Mr. West has said in this community, the specific works themselves leave a permanent legacy of duties. You cannot throw two or three millions into a big work, and imagine it will not be represented by any additional labour. These great works will not perform their own functions of administration automatically. They will involve an enormous amount of additional financial and administrative work. Houses are increasing, and applications for building sites have grown to the rate of 1,000 per annum from about 400, when Mr. Ollivant assumed the office. With reference to the correspondence carried on in the Municipal Commissioner's office, I have received a note showing that in the Commissioner's personal office this correspondence has increased as follows:—In 1876 the inward letters were 7,867; in 1880, 14,029; in the present year 1887-88, up to the 9th of March, 18,036. The outward letters have increased from 8,492 in 1876 to 18,000. Well, now, I quite agree with the remark made by the Honourable Mr. Forbes Adam that it is very probable the Municipal Commissioner would be able to get his detailed and minute work brought up in a better form and despatch it better. Some internal improvements might be decided on, but where the officer is overworked it is not possible for him to devote any attention to the improvement of the internal economy of his office. I appeal to Your Excellency and my honourable colleagues whether in our experience we have any time to find out methods for reducing work. Current work being at a maximum, it is impossible to find leisure to produce a scheme, with this object in view. During late years in India we have had a change from personal government to government by law, and between 1865 and 1872 was a period of strong personal government. But government by legal methods has grown and is yearly growing with the spirit of independence and the readiness with which our people realise their rights and resent any encroachment upon them. The facilities they have of getting their petitions and complaints heard will demand more and more care in procedure and will require more and more method necessitating increased correspondence and greater work of responsibility. The figures I have given you ought to satisfy the honourable mover of the amendment that there are sufficient facts and figures if they could be carefully elaborated to support the case put forward in this Bill.

The Honourable Mr. TELANG:—I must make a confession similar to that made by the Honourable Mr. West, namely, that I formed an opinion at first somewhat different from the one I hold now. But the change with me has been in an opposite sense to that of the honourable gentleman. When I first sent in my proposals to the honourable mover, the only suggestion I made was the one I brought forward at the first reading of this Bill, *viz.* that the power of appointing to the office of Deputy Commissioner should be vested in the Corporation and not the Governor in Council. Since then I have come to the conclusion that it is not in the interests of the Municipality even to create this new office, and for the reason that there is in the other sections of the Bill ample provision made for meeting the

difficulties. I feel myself to be in perfect sympathy with what has been said by the Honourable Mr. West and the Honourable Mr. Richey as to the necessity of a high officer like the Municipal Commissioner not having his hands too full of current work, and having ample leisure not only for his health's sake, but also for the purpose of enabling him to take a general and comprehensive view of matters elsewhere such as will enable him to adapt them to the working of the system in Bombay. But it seems to me that we have not to look at section 67 alone though even in that section there are not only, as the Honourable Mr. West pointed out, many provisions of the present Act re-enacted, but also a considerable number of provisions enacted for the first time, by which the Commissioner can transfer some of his work to others, and we must also look at section 79 under which provision is made for the Commissioner getting all such assistance as he can require. And I point to that section because with reference to the statement concerning the great amount of work in the Municipal Commissioner's office, I am not satisfied that it is work which is necessarily required to be done by the Commissioner or a Deputy Commissioner. I must confess speaking with great respect of the argument of the Honourable Mr. West in reply to the Honourable Mr. Forbes Adam, that he did not convince me that the argument used by Mr. Forbes Adam was wrong. I know that Bombay is not yet, if I may so say, like an extinct volcano, and that there will be plenty of work for the Municipality to do in future. But I repeat I am not sure that it will be the sort of work for which an officer of the kind suggested by Mr West would be required. Though with the growing intellectual capacity of the people the result may be as the Honourable Mr West predicts, and work may increase, still the probabilities are that the work will, for the most part, be such as can be done by officers of the sort contemplated in section 79. Again as to responsibility I quite agree that we have to look at moral responsibility, not merely technical responsibility. But in view of section 57 (2) (*b*), I think the moral responsibility will in effect be shifted when powers and duties are deputed to the deputy. I would make one further remark. The Honourable Mr. West proposes to change the words "subject to general direction" to "subject to the orders of the Commissioner" The effect of this would be that the officer appointed under section 79 would be quite as good as one appointed under section 56, and it is much better he should be appointed under section 79, the Municipal Commissioner passing off his own shoulders whatever was sufficiently unimportant to be entrusted to his subordinate, retaining to himself only such duties as require the attention of a more experienced and qualified officer. On the whole I am of opinion that this office should not be created. The Corporation does not want it, and has said so over and over again, and I do not see why we should say that such an officer should be appointed.

The Council divided:—

Ayes.	*Noes.*
Lieut.-General H. R. H. The Duke of Connaught.	The Honourable J. B. Richey.
The Honourable Kashinath Trimbak Telang.	The Honourable R. West.
The Honourable F. Forbes Adam.	The Honourable J. R. Naylor.
The Honourable Pherozeshah Mervanji Mehta.	The Honourable Mahadev Wasudev Barve.

The amendment was lost on His Excellency the President's giving his casting vote against it.

The Honourable Mr TELANG moved that in section 56 the words "Governor in" in line 1 of that section, and the words in italics in lines 6 and 7 be omitted; and that in line 8 the word "it" be substituted for the word "him".

The honourable member in moving the amendment said :—I have a double proposal to make here, either that the appointment of a Deputy Commissioner be made by the Corporation, or that, if the power be retained by the Governor in Council, such power should not be exercised except on the application of the Corporation. There is one point, in addition to what has been said in the course of the previous debate, which I should here mention. It seems to me that the Governor in Council, however well-informed in reference to municipal matters, must necessarily be, I say it with all respect, much less well-informed than the Corporation. And it appears to me that it is not enough that the Government should merely "consult" the Corporation on the subject, but it is necessary at least that it should only exercise the power on the application of the Corporation. I myself am prepared to go further. I think that the Corporation should itself make the appointment. The Executive Engineer and the Chief Officer of the Health Department are both appointed by the Corporation subject to confirmation by Government, and I do not see why the Deputy Municipal Commissioner should stand on a different footing than the other two officers. I may, as the matter has been incidentally referred to, at once disclaim any intention of imputing to the Governor in Council or any one else any love of patronage or nepotism in this matter. But it seems to me that the proper authority for making such an appointment as is now under consideration is the Corporation, who should know the exact purpose for which the officer is required and for which he ought to be appointed.

The Honourable Mr. NAYLOR :—Your Excellency,—The effect of the proposal the honourable member now makes is, that the appointment, when necessary, shall be made not by the Governor in Council, but by the Corporation. To that proposal my answer is that if it is right, as this Bill asserts it is, and as it is generally admitted to be that the Commissioner should be the nominee of Government, it appears to me we cannot draw any distinction between the grounds which affect the Commissioner's appointment and the grounds which affect his deputy's appointment. The two officers would virtually be one officer divided into two, the one assisting the other. The same reasons which render it expedient for the Commissioner to be appointed by Government apply to the deputy. One great argument in favour of the appointment by Government is that the section contemplates that the appointment shall usually be a temporary one merely, and that Government, having at their disposal a large number of officers in the several branches of service, are at all times able to select a competent person for such a post even temporarily, and when the term of such person's appointment has expired, Government are able also, without any loss to him or the Corporation, to transfer him again to his proper position in the Government service. This is a convenience which the Corporation does not and cannot possess, and one which points strongly in favour of the appointment being made by Government.

The Honourable the ADVOCATE-GENERAL :—I was unable on the last amendment to come to any decided conclusion. I am not in the same difficulty with regard to this proposal. Of course it may be said that I am not a very fair judge of the matter as I am prepared to let the Corporation appoint the Commissioner himself; but apart from this I cannot

...ent by Government is in accordance with the ... he head of the executive is to be appointed by ... by the Corporation. It is not long since the Health ... Engineer were appointed by Government; and the present tendency is ... such powers to the Corporation. If it be only necessary to appoint a Deputy ...ssioner for a temporary period, I see no reason why a Government servant should ...ppointed at all. I shall vote for the amendment.

The Honourable Mr WEST.—Your Excellency,—It appears to me that the arguments advanced in favour of the Deputy Commissioner being appointed by the Corporation are really arguments for the appointment of the Commissioner by the Corporation. It is said they would know better what they wanted. The two officers are so intimately connected that it seems to me it would be a serious mistake were they not both appointed by Government. If it were not so, differences of opinion and friction might be the result. For the Deputy Commissioner who would be a man having the greatest influence with the members of the Corporation would thus hold his head quite as high as the Commissioner whose subordinate he is supposed to be. The American constitution furnishes us with almost an exact analogy. The heads of the different departments of the United States hold positions in which they may be invited and they are frequently invited to bring statements before Congress. But the President may dismiss his Secretaries of State and it is therefore improbable that they will venture to make any statement unpalatable to the President. I do not say that the section here ought to make similar provision in the case of the Commissioner. But if the amendment were carried there would be occasions when the deputy would be opposed to his superior. There would be divided councils and general obstruction of business. These considerations alone are enough to show that the Deputy Commissioner ought to be appointed by the Governor in Council. I think the arguments of the Honourable Mr. Naylor in favour of his appointment by Government should weigh very powerfully. If the Deputy Commissioner is made an officer with an independent status, as he would inevitably be, we should have public work obstructed and the interests of the city sacrificed.

The Honourable Mr. PHEROZESHAH MEHTA:—Your Excellency,—There are two questions involved in the Honourable Mr. Telang's amendment, firstly as to who should be the judge of the necessity for the appointment, and secondly, who should make the appointment when necessary. With regard to the first point, I take it that the Corporation who must be practically and intimately acquainted with municipal work are in a better position to judge of the necessity than Government who would have to act upon other peoples' statements, and are perhaps liable to be influenced by those of the Commissioner who would be personally interested in the matter. As to the second point, the arguments of the Honourable Mr. West against vesting the appointment in the Corporation are refuted by actual experience. The Health Officer and the Executive Engineer are officers entirely subordinate to the Commissioner. Yet, ever since the passing of the Act of 1872, their appointment has been vested in the Corporation, and it is well known that there has not been the slightest break of harmony between these officers and the Commissioner. I think this is a complete answer to the apprehensions entertained by the Honourable Mr. West.

The Council divided :—

Ayes.

The Honourable the Advocate General.
The Honourable Káshináth Trimbak Telang.
The Honourable F. Forbes Adam.
The Honourable Ráo Bahádur Mahadev Wasudev Barve.
The Honourable Pherozeshah Mervanji Mehta.

Lieutenant-General ... the Duke of Connaught.
The Honourable J. B. Richey.
The Honourable R. West.
The Honourable J. R. Naylor.

So the amendment was carried. The Honourable Member's alternative amendment that in the event of the last proposal not being carried, the words "on the application of the Corporation" be substituted for the words "after consulting the Corporation and the Commissioner" in lines 6 and 7 of section 56, was therefore dropped.

The Honourable the ADVOCATE GENERAL suggested that, as in the case of the Health Officer and Executive Engineer, the words should be added "subject to the sanction of Government."

The Honourable Mr. TELANG :—Certainly; that is entirely in consonance with my view.

This suggestion was accordingly adopted.

The Honourable Mr. WEST :—And I would suggest as a further alteration that the word "orders" be substituted for "general direction." It seems to me more necessary in that shape than in the one in which it now appears.

The Honourable the ADVOCATE GENERAL :—Yes; several minor alterations will be now necessary.

This suggestion was also adopted.

The Honourable the ADVOCATE GENERAL moved that in *section* 58 (*2*) after the word *time* in line 2 the words "with the sanction of the Council" be inserted; and that the words "with the sanction of the Council" in line 21 be omitted.

The honourable gentleman in introducing his amendment said :—I think it only fair that the Corporation, whose officer the Municipal Commissioner is, should give their sanction before he takes up any work other than the work for which he is specially nominated. I admit, as the Honourable Mr. Forbes Adam said in his speech on the second reading, that the duties falling on an additional member of your Excellency's Council are not very onerous. But there are times when we know it might cut very seriously into our own work, especially when the meetings of the Council are held at a place outside Bombay. As the Honourable Mr. Naylor urged, we should be careful about overburdening the Municipal Commissioner; and I think therefore we ought not to entail additional duties upon him, which may take him away from Bombay without the consent of the Corporation. The office of Port Trustee is one which must occupy much of the Commissioner's time. For these reasons I propose the amendment.

The Honourable Mr. NAYLOR :—Your Excellency,—The arguments of the Honourable the Advocate General admit of a very simple and a very natural answer This section has

excited a discussion which I certainly did not anticipate when I inserted it. For its insertion I am entirely responsible, and my reasons for inserting it were simply these, *viz.* as regards clause (*a*), because I found a similar provision in the Calcutta Municipal Act; as regards clause (*b*), because, as a matter of fact, the Municipal Commissioner has hitherto, I believe, always been a Port Trustee; and as regards clause (*c*), because it seemed desirable, in the interests alike of the Corporation and of the public, to provide for the Commissioner's occasionally being a member of such committees as are therein described. The rider which the Honourable the Advocate General now proposes to add at the end of the second line would have the effect of limiting the power of His Excellency the Governor to select for the position of a member of this Council any person whom he thinks worthy of that honour. I think it would be unbecoming that anything should be enacted by this legislature which should subject His Excellency to have to ask the sanction of the Corporation or of any body or person before selecting any gentleman to be the recipient of the honour of being one of his Council. As to clause (*b*) the appointment of a trustee of the Port of Bombay is a post which has been held by the Municipal Commissioner for some years, and I am bound to say that before the last sitting of the Council I had never heard any suggestion to the effect that his presence on that Board has not been extremely useful and valuable As it is a point upon which opinions apparently differ, I, of course, cannot continue to hold the opinion which I held up to Wednesday last, that it is admittedly desirable in the interests of all concerned that he should be a member of the Board. At the same time, although opinions differ as to the desirability of the Commissioner being upon the Board of trustees, it is not at all improbable that from time to time his presence on that Board will be thought by the Governor in Council to be useful, and as the Port Trust Act vests in the Governor in Council the power to select and appoint fit persons to be trustees, it would, I think, be inconsistent for the Council, by this Bill, in any way to restrict His Excellency's free choice.

The Honourable Mr. FORBES ADAM:—Your Excellency,—In regard to the section now being discussed by the Council, I occupied the attention of honourable members on the second reading at some length and do not now wish to go over the matter again, but I would like to say a word or two as to the remarks which fell from the Honourable Mr. Naylor. First, as to the Commissioner being appointed as a member of your Excellency's Council, and second as to being appointed a member of the Board of trustees for the Port of Bombay. If the amendment which has been suggested by the Honourable the Advocate General is carried it would simply work in this way—that the Municipal Commissioner would be put in the same position as many other gentlemen at present in Bombay whom possibly at one time or another your Excellency would wisely select for the honour of taking a seat on the Council. There are many gentlemen upon whom your Excellency's choice might fitly fall who would require to get the sanction or approval of some one else. That is I think how the amendment would work. As regards the Commissioner being a member of the trustees of the Port of Bombay, I was very careful in making my remarks on Wednesday last to state that I considered the presence of a gentleman like the Commissioner distinctly valuable and useful to the trustees, because necessarily a man of presumably his sound judgment and common sense would be an acquisition in conducting the affairs of the Trust; but I fail to see how the municipality could reap much benefit; for my experience has been that work between the Port Trustees and the Municipality

is practically carried on by correspondence, and, I think, as to work being facilitated by the intercourse between the Chairman of the Port Trustees and the Municipal Commissioner I can repeat what I said on Wednesday that the intercourse may be carried on without the Municipal Commissioner being a member of the Port Trust. These are my chief objections to power being given to appoint the Commissioner to either post without the consent of the Corporation. So much stress has been continually laid upon the work the Municipal Commissioner has to do, and I know his duties are very onerous and very great, that it would not be well to increase them unless the Corporation judged it advisable. The duties of both offices may or may not be very great in themselves, but there is every possibility they might interfere with his work in Bombay, about which the Corporation can best form an opinion and I therefore shall support the amendment.

The Honourable Mr. WEST:—Your Excellency,—I must admit that the arguments do appear to me to have a certain degree of force which your Excellency may recognise. But what was observed by the Honourable Mr. Naylor, namely, that it puts your Excellency in Council in a somewhat invidious and not altogether desirable position when he is to appoint a Municipal Commissioner, perhaps only temporarily, to the Legislative Council, to have to go to the Municipality for their permission, and similarly with regard to the Port Trust. In the Port Trust, it is admitted, that the presence there of the Municipal Commissioner is in itself a very useful element. But the objection is made on the ground that it is undesirable to deprive the Municipality of his duties. Then I must say it seems undesirable that when the Governor in Council should be of opinion that the services of the Municipal Commissioner are necessary to the Port Trust that the Corporation should step in and say we appreciate this gentleman so highly that we will not allow him to serve anywhere else. I believe that several honourable members are of opinion that clauses (*a*) and (*b*) should be left out, I do not know how it would meet the views of the Honourable the Advocate General if we remove them altogether, or if these words be added—"He shall not hold any other office or place of emolument or any other duties which will withdraw him from Bombay."

The Honourable the ADVOCATE GENERAL:—I did not quite hear your exact form of words.

The Honourable Mr. WEST:—After; "being in force clause (1)": "He shall not "without the sanction of the Council hold any other office or place of emolument or one "the duties of which will withdraw him from Bombay."

The Honourable Mr. PHEROZESHAH MEHTA said:—I think it right to mention that when this matter was discussed in Select Committee I thought that so far as membership of Council was concerned, the Governor in Council would not ask the Municipal Commissioner to be a member of the Council unless some proper occasion arose, which would not be, I confess, very often. As to his being a member of the Port Trust I was of the same impression as the Honourable Mr. Naylor that he was a very useful member, not as regards the Port Trust only, but also as regards the Municipality. And I must also confess that it was the first time I ever heard anything to the contrary when I listened to the remarks of the Honourable Mr. Forbes Adam. As to section (*c*) the Select Committee consented at my instance to put in these words—"with the sanction of the Council." I have always held that Government should be at liberty to make demand on the services of the Municipal Commissioner as on those of any other public citizen on special occasions of general public utility.

His Excellency the PRESIDENT:—After what has fallen from the honourable member I feel bound to state that in this Bill, which has for its main object to safeguard the interests of the town, it seems to me important to secure that the town should be represented on the Port Trust, seeing how interwoven are the management of the town and of the port, and I hold strongly that Government should be left unfettered in this matter. With respect to the appointment of the Municipal Commissioner, clause (*b*), I think, had better stand. With regard to clause (*a*), I may mention that as the occasions on which the Governor would be inclined to make the Municipal Commissioner an additional member of his Council are so rare, and as I also feel the force of the argument used by the Honourable Mr. West, that the Municipal Commissioner should not be taken away from his duties in Bombay, I think clause (*a*) need not be retained. I would suggest therefore that we drop clause (*a*) and otherwise leave the section as it stands.

The Honourable the ADVOCATE GENERAL:—I think that the suggestion will hardly meet my objection as to the appointment to the office of Port Trustee which no doubt takes up considerable time. And I hold that this appointment should not be made without the Corporation having an opportunity of expressing its sense on either side.

His Excellency the PRESIDENT:—I take it that the Municipal Commissioner ought to know what is going on in the Port Trust, and that this knowledge will save him time and save correspondence to the Corporation and the Port Trust. The Municipality should be represented on it by the officer who will naturally be most intimately acquainted with executive details.

The Honourable Mr. FORBES ADAM:—If my honourable colleagues are of opinion that the interests of the Municipality require that the Municipal Commissioner shall be a member of the Port Trust, I will withdraw my opposition though I have expressed myself in a contrary sense..

The Honourable Mr. WEST:—Then I think, Your Excellency, that it really appears to be the opinion of the majority of members present, and I think it would be better to strike out the amendment in the shape in which I put it, and let it be that clause (*a*) be removed.

The Honourable the ADVOCATE GENERAL:—I will alter my amendment in the sense suggested by His Excellency.

The Honourable Mr. PHEROZESHAH MEHTA:—Then, I think, we need not press the matter further.

The amendment was accordingly withdrawn, and the suggestion of His Excellency the President adopted.

The Honourable Mr. PHEROZESHAH MEHTA moved that in section 58, lines 29 and 30, the words "a commissioner who has held the appointment for a period of not less than five years" be substituted for the words "the commissioner." Your Excellency, I am strongly in favour of power being given to the Corporation to increase the salary of the Commissioner from Rs. 2,500 to Rs. 3,000. With the arduous and responsible duties which the Commissioner has to discharge, it is but right and proper that his remuneration should be adequate and sufficient and even handsome. I believe the power of increasing the salary will work beneficially in two ways. It may be of use at times in inducing a Commissioner to stay on, when with the knowledge and experience acquired

by him it may seem desirable to retain him in the place. It also gives to the Corporation a certain influence over the Commissioner; he will have then something to expect from that body, and we know how wonderfully such a prospect is calculated to promote harmonious co-operation and to smooth all difficulties. But while I am in favour of the increase, I think it should only be granted after a certain period of approved service to a deserving officer. I think five years should be that period.

The Honourable Mr. NAYLOR:—Your Excellency,—Sub-section (3) of this section 58 provides that the salary of the Commissioner may be raised to a sum not exceeding Rs. 3,000, with the sanction of the Corporation. This sub-section was inserted by the Select Committee on the suggestion of the honourable Mr. Mehta himself. But since the report of the Select Committee has been published, the honourable member has apparently become so afraid of his proposal that he seeks to limit the power which it will confer on the Corporation by adding a proviso to it that no Commissioner shall receive any such increased emolument till after five years' service. To the principle of this amendment I take no objection, but five years is too long a time; it postpones the benefit to a time when a Commissioner is utterly worn out by the cares and labour of his office and when instead of looking for more pay as Commissioner he would be glad to take less somewhere else and be free of the appointment altogether. I think the honourable member's object would be much better served if he would consent to change five to three. Three years is the term for which a Commissioner is in the first instance appointed. At the end of that term he may be re-appointed and then, I think, the Corporation may fittingly step in and increase his pay if he will consent to stay on. I may mention with respect to this question that the salary of the Chairman of the Calcutta Municipal Corporation may be, from the first year of his appointment, Rs. 3,000; and in addition to this the Calcutta Corporation may, and I believe do, grant him a house-rent. So that the salary we propose to be the maximum is still less than that of the Chairman of the Calcutta Corporation, although considering their respective duties and comparing the areas of the two municipalities the Municipal Commissioner of Bombay should have higher emoluments than the Calcutta Chairman.

The Honourable Mr. PHEROZESHAH MEHTA explained, saying:—It is true that it was at my suggestion that the sub-section was introduced. But I took care to explain that it was only after a service of some years that the increase should be given in case the Commissioner had served well and given satisfaction. That was the real object of the suggestion I then made and which should be incorporated in the section.

The Honourable Mr. WEST:—This increase of salary after five years may operate injuriously in two ways—first, when the gentleman who has been devoting his services to the Municipality has become very much fagged and worn-out they may be induced to give him this increase of salary as a solatium, because he is unlikely to get a place outside the Municipality, and as to the gentleman himself, he may be induced to stay on instead of going away for recreation and to refresh himself. I think the Honourable Mr. Naylor's suggestion of three years is better in the interest of the community than five, and the Honourable Mr. Mehta might adopt it.

The Honourable Mr. PHEROZESHAH MEHTA:—The Commissioner's duties are so various that he requires at least three years for fully learning the work, and the next two years to show what is in him.

The Honourable Mr. WEST :—To arrive at his maximum of efficiency ?

The Honourable Mr. PHEROZESHAH MEHTA :—I do not say maximum of efficiency, but to show what he is capable of.

The Council divided on the point whether the number of years in the amendment should be three or five :—

For three.	*For five.*
Lieut.-General His Royal Highness the Duke of Connaught.	The Honourable the Advocate General.
The Honourable J. B. Richey.	The Honourable F. Forbes Adam.
The Honourable R. West.	The Honourable Pherozeshah Merwanji Mehta.
The Honourable J. R. Naylor.	
The Honourable Ráo Bahádur Mahádev Wásudev Barve.	

So the amendment was carried substituting three for five years.

The Honourable Mr. TELANG :—We shall have to make some changes in sections 59 and 60 in consequence of what has been done now.

His Excellency the PRESIDENT :—All these changes will be made.

Thereupon in line 6 of section 59 the word 'Corporation' was substituted for 'Government.' The changes required in section 60 was left over for consideration.

The Honourable Mr. TELANG moved that in section 65, line 25, the words "limitations and conditions" be substituted for the words "and limitations." The Honourable gentleman said :—Your Excellency,—This is principally a change of words. I wish to insert the word "conditions" before "limitations," as bringing out more clearly the necessity, for instance, of a grant of money being made by the Corporation as a condition for the Commissioner's action even in executive matters.

The amendment was carried.

The Honourable the ADVOCATE GENERAL moved that in section 65, clause *b*, after the word "servants" in line 39, the words "except the Municipal Secretary" be inserted, but said :—Your Excellency,—I withdraw my amendment in favour of that of the Honourable Mr. Naylor which supersedes mine.

The Honourable Mr. NAYLOR moved that in respect of the clerks and servants subordinate to the municipal secretary the following amendments be made in the Bill, *viz.* :

(1) that in clause (*b*) of sub-section (3) of section 65, line 39, the following words be inserted after the word "servant," *viz.* : "other than the municipal secretary and the municipal officers and servants immediately subordinate to him" ;

(2) that the following new section be inserted after section 77, *viz.* :

Appointment of clerks and servants subordinate to the municipal secretary.

"77A. (1) The standing committee may from time to time :

"(*a*) appoint such clerks and servants to be immediately subordinate to the municipal secretary as they think fit ;

"(*b*) determine the nature and amount of the salaries, fees and allowances to be paid to the said servants and clerks respectively ;

"(*c*) prescribe or delegate to the municipal secretary the power of prescribing the duties of the said clerks and servants.

"(2) The municipal secretary, subject to the orders of the standing committee, shall exercise supervision and control over the acts and proceedings of the said clerks and servants, and the standing committee, subject to the regulations at the time being in force under section 81, shall dispose of all questions relating to the service of the said clerks and servants and their pay, privileges and allowances."

Control, &c., of the said clerks and servants.

(3) that in section 80, line 6, the word and figures "77 or 77A" be substituted for the word and figures "or 77";

(4) That the following words be added to sub-section (1) of section 84, *viz.*:

"other than an officer immediately subordinate to the municipal secretary'

and that the following be substituted for sub-section (2) of the said section, *viz.*

"(2) Leave of absence may be granted, subject as aforesaid, by the standing committee:

(*a*) to any clerk or servant appointed under section 77A.

(*b*) for a period exceeding one month, to any other municipal officer, the power of appointing whom is not vested in the commissioner."

The honourable gentleman said:—In proposing the second reading of the Bill I had to confess that an oversight had been made in respect to the transfer of certain powers from the Town Council to the Commissioner. The present Act very properly provides that the Municipal Secretary, now called the Clerk to the Town Council, and his office shall be under the immediate control of the Town Council. In some manner, which I am at present unable to explain, this special provision with regard to the Municipal Secretary and his two or three clerks was overlooked and in section 65 we have given the Commissioner power to exercise control over all servants of the Municipality. The Municipal Secretary should not, however, be responsible to the Commissioner but to the standing committee; and in order to correct the mistake which has been made I propose the insertion of appropriate words in line 39 of section 65; and that having been done, it is necessary in subsequent parts of the Act to provide for the appointment of, the control of, and for the granting of leave to, the Municipal Secretary and his assistants. Honourable members have, I doubt not, considered the notice of motion which has been before them for some days and as I anticipate that my proposals will be acceptable, I need not lose time in making any further explanation of them.

The amendment was adopted without division.

The Honourable Mr. PHEROZESHAH MEHTA moved that clause (*c*) of section 65 be omitted, and said:—Your Excellency,—When I addressed the Council on the second reading, I specified this clause as one to which I had a very strong objection and indicated my reasons for that opinion. I will briefly state them again. In the first place, the clause is so worded that even for the purpose for which it is designed, it is, if I may say so, excessive. It gives to the Commissioner in case of urgency *any power given by the Act to the Council or the Committee.* Now in no conceivable case of emergency could it be necessary to exercise a great many of the powers vested in the Council, *e.g.* of levying taxes, &c. I think it cannot and will not be denied that the clause is thus extravagantly

framed. But I should object to it, even if it was limited, for the reason that experience has shown that while on the one hand no necessity has ever been felt for the existence of such a power, on the other, such a provision is liable to be misused. We have instances to guide us either way. No Corporation would ever refuse to ratify any proper action taken by the Commissioner in a case of real and undoubted emergency. In the only case that occurred within the last fifteen years, *viz.* the bursting of the Vehar dam, there was not the slightest difficulty in obtaining the requisite sanction. The Council will remember the case I cited on the other side. I should mention that though the resolution I read to the Council on a former occasion was worded as if the money was to be spent, the fact was that sanction was sought after the expenditure had been incurred on the plea of urgency. I fear that such a power as that proposed to be given by clause (*c*) will be a refuge for irregular action on the part of the municipal officers. It will be putting a temptation in the way of the Commissioner to put a very liberal construction upon the word *emergency*, and under cover of it, incur expenditure for which he ought properly to obtain previous sanction. It is because I strongly feel that clause (*c*) is excessive, unnecessary and liable to abuse that I move its omission.

The Honourable Mr. NAYLOR :—Your Excellency,—This is another of those harmless little clauses inserted on my own responsibility, with a view of providing a practical code for the working of the Corporation and of the municipal institution generally, and it has much surprised me to find that this clause has excited considerable opposition. In the case of Local Boards in the provinces of this Presidency there is a provision for meeting pressing emergencies, and with that before me and with the knowledge of one case to which the Honourable Mr. Mehta has alluded, I thought it was desirable to provide for such a contingency which at any time might occur again. The Honourable Mr. Mehta urges that it is not wanted and that there is no use whatever for it. But in the next breath he himself admits that in the history of the Corporation one occasion has arisen where such a power was wanted, and in the absence of such a power the Commissioner, being a man of considerable courage, did what he thought was best, and asked the sanction of the Corporation afterwards. That, I submit, is not a course which every Commissioner would care to take, and I think that, so far as possible, it is expedient that the legislature should provide against the Commissioner having at any time to commit an irregularity and afterwards go to the Corporation to ask them to ratify what he has done. With regard to the future, the probability or possibility of such cases again occurring is stronger than it has hitherto been. It must be remembered, for instance, that the Tánsa scheme, which is being carried out, involves the construction and future maintenance of a lake of very large area situated some fifty miles from Bombay. If telegraphic communication were received here to-day that the dam of that lake was leaking and likely to burst, it would be such an urgent matter that the Commissioner would have to proceed at once to the spot and do what he could, in the interests of the community generally, and of the residents in the immediate locality particularly, to prevent such an untoward event. One need scarcely say that other such emergent cases may occur. It is very improbable that they will occur more than once or twice in a life-time, but it seems only fair to the Commissioner that in passing an Act of this description we should provide for them. The Honourable Mr. Mehta has quoted a case in which the words "urgently required" were used by the Commissioner some years back with regard to some petty repairs and alterations, and he bases upon this fact an argument that this clause will be

made use of in a similarly petty, trifling manner. Now I think that is a very unusual kind of argument to address to the Council. I cannot for a moment suppose that with the words "in any case of pressing emergency" clearly written in the Act, the Commissioner would propose to the Standing Committee to take action in any such trumpery case as the Honourable Mr. Mehta has alluded to, or that the Standing Committee would for a moment entertain such a proposal. I am not in possession of the facts of the case to which he has referred, and it is scarcely my business to attempt to justify any action taken by the Municipal Commissioner some years ago; but I may say that the words "urgently required" are of course capable of many degrees of meaning. And as we all know from our experience in other departments, it is not an uncommon thing when a work has been carried on to find, on the accounts being finally made up, that there has been an excess of expenditure—something not provided for in the estimates, and that the sanctioning authority must be asked to sanction the extra expenditure. It is quite possible that the Municipal Commissioner, having exceeded the amount specified by the Corporation, found it necessary to get sanction afterwards, and considered the obtaining of such sanction a matter of some urgency. But to suppose that the getting of the Corporation's sanction to an excess expenditure in a small matter of some Rs. 2,000 was considered by the Commissioner to be a case of emergency such as we have at present in contemplation, is to credit the Commissioner with a want of sense of which no Municipal Commissioner, who has held this important office in my time, could ever have been guilty. I may say that the words originally used in the clause were "case of emergency" and in order that there might be no mistake as to the kind of emergency in which the power was to be used, I inserted the words as they now stand. The Honourable Mr. West has suggested some words which may be added after the word "emergency," and which will still more pointedly emphasize the nature of the occasions on which it is intended that the clause should be put in force. If the Council concur in their adoption I shall be very willing to see them inserted. They would come after the word "emergency" in line one, and the words are: "in which irreparable mischief may arise from want of prompt action."

The Honourable the ADVOCATE GENERAL:—I do not see that the clause is of any use whatever. And I think that the Honourable Mr. Naylor will on reflection agree with me that any reference to the Corporation in this section is a mistake, because the Corporation has no power to take action, their functions not being executive; and I think that he will agree that such reference should be struck out.

The Honourable Mr. PHEROZESHAH MEHTA:—The Honourable Mr. Naylor says that he never expected any opposition to this clause. He does not seem to be aware that the matter has been very fully and carefully discussed by the Corporation. The attention of the Corporation was forcibly drawn to the matter at the time when the resolution about urgent expenditure which I have already quoted, was placed before them, and two members of the Town Council brought a proposition before the Corporation to provide for cases of emergency. I will read that proposition from the Municipal Record for 1883-84:—"That, as recommended by the Town Council in their Resolution No. 1121, dated 15th August 1883, the Corporation request Government in the Legislative Department to include the following section in the new Bill for the amendment of the Municipal Acts:—'It shall be lawful for the Town Council, on the written application of the Municipal Commissioner, to sanction the payment, from surplus cash balance of any sum not ex-

ceeding Rs. 5,000, for the purpose of providing for any emergent work, charge, or duty: Provided that the Council shall record their reasons for making such grant without the previous sanction of the Corporation; and that the said grant shall be reported at the meeting of the Corporation then next ensuing." The Corporation rejected the proposition by 26 votes to 6. The Council will observe how modest this proposed clause was as compared to clause (*r*); and no Municipal Commissioner has ever suggested that he required more extensive powers. The Honourable Mr. Naylor has observed that no Commissioner should be placed in the predicament of having to act on his own responsibility in case of real emergency. To that I would wish to say that a Municipal Commissioner who would feel unequal to such a task, would not be worthy of that high and responsible position.

The Honourable Mr. WEST:—Your Excellency,—It strikes me that the arguments addressed to the Council by the Honourable Mr. Mehta are open to a logical objection, which he, as a distinguished logical student, will know. He has drawn an induction in this case from a single instance, because the Commissioner did some irregular act and the Corporation ratified it, he would have us infer that anything he does which is of considerable emergency will be ratified by them again. That I believe is not in consonance with the canons of the inductive science. Another objection arises, that at the very time he may be seeking to have his action ratified there may be a certain degree of asperity of feeling between the Commissioner and the Corporation as to that very work. A certain amount of friction and warmth will be the result. You cannot make an induction from a single instance, and what harm can there be in expressing that in the Act? When put in the position of having violated the law, why should you then put him before the Corporation or Council with that blot on his character, and have him say "make me an honest man again?" The best security is to allow the Commissioner to take such steps as are really necessary in cases of pressing emergency. What I mean is that he should take such steps as are really necessary and avail himself of the powers of this section when some grave or irreparable mischief is likely to occur from want of prompt action, and I would suggest that words embodying that restriction be added. The only difference between the sanction provided here and that of the Council, or, as we are to call it, the Standing Committee, is this, that the Standing Committee may be called together within 24 hours, and then they are so few in number that, being called upon in some terrible emergency, he might take upon himself to run round to their houses, and having ascertained their views, would feel certain of having obtained the approval of a majority, and proceed with his duty. But it would be a very difficult business to call upon a majority of seventy-two members of the Corporation, and the business might be embarrassed, and he would have to act illegally, that illegality having to be battled out by the resolution of the Corporation afterwards. I hope the honourable member will not be inclined to take the matter further than introducing the words I propose if he thinks the safeguard necessary.

The Honourable Mr. FORBES ADAM:—I had intended to support the amendment because I thought there was a danger that great difference of opinion might prevail as to what was a really emergent matter. But after hearing what the Honourable Mr. West has said I see the danger can be avoided. I can quite see that if any serious accident took place immediate action would be necessary, but with the addition of the words which Mr. West suggests I think the clause should remain.

The Honourable Mr. WEST:—I would suggest another word after "reporting," "forthwith," and then there is not much room left for abuse.

The Honourable Mr. TELANG:—I do not quite understand how the arguments of the Honourable Mr. West support the section as it stands, for although the condition is in his amendment made more precise the power is not diminished. And the power extends not merely to the expenditure of some municipal money but to the exercise of any of the authorities of the Corporation or the Standing Committee. It is admitted you are providing for an emergency which may occur but once in a life-time; yet the clause is one which covers events that may occur many times in a life-time. It seems to me that the power would in every probability be misused. The legislature should not thus put the Commissioner in possession of powers which are very extreme. Supposing urgent measures are wanted and five lákhs is required, there is plenty of time to bring the matter before the Corporation. A meeting might be held at three days' notice to authorise whatever was necessary. All the five lákhs cannot have to be spent before such an urgent meeting can be held.

The Honourable Mr. WEST:—Perhaps Your Excellency will allow me to explain to the Honourable Mr. Telang that I suggested the addition of the words "where grave and irreparable mischief may arise from want of prompt action" and that such be the only cases in which he would interfere. The Honourable Mr. Naylor suggests that clause (*h*) in this section appears to cover this very case.

His Excellency the PRESIDENT:—I understand this clause simply anticipates such action as the Corporation itself would be bound to take in circumstances of such a nature as to leave no option. I consider this clause would only come into operation when *vis major* compelled the Commissioner. We find a similar provision in clause (c) of section 360, where the chief officer of the fire brigade obtains the power to set aside the Land Acquisition Act simply because *vis major* interferes. The pressing emergency is not created by the Commissioner, but by circumstances unforeseen, independent of his will. though it may occur through neglect of proper precautions. Perhaps it would be as well if some change were made in the drafting of this clause so as to make this quite clear. However, we may return to this matter when we come to sections 115, 2 "*h*," and meanwhile the Honourable Mr. West and the Honourable the Advocate General will be able with the honourable mover of the Bill to agree on words which will specify the very exceptional circumstances under which the Commissioner would be able to avail himself of the powers contained in this section.

The further consideration of this matter was deferred and the Honourable Mr. PHEROZESHAH MEHTA moved that in section 65A, line 12, and in section 65B, line 27, the words "as far as may be" be omitted. He said:—The amendment I propose is a very short one and one only as to words.

The amendment being read was adopted.

The Honourable the ADVOCATE GENERAL moved that in section 65B, clause (3) be omitted.

The honourable gentleman observed:—This is an amendment having reference to a question which has given rise to a good deal of discussion in the Corporation. It turns upon the point as to whether the Commissioner is a fair judge as to what ought to be brought forward and what not. The Honourable Mr. West has had a good deal of ex-

perience with regard to similar matters. I have discussed before him in another place on many occasions questions which he knows are always subjects of the widest difference of opinion between lawyers, namely as to what documents shall or shall not be produced. Mr. Ollivant had, it was believed, some private correspondence with Government. I understand the belief was entirely unfounded; but I think he went so far as to say that if he had had such correspondence he would not have produced it. The Corporation has a perfect right to be jealous of any such statement. The Commissioner ought not to carry on correspondence without the knowledge of the Corporation or without the Corporation having the right to see it. The Commissioner has power to take legal advice, which it is quite right he should have, as to the relation between himself and the Corporation, when necessity arises. But it is absolutely necessary that the Corporation shall have the opportunity of seeing that advice and the case he has made, for we all know that if you only get your case made out right you may get what opinion you want by laying a judicious statement before counsel. I hold that the Corporation have a right to ask for documents, and I can see no case in which the Commissioner can be justified in refusing to comply. I think, however, he has a right to point out that it will be undesirable to produce any documents. It should be left to his powers of persuasion and explanation to get the members to delay their request.

The Honourable Mr. NAYLOR :—Your Excellency,—The section to which the Honourable the Advocate General refers was not in the Bill as originally drafted, and I may say is due, to a large extent, to the circumstances to which the honourable gentleman has alluded. Under the present Acts the Corporation has no power to call upon the Commissioner for any correspondence or for any such returns, plans or other things as are set forth in this section, and Mr. Ollivant, when stating his views with regard to the contention which arose between the Corporation and himself, was, I gather, expressing what would be his reply with reference to the law as it then was, and as it now stands, and I am not at all sure that under that law he would not have been justified in declining to produce what he considered private correspondence between Government and himself. I only mention this to defend Mr. Ollivant from any adverse view which may be taken of the particular line he adopted in this particular instance. I am quite sure that he himself honestly thought that the course he did take was the course the law as it stood justified him in taking. For myself I must say that from the first I have been in favour of giving the Corporation this power, as I think it is a right and proper one, and it would be impossible for the Corporation to perform their duties properly, unless they could obtain from the Commissioner all such information as they needed from him to enable them to do so. But the difficulty I have felt was with regard to papers, the production of which might be prejudicial to the interests of the Municipality, and upon consulting my colleagues on the Select Committee, I found we were entirely agreed that the Commissioner should have the discretion of declining to produce papers, the production of which he thought prejudicial to the interests of the Corporation. Upon this point in the Select Committee there was perfect unanimity. There is, of course, a danger that the Commissioner may decline to produce what he ought to produce, but the Committee thought the power should be given to somebody to be able to say that in the interests of the Corporation it is not desirable that certain papers should be made public; and that power, most properly we thought, should be vested in the officer who has possession of the papers. Since the Select Committee's report has been published, the Honourable Mr. Mehta has further

thought out the question, and he has to-day an additional proposal to make, which is to the effect that the Commissioner shall only be able to decline to comply with an order to produce papers for a time and must specify the time or the event which must occur before he will be prepared to produce the papers. With this additional safeguard, which is a practical and sound one, I think the proviso should, in the interests of the Corporation and of the municipal government of the city, be allowed to stand. I am quite prepared to accept the Honourable Mr. Mehta's proposal, but the Honourable the Advocate General's, I think, would be the cause of injury to the Corporation itself.

The Honourable Mr. PHEROZESHAH MEHTA:—Your Excellency,—I cannot help thinking that the amendment of the Honourable the Advocate General is better than the one of which I have given notice and I shall ask to be allowed to withdraw mine in favour of his.

The Honourable Speaker's amendment was as follows:

That for sub-section (3) of section 65B, the following be substituted, *viz.*:

" Provided that if the Commissioner shall certify in writing that in his opinion compliance with any such requisition or with any part thereof would be prejudicial to the interests of the Council, he shall not be bound to comply with the said requisition or part thereof, until such time or the happening of such event as he shall in such writing specify, or if on the expiry of such specified time or the happening of such specified event, the Commissioner shall be of opinion, that compliance with such requisition or part thereof would still be prejudicial to the interests of the Council, until such further time or the happening of such other event as he shall then in writing specify."

I feel sure that the Corporation would not be likely to compel the Commissioner to produce such documents as it would be prejudicial to their interests to produce. The Corporation should have the power to compel the production of all correspondence, and I can scarcely conceive an instance when they would do so if the Commissioner assured them such a course would be prejudicial to their interests. I consider the amendment of the Honourable the Advocate General will meet the exigencies of the case better than mine, and I shall vote in favour of it.

The Honourable Mr. WEST:—Your Excellency,—I am sorry to say that I have been drawn off the rails by the line the honourable gentleman has taken. The Honourable Mr. Mehta's amendment was a sufficient safeguard. I had another amendment to propose, but finding this would in my mind meet the case, I did not give notice of my own. It appeared to me that there was no doubt the Corporation had a right, a general right, to look at all correspondence affecting the municipality, and that is my opinion still. I agree with the honourable gentleman that a case can scarcely be conceived in which they ought not to see it. But a case may arise when the premature disclosure of a document might have a very prejudicial effect—say with respect to a contract or a case—and the facts being disclosed might affect the Corporation to the extent of several lákhs of rupees. It occurs to me that the Commissioner should not have the absolute right to refuse. The traditional custom for all time with respect to disputed production has been to refer documents to a special committee appointed for the purpose. Take the case in Parliament of Queen Caroline. There it was urged by one party that the production of certain

documents would be extremely injurious to the affairs of State. A Secret Committee was appointed and stated after careful consideration that the documents ought not to be disclosed and they were not. The Commissioner might hold over documents if he thought it undesirable not to produce them for a meeting or two or three; if he still considered it unwise to produce them it should be competent for the Corporation to appoint a Select Committee to decide whether or not they should be laid before the Corporation. I put to the Honourable Mr. Mehta whether it would not be better to keep to his own amendment rather than accept that of the Honourable the Advocate General.

The Honourable Mr. PHEROZESHAH MEHTA :—When I gave notice of my amendment, I had not seen that of the Honourable the Advocate General. As I consider his a better one, I feel bound to support it in preference to my own.

His Excellency the PRESIDENT :—I propose to defer this matter till the next meeting of the Council. After what has taken place we had perhaps better give the Honourable Mr. West an opportunity of drafting his amendment.

The Honourable Mr. NAYLOR :—I think it is right to mention that it appears that the Corporation do not like trusting their powers to committees but preferring to do all their work themselves. We have that from members of the Corporation, who are also members of this Council. The result may be very awkward indeed, if the question whether secret or confidential papers are to be made public is considered and decided by the full Corporation.

The further consideration of the subject was deferred, and the Honourable Mr. TELANG moved that in section 67, clause (2), line 74, " 515 clause (*a*)" be omitted.

He said :—This clause gives the Commissioner liberty to authorise his subordinates exercising powers which should not be entrusted to any subordinate but should be exercised by the Commissioner only. The Corporation think it should be struck out.

The Honourable the ADVOCATE GENERAL :—It was only yesterday I had a letter from the Chief Presidency Magistrate giving a list of cases before him on behalf of the Corporation. There are a great deal too many, and this perhaps is a result of deputing power to subordinates.

The Honourable Mr. WEST :—It would seem to me that in these matters the Commissioner must depute the power to some other person. If he did not, endless inconvenience would arise. Suppose he is before the Chief Presidency Magistrate and something turns up which shows him he cannot hope to get a conviction. He cannot, unless he has authority delegated to him, say " then I withdraw the case." He would have to admit: Well I am very sorry I cannot withdraw the case without the Commissioner, and I cannot communicate with him; he is at a meeting of the Corporation or out at Máhim. I must do my best to get a conviction."

The Honourable Mr TELANG :—I see the force of the argument and will withdraw my amendment.

The amendment was withdrawn accordingly, and the Honourable Mr. Pherozeshah Mehta moved that in section 71, line 9, the word " two " be substituted for the word " five ".

The honourable gentleman observed :—My Lord,—I should have no hesitation in accepting the section as it stands, but I know that the Commissioner must leave such matters in the hands of subordinates, and perpetration of jobbery must often be the result.

I think the amount should be reduced to Rs. 2,000. That is the limit of the present Act which in this respect has worked well.

The Honourable Mr. NAYLOR :—The honourable gentleman thinks Rs. 5,000 too large a sum, but considering the vast extent of the city and its requirements I think it must be admitted to be comparatively small. The only principle involved is one of practical convenience. Considering that the lowest prices at which articles and work can now-a-days be procured are so well known by means of price-lists and otherwise, it seems quite inexpedient to compel the Commissioner to call for tenders down to so low an amount as Rs. 2,000.

The Honourable Mr. FORBES ADAM :—Then I would suggest Rs. 3,000 as a compromise.

The Honourable Mr. NAYLOR :—I am willing to agree to that.

The clause was accordingly amended in the terms of the Honourable Mr. Forbes Adam's proposal.

The Honourable Mr. PHEROZESHAH MEHTA moved that the appointment of chief accountant be included in section 73, the section being amended in its details for this purpose. He said :—Your Excellency,—I beg the most careful and earnest consideration of the Council to this amendment. The conspicuous success with which, it is admitted on all hands, the Corporation have worked the present municipal constitution, justly entitles them to claim extension and development in all directions in which experience has shown they could be safely carried out. With great good sense and moderation the Corporation have confined their demands to two important points. They have asked that the right of electing the Chairman of the Town Council should be vested in that body itself. And their second important demand is the one involved in my present proposal. It is one which is strictly based on and justified by the results and lessons of past experience. When the Bill of 1872 was under discussion, strong objections were raised to vest in the Corporation the appointments of the heads of two of the great Municipal Departments—Health and Engineering. The same arguments that are now used against my present proposal were then used against those proposals. It was urged that as the Health Officer and the Executive Engineer were officers entirely subordinate to the Municipal Commissioner in his executive capacity and that as he was responsible for the working of those departments, it could only lead to friction and insubordination to vest the appointments of these officers in the Corporation. In spite of these forebodings, however, the appointments were so vested, and experience has shown that the apprehensions which were entertained were utterly unfounded. The Health Officer and the Engineer have, in spite of their being elected by the Corporation, uniformly rendered the most cheerful and loyal obedience to the Commissioner. Therefore it is that I now submit that the appointment of the third great department of the Municipality—the Account Department—should also be vested in the Corporation. The only argument that I have yet heard against the proposal is that the Head Accountant stands on a somewhat different footing from the other two chief officers. It seems to me that so far as my present proposal is concerned, the difference, if there is really any, is rather in favour of the proposal. In matters regarding the Health and the Engineering Departments there is room for a considerable difference of honest opinion; the Account Department deals with mathematical matters and figures, and there is hardly any room for serious difference of opinion. I cannot imagine, I will frankly say, why the Head Accountant should be more under the

Commissioner's immediate and absolute control, unless it is thought desirable that facility should be given to him for manipulation of accounts to hide irregular and unauthorized action. My proposal will have this further advantage that it will save the Commissioner from all such temptation. I have pointed out that experience shows that so far as legitimate work is concerned nomination by the Corporation does not produce insubordination; at the same time it will have this positive beneficial effect that as their appointment is in the hands of the Corporation, the officers so elected are not likely to lend themselves easily to irregular or improper action. This is a more valuable and important check than is generally imagined. For all these reasons I beg the Council to yield to what I strongly feel is a most moderate and reasonable and well justified demand for further progress.

The Honourable Mr. NAYLOR:—Your Excellency,—This is a matter which was considered more than once by the Select Committee, and a majority of us decided that the appointment of the chief accountant should continue to rest, as it has hitherto, with the Commissioner. I must explain at the outset that the officer in question is not Controller of the municipal accounts. For a few years past he has been erroneously so called, but his function is not to control the accounts. The real control of the expenditure and of the accounts is vested in the Town Council and in the auditors appointed by the Corporation. If this control is thought to be too weak then, I submit, the remedy is to appoint a Controller; but that officer should hold his appointment outside of the Commissioner's office and not within it. I have seen the appointment of this officer compared to that of the Accountant General, but that is not a correct comparison; he really corresponds to a Collector's Head Accountant. The officer in question is the head of the accounts department under the Commissioner and receives his promotion in the Commissioner's office, rising gradually, according to his fitness, from the lower grades of accountants to be chief accountant. He is and should be entirely under the orders, and, in every respect, subordinate to the Municipal Commissioner. The result of the Honourable Mr. Mehta's amendment would, I think, be that the officer concerned would look rather to pleasing the Corporation than the Commissioner, and that is a state of things which would be intolerable. I do not credit the Municipal Commissioner with any wish to manipulate his accounts or to have the means of enabling him to do anything of the kind. I submit that any such design on his part is completely incompatible with the control which exists from outside his office. If that control is not sufficient, the Commissioner is perfectly willing to have it increased to any reasonable extent. But what I do urge is that the appointment of chief accountant, who is a man upon whom the Commissioner depends for hourly information as to the state of the accounts and whom he has constantly to consult for the preparation of all his financial schemes and for keeping him straight on all questions of expenditure, who is, in fact, his right-hand man, that the appointment of this officer should rest with the Commissioner himself.

The Honourable Mr. FORBES ADAM:—Your Excellency,—I gather from the remarks of the Honourable Mr. Naylor that the chief accountant is, for all practical purposes, a book-keeper. That is to say, certain monies are voted for certain purposes, and the expenditure of these having been carried out by the Commissioner it falls then upon the chief accountant to enter them. Supposing that the chief accountant is appointed by the Corporation I cannot see that it would in any way interfere with the advantages pointed out by the Honourable Mr. Naylor, which are derived by the Commissioner. He would still be able to

obtain from him all the information he has been accustomed to obtain. My opinion is that the appointment should rest in the hands of the Corporation who have a right to demand this guarantee against irregularity.

The Honourable Mr. WEST:—The honourable gentleman has stated that the head accountant has only to carry out certain mathematical calculations, and therefore if you secure a man possessed of the requisite mathematical skill you have done all that is necessary. Consequently it is said there is no need for subordination; no room for dispute. It is however an error to suppose that there cannot be disputes about figures, and there is no comparison between the head accountant and the Accountant General with whom he has been compared. Let it be granted that the duties of the head accountant being purely mathematical calculation admit of no dispute, argument, or discussion, yet the most harassing and troublesome correspondence which comes under my observation is the correspondence in which various officers in the mofussil are at war with the Accountant General as to the proper appropriation of various sums. And I may appeal to His Excellency and my other honourable colleagues to bear me out in all I say. Apart from Government altogether, debatable questions of accounts as between firms and banks are continually arising. and I may appeal to another honourable gentleman with whom I have worked together for many years in a Court if these questions of account are not matters of the greatest trouble to counsel, and further as to whether they do not find it the hardest thing to drive them into the heads of judges. The fact is that the ways in which accounts may be presented are just as different as it is possible for any two things to be. There is a great difference between the keeping of English accounts and Native accounts, and no man who has studied English accounts will be made at once *au fait* with Native accounts. They may be kept in a hundred and one different ways and a thousand different points may arise. If the Commissioner is to have his work well done, and it is only right that he should, for he is really responsible for the accounts, the man who does it under his direction should be made distinctly subordinate to him and should not in any way be above him. The Commissioner names his own head accountant, and as I do not think it has been shown that the method of appointing has in any way failed, why should a system be changed when no failure has arisen from its working? Surely it is better to stand by a system which has worked well than to make experiments the result of which may be doubtful. By reason of allowing the Commissioner to make the appointment, a general system of promotion is carried out in the office, which I think cannot be regarded as other than desirable. But on the other hand, if the head accountant is to be elected by the Corporation, the probability is that the appointment will very seldom be given to the next man in the office who may be thoroughly qualified and entitled to take it, and will in that case certainly be the best man to fill the position. Another point I should like to mention is this, that I think the control of accounts ought necessarily to be vested in a body or an individual standing entirely apart from the establishment. He should be free from the intrigues, jealousies or party-feeling which we know exist in all large offices in this country. Therefore I think the examination of the accounts from outside is highly desirable. The means are left in our hands. We have only to cut away the clause which limits the remuneration of the auditors to enable the Council or the Corporation to give them a proper remuneration and lay on them the duty of perpetually investigating the accounts and of bringing before the Standing Committee from week to week or day to day any instances of irregularity.

The Honourable Mr. TELANG :—Your Excellency,—The chief accountant has been described as the Commissioner's accountant and if that description is correct, the argument on the other side certainly has some force, but I say that that description begs the whole question. I say he is the chief accountant of the municipality. I do not see why the chief accountant of the municipality should not be appointed by the governing body of the municipality. To call him the Commissioner's chief accountant is just as much a misnomer as it would be to call the Health Officer the Commissioner's Health Officer or the Engineer the Commissioner's Executive Engineer. There is no reason, as far as I can see, to apprehend insubordination on the part of the chief accountant any more than there is to expect it on the part of the other two officers, and I cannot understand how the Council can come to the conclusion, while the Corporation is deemed to be fit and competent to appoint the Health Officer and the Executive Engineer, that it is not fit to appoint the chief accountant. As to the argument urged by the Honourable Mr. Naylor of there being rival authorities, I cannot understand how that is possible. If the accountant obstructs the policy of the Commissioner by refusing to allow any cheques to pass for sums which the Corporation has not sanctioned, he is acting in the discharge of his duty and the obstruction is justifiable in the interests of the municipality; but if he says to the Commissioner in regard to sanctioned expenditure "no, you shall not spend the money in the way you desire," he will be clearly going beyond his functions altogether. I confess I am unable to follow the arguments which have been used in favour of his appointment by the Commissioner. I can only say that to my mind it is absolutely manifest that the accountant stands on the same footing as the Health Officer and Engineer, and I do not know how the Council could come to the conclusion that though the Corporation is fit and competent to appoint the Health Officer and Engineer it should not be allowed to appoint the chief accountant.

The Honourable Mr. NAYLOR :—By way of explanation I would like to say that the chief accountant is on a very different footing from the other officers named They are professional gentlemen doing special work entirely outside the Commissioner's office, whereas this officer is in the Commissioner's office in daily contact with him and in fact is little more than his head clerk.

The Honourable Mr. RICHEY :—The Honourable Mr. Telang commenced his speech by challenging the correctness of the description of the chief accountant and cited the Health Officer and the Engineer as holding analogous positions. The functions of the three officers are so entirely different that one cannot apply the same designation to them all. The Municipal Commissioner himself is the head of the accounts and finance department and is responsible. The officer who works under him in that branch is merely his subordinate, and I can hardly understand the ground taken by the Honourable Mr. Telang when he tries to put him on a parity with the two other officers who are retained for strictly professional duties. The accountant will in every respect be subordinate to the Commissioner. If he were not, it would upset the basis of authority if he were made an independent officer, owing his nomination or promotion to the Corporation and responsible to them for his position in the world. The Honourable Mr. Telang cannot conceive that he would be tempted to usurp the functions of his superior; but it is constantly assumed that usurpation of authority by the Commissioner must be looked for and guarded against. As the Honourable Mr. West has said not only with people in this

country, but all over the world, in official life intrigues and cabals and personal influences are powerful, and it is not impossible to conceive that he would work into the hands of the Corporation as against the Municipal Commissioner. The remarks of the Honourable Mr. West and the Honourable Mr. Naylor commend themselves to our experience much more than the arguments of honourable members opposite, who have supported the amendment. We must legislate with a view to human nature. There should be harmony between the Municipal Commissioner and his chief financial adviser which is essential to the due working of the municipal executive machine. This can only be done if the subordinate is in a position to look for countenance and support to no one outside the office.

The amendment being put to the vote, the Council divided—

Ayes.	*Noes.*
The Honourable Kashinath Trimbak Telang.	Lieut.-General His Royal Highness the Duke of Connaught.
The Honourable F. Forbes Adam.	The Honourable J. B. Richey.
The Honourable Pherozeshah Merwanji Mehta.	The Honourable R. West.
	The Honourable the Advocate General.
	The Honourable J. R. Naylor.
	The Honourable Ráo Bahádur Mahádev Wásudev Bárve.

So the amendment was lost.

The Sind Village Officers Act Amendment Bill.

Mr. Richey moves the second reading of Bill No. 5 of 1887.

The Honourable Mr. RICHEY, in moving the second reading of Bill No. 5 of 1887, a Bill to amend the Sind Village Officers Act, 1881, said:—I had the honour at the last meeting of the Council to explain to honourable members the objects of the Bill, and I may now, in moving that it be read a second time, inform the Council that it was published on the 14th of November and since its publication no suggestion on any of its provisions has been made. It may therefore be assumed that it is likely to meet the object desired.

Bill read a second and third time and passed.

The Bill was then read a second and third time and passed.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Right Honourable the Governor in Council,

J. J. HEATON,
Acting Secretary to the Council of His Excellency the Governor of Bombay for making Laws and Regulations only.

Bombay, 10th March 1888.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Bombay on Wednesday, the 14th day of March, 1888.

PRESENT:

His Excellency the Right Honourable Lord REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding.*

Lieut.-General His Royal Highness the DUKE OF CONNAUGHT, K.G., K.T., K.P., G.C.I.E., G.C.S I, G.C.M.G., C.B., A.D.C.

The Honourable J. B. RICHEY, C S.I.

The Honourable R. WEST.

The Honourable the ADVOCATE GENERAL.

The Honourable KASHINATH TRIMBAK TELANG, C.I.E.

The Honourable F. FORBES ADAM, C.I.E.

The Honourable J. R. NAYLOR.

The Honourable Ráo Bahádur MAHADEV WASUDEV BARVE, C.I.E.

The Honourable PHEROZESHAH MERVANJI MEHTA, M.A.

The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS.

The City of Bombay Municipal Bill

The Honourable Mr. PHEROZESHAH MEHTA moved that for the latter portion of clause (*b*), sub-section (2) of section 73, commencing with the words (line 9) "or if he," the words "and not hold any other appointment" be substituted. He said:—Your Excellency,—I do not think that clause (*b*) is a wise departure from the law on the point as it at present stands. Under sections 44 and 45 of the present Acts, the Health Officer and the Executive Engineer are precluded from holding any other appointment or office and are required to devote the whole of their time and attention to the duties of their respective offices. The object of my amendment is to return to the present state of the law. When so much is said of the growth of municipal work it seems illogical to imagine that the heads of the two most important Municipal Departments could have possibly time to attend to anything else. Nor is it desirable that these officers who are appointed by the Corporation should hold even temporarily offices in the gift of the Commissioner, who could thus acquire a special, and, I may be allowed to say, unwholesome influence over these officers. Such a provision would have a tendency to disarrange the constitutional checks which regulate the proper subordination of these officers both to the Corporation and the Commissioner.

The Honourable Mr. NAYLOR:—Your Excellency,—The portion of section 73, to which this motion is directed, was inserted at an early stage of the drafting of the Bill at the suggestion of Mr. Ollivant. I believe his view was that it might occasionally be convenient that either the Health Officer or the Executive Engineer should hold for a short period some other municipal office in addition to his own, and, if I am not mistaken, it has occurred that the Health Officer whilst continuing to be Health Officer was also Municipal Commissioner.

The Honourable Mr. PHEROZESHAH MEHTA:—No, he acted for the commissioner for a short period, but his own duties were for the time performed by another officer.

The Honourable Mr. NAYLOR:—The clause was, as I have said, inserted on Mr. Ollivant's suggestion as a matter of convenience, and in any case the whole time of the officer would be devoted to the services of the Municipality. I do not lay very great stress upon the provision for my own part, and if it be the desire of the Council that it be amended as proposed I shall not oppose the motion.

The Honourable the ADVOCATE GENERAL:—Might I suggest that the words "and not any other appointment" should be dropped so as to have in case of necessity an opportunity for making an arrangement similar to what was made before? The section might otherwise be taken to forbid such a temporary arrangement.

The Honourable Mr. WEST suggested that the words be dropped.

The Honourable the ADVOCATE GENERAL:—The words which the Honourable Mr. Mehta proposed to drop had better not have any others substituted for them.

The Honourable Mr. WEST:—Yes, let the clause cease at "office."

The Honourable Mr. PHEROZESHAH MEHTA:—I am quite willing to accept the suggestion, which leaves the clause as under: "Each of the said officers shall devote his whole time and attention to the duties of his office." That meets substantially the object of my amendment.

The Honourable Mr. NAYLOR:—I have no objection to the amendment in that form.

The amendment was accordingly accepted.

The Honourable Mr. TELANG moved that in section 79, line 20, the word "one" be substituted for the word "three". He said:—Your Excellency,—The amendment I propose is in reference to the creation of new officers in the Municipal Establishment. As the section stands, no new office of which the aggregate emoluments exceed rupees three hundred per month can be created without the sanction of the Corporation. I suggest that the limit be Rs. 100 instead of Rs. 300. There are not many officers in the various Municipal Departments to whom this regulation as it stands can apply. I believe there are very few who are getting salaries above Rs. 300 per month. But it is necessary, I think, that in the matter of the sanction of the Corporation, the limit should be lower than Rs. 300. I speak under correction, but I believe that even the Government of Bombay cannot create offices the emoluments of which are Rs. 200 per month or upwards without the sanction of the Government of India, and I do not see why our Municipal Commissioner should have larger powers.

The Honourable Mr. NAYLOR:—Your Excellency,—On this matter I would merely say that the section as it stands is framed upon the basis of the present Act, which places the limit at Rs. 300. That has been the law of the Municipality for the last 16 or 17 years, and I anticipated that the Honourable Mr. Telang would give us some reason for thinking the limit should be lowered. When asking that his amendment should be passed I thought he would have brought forward some sufficient reason for it; but he has not adduced any. The Council will bear in mind that the power of creating appointment which is in question is not given to the Commissioner but to the Standing Committee, whose members are the delegates of the Corporation itself.

The Honourable Mr. WEST :—Might I suggest with the object of effecting a compromise that the limit be Rs. 200 ? I trust that will meet the views of both gentlemen, and this will assimilate it more closely with the maximum adopted by the Government of India.

His Excellency the PRESIDENT :—Shall we say Rs. 200 ?

The suggestion was adopted.

The Honourable Mr. TELANG moved :—That in section 81, sub-s. (1), line 6, the words "in consonance with any resolution that may be passed by the corporation" be added after "regulations."

The Honourable Mr. NAYLOR :—Your Excellency,—I do not object to this proposal.

The amendment was accepted.

The Honourable Mr. NAYLOR moved that the following amendments be made in section 93 :—

in line 35, omit the word "new" ;
in line 43, for "and 1886" substitute "1886 and 1888" ;
at the end of the section, add the following clause :

"(*vii*) the portion of the drainage and waterworks' loan of 1888 contracted under the said Act previous to the coming into force of this Act."

He remarked :—Your Excellency,—The amendments which I propose to section 93 are merely verbal amendments the object of which is to make the section cover loans which have been, or have yet to be contracted during the present year and up to the time of this Bill becoming law.

The amendments were agreed to without discussion.

The Honourable the ADVOCATE GENERAL moved that in section 119 (1) after the word *Government* in line 3 the words "addressed to the Standing Committee" be inserted, and that after the word *may* in line 4 the words "with the sanction of the Standing Committee" be inserted.

He said :—Your Excellency,—This amendment is to a new section which gives power to the Commissioner to undertake work which is certified by the Secretary to Government to be urgently necessary for public service. I do not apprehend that it alludes to cases of the State being in danger, but rather to cases of convenience. I do not find any reason for it in the statement of objects and reasons, but I take it that it is intended to cover work which could more conveniently be done for Government by the municipal authorities than at any other place in Bombay. I do not think, as I have said before, that any communication should be addressed from any outside body—and to the Corporation the Government is an outside body—to the Commissioner direct. The Commissioner is an officer of the Corporation ; and I think he should neither be addressed or entitled to comply with a requisition, such as that here contemplated, without the consent and sanction of the Standing Committee. He should not be put into a position to use his own judgment as to whether he will comply or will not comply with such a requisition. If the Commissioner is a Government servant,—and although it may not always be that he is a Government servant, yet he may be so for a long time to come,—he is put in a delicate position in having to say whether he will comply

with the requisition of Government or not A nervous man might consider that he was injuring his future prospects by refusing. Therefore I think it should be laid down that any communication should be with the Standing Committee and not with the Commissioner himself, and that without the consent of the Standing Committee he shall not proceed to comply with it.

The Honourable Mr. NAYLOR :—Your Excellency,—The Honourable the Advocate-General appears to me to have somewhat misconceived the kind of occasion on which this section is intended to be brought into operation. The section was really drafted to make legal provision for a contingency which has already arisen once, if not more frequently, when Government, being very much pressed for time in order to fit out some military expedition or to set on foot some other undertaking urgently needed in the public service, has called upon the Commissioner to aid it by having executed at the municipal work-shops by municipal officers and under their supervision, certain articles of which a sufficient supply could not at once be obtained in the market and which the municipal work-shops were in a better position than any similar factory in Bombay to turn out without much delay. The Maltese expedition was one of which I have some knowledge, and on that occasion the Commissioner complied with a requisition from Government and was able to afford very material assistance in enabling Government to send off that expedition with the facility and despatch with which it is well known that expedition was sent. It is not meant that this section should enable Government to require the Commissioner to supply work which can be readily executed elsewhere, and I think that words of the section indicate that this is not the intention, because the work must be certified by the Secretary to Government as being urgently needed in the public service. I may say that this section was considerably discussed by the Select Committee and the *primâ facie* objections to it on the part of my honourable colleagues opposite were met, and they eventually concurred in allowing the section to stand as it has been amended by us. The Honourable the Advocate General, however, suggests that it shall not be competent for the Commissioner to comply with a requisition of this nature on his own authority, and that the requisition shall not be sent to him at all, but be made by Government to the Standing Committee, and that they shall decide whether it shall be complied with or not. But the occasions to which the section applies are such that no Standing Committee or Commissioner should wait to consider whether they or he will comply or not, but, having the means of complying, should unhesitatingly comply at once. This is what has happened in the past, and what will happen in the future, whether the requisition be addressed to the Standing Committee or to the Commissioner. Such being the case, to require that the requisition be addressed to the Standing Committee would only involve a certain loss of time. It would take a certain amount of time to get the committee together to discuss the question, and then, like other committees, they would take a certain amount of time to consider the matter, instead of the order going direct to the Commissioner, and being put into immediate execution. The amendment will, if carried, entail in this way a certain loss of time, which, in the exigencies of the occasion, may prove of material importance. Moreover, I fail to see that any object is gained by sending the requisition to the Standing Committee. We may be sure that Government would not make any such requisition unless it was of the utmost importance that the work should be speedily completed. It seems to me to be wrong in principle that we should ask the Standing Committee to determine whether a requisition made by Government should be complied

with or not. If a requisition comes from Government in such urgent cases, as those to which the section refers, then I say, the section surely means that the work shall, if possible, be done by the Commissioner without any delay or dissent whatever. As to the further question which the Honourable the Advocate General has raised incidentally, namely that the Commissioner is an officer of the Municipality, and that no correspondence whatever should take place between him and Government direct, I do not wish at this moment to state my reasons fully, but I may say that this is a position which I have never accepted on behalf of the Commissioner. It is not the position which he has occupied up to the present time, and it is not the position which is now, according to my interpretation of the Bill, to be given to him. He, as the executive authority of the Municipality, is not a subordinate either of the Corporation or of the Standing Committee, but is co-ordinate with those bodies, who constitute, with himself, the three "municipal authorities" charged with carrying out the provisions of the Bill.

The Honourable Mr. PHEROZESHAH MEHTA:—Your Excellency,—I should like to emphasize what has fallen from the Honourable Mr. Naylor as to the readiness of the Corporation to give such aid to Government as may be in their power in times of urgent public need. I cannot imagine that under such circumstances as are indicated in the section, the Standing Committee would feel or evince the slightest hesitation in cheerfully meeting the call upon them. But with regard to the objection of the Honourable Member that it is wrong in principle that the Standing Committee should be allowed to sit in judgment upon a requisition of Government, he forgets that the section places the Commissioner in the very same position, for the words are not 'the Commissioner *shall*,' but that 'the Commissioner *may* undertake' the work. If there has been therefore no objection to place the Commissioner in such a position, why then any objection to the Committee being placed in the same position? The amendment of the Honourable the Advocate General is simply directed as to the individual to whom the requisition should be addressed and it seems to me that the Honourable Mr. Naylor fails in meeting his argument on that point. I do not apprehend any danger of serious delay if the requisition were addressed to the Committee.

The Honourable Mr. WEST:—I think, your Excellency, it is necessary to go back once more to the central principle of this section to determine what the proper wording should be. It is a case in which Government, being pressed by some great emergency, finds it necessary to exert all its powers. Such a case would arise when, as might be done on the Continent of Europe at this time, it might temporarily place this city in a state of siege. I could put many cases in which it would be undesirable that there should be any obstacle put in the way of Government when a case of this kind has arisen. Take a case of this kind: Government has received private information to the effect that an attack is meditated upon Bombay, though war has not yet been declared. It would be obviously very indiscreet to have the matter discussed in the Standing Committee, which might consist in great part of timid men, or possibly of injudicious men. The whole secret which Government is anxious to keep would be out, and the chief object of Government would be at once defeated. This is one case. I could quote a great many more. When an emergency of this kind is to be met, Government should be enabled to act very promptly, and I take it that *may* is equal to *must* or *shall*, and I think it would be competent to substitute the one for the other. If the Honourable Mr. Mehta would prefer having *shall*

inserted for *may*, I suppose the Honourable Mr. Naylor would not object, but I think the honourable gentleman opposite will recognise that in a great many enactments the word *may* is constantly construed by the Courts as *shall*. I think, however, the Commissioner would find himself sufficiently constrained by the word *may* if he received a requisition from Government, and, therefore, I think we may leave the word *may*, as it looks more constitutional than *shall*. As to the communications, we must bear in mind that the Standing Committee is not the Corporation, nor is it the Executive Officer of the Corporation. The communication should be addressed either to the Corporation or the Commissioner, the Standing Committee being merely a delegated body for carrying on certain business of the Corporation. If it were any general measure the communication would only be to the Corporation, but for any executive measure of pressing emergency, the proper thing for Government to do is to go straight to the officer who can carry out their orders as quickly as possible, and then he may communicate with his Committee that he is doing it, so as not to act behind their backs. Looking at the very serious results which might occur from delay, this section had really better be left as it stands.

The Honourable Mr. TELANG :—Your Excellency,—The Honourable Mr. Naylor having raised the question of principle, I am bound to say that on the principle my opinion agrees with that of the Honourable the Advocate General. I am content that the section should stand in the form in which it is merely as a matter of convenience, and having regard to the necessities of the case which have been pointed out by the Honourable Mr. West. As originally drafted, the section appeared to me very objectionable on grounds of principle. But a deviation from principle in such a case as this may be justified by the necessities which may arise, and may be allowed in view of the necessary precautions which are taken in sub-clause 2, under which the Commissioner is bound to report forthwith to the Corporation. I may point out that the Corporation do not object to the form in which the section now stands. All they say is, that in an adjustment of accounts between the Corporation and the Government, Government should apply the same principle which is applied by them to the work they obtain from other bodies. I take that to be a matter of course which need not be provided for in express terms.

The Honourable the ADVOCATE GENERAL :—I think the section is a mistake. In case of emergency the Government has the power to transcend the law, and use every facility it can.

The Honourable Mr. WEST :—Might I call attention to one important point—Government is not bound to state its reasons to the Corporation. They would be as blind in case of emergency as the public at large.

His Excellency the PRESIDENT :—Do I understand that the Honourable the Advocate General withdraws the first part of his amendment as well as the second ?

The Honourable the ADVOCATE GENERAL :—Yes.

The Honourable Mr. WEST :—If you put in that the Corporation shall thereon pass the orders which the Commissioner shall obey ; you thus force them to make public what may have a most pernicious influence upon the policy of Government.

The Honourable the ADVOCATE GENERAL :—That is already provided against.

The Honourable Mr. PHEROZESHAH MEHTA :—Taking all things into account and remembering that a case of this sort will be of extremely rare occurrence, it would be advisable, perhaps, not to press the amendment.

The Honourable the ADVOCATE GENERAL :—If the Corporation desires the section to stand, I withdraw ; but the clause is, in my opinion, contrary to the principle of the Bill.

The amendment was accordingly withdrawn.

The Honourable Mr. TELANG moved that in section 126, clause (1), line 4, "first" be substituted for "tenth"; and in clause (3), line 37, "first" be substituted for "fifteenth;" and that in section 128, clause (1), line 3, "thirty-first" be substituted for "twenty-fifth." The honourable gentleman said :—Your Excellency,—The proposals embodied in the amendments now before the Council are in accordance with the suggestions of the Municipal Corporation and in substance the same as I proposed in the Select Committee. The Corporation point out that the person most affected by the changes of dates suggested is the Municipal Assessor and he has no objection to the suggestion made ; therefore there is no need to apprehend any practical difficulties arising through the extension of time. The result of the amendment if accepted will be that the Town Council or Standing Committee will commence the consideration of the Budget on the first of November instead of the tenth, and the Budget so considered and passed by the Council will be in the hands of the Corporation on the first of December instead of on the 15th, and the rates and taxes proposed in the Budget will be finally sanctioned by the 31st January instead of the 25th. That is to say the Council or Standing Committee will begin deliberating on the Budget nine days before the present date and the rates and taxes will be sanctioned a week later. I do not think these changes are revolutionary ; there will be no inconvenience to any one if they are made ; and I think the Council will be exercising a wise discretion in accepting the proposal.

The Honourable Mr. NAYLOR :—Your Excellency,—The financial year of the Corporation commences, like that of the Government, on the first of April. The Bill now before us, like the present Acts, provides that some time before the commencement of that year the Commissioner shall prepare and submit to the Standing Committee an estimate of the probable requirements and expenditure and shall lay before them suggestions for taxation for that year. In fact, the Commissioner has to prepare a draft Budget, which is submitted by him to the Standing Committee, who having thoroughly investigated it and modified it according to their views, send it forward to the Corporation, who finally pass their orders upon it. There are two considerations with regard to the time of preparing this Budget which are of great importance. In the first place it is very important that the Commissioner shall not be called upon to prepare it at too great a distance of time before the commencement of the year to which it relates. The Finance Minister of India is able to present his Budget for the year about to begin on the first of April, somewhere towards the end of March—about a week or ten days before the commencement of the year. But the need for having the municipal budget considered and discussed both by the Standing Committee and by the Corporation renders it necessary to require the Commissioner to prepare his draft several months before the first of April. That, under the circumstances, is inevitable, but what we seek is to bring him as near as possible to the first of April and not to impose between him and that date any unnecessary waste of time. Then, on the other hand, after the Budget has been passed by the Corporation, or at least after the Corporation has determined what shall be the taxation in the coming year, a considerable period must be allowed before the first of April in order that the subordinate officers of the Municipality may be able to complete the

assessment-book, details concerning which are given in section 155, and to get the property-tax bills ready for presentation by the ensuing 1st April. One clause of section 155 requires that, when the rates of the property-taxes have been determined, the amount of tax at which each building or land is assessed shall be entered in the assessment-book—a highly important book which is the record of the liability of all property in the city for taxation for municipal purposes. When the assessment-book has been finally completed and signed by the Commissioner, the subordinate municipal officers have to set to work to get ready their bills. It is necessary that there be no delay in this matter because, by section 195, it is provided that each property-tax shall be payable in advance in half-yearly instalments on each first day of April and each first day of October, and by section 198 it is provided that when a property-tax or any instalment of any such tax shall fall due, the Commissioner shall with the least practicable delay cause to be presented to the person liable for the payment thereof a bill for the sum due. . To be able to present all these bills in respect of some 60,000 separate properties soon after the 1st April, requires that an enormous amount of work shall first be performed in their preparation. Punctuality must be observed in the presentation of these bills in order to secure prompt payment of the taxes and regularity and order in the administration of the Municipality's financial affairs. In the consideration of the amendment before us these details cannot be lost sight of. According to the present Acts the Budget must be circulated to the members of the Corporation by the 27th December and the taxes must be voted by them on or before the 15th January. As the matter was provided for in the Bill as it originally stood, it was proposed that the Budget should be before the Corporation by the 22nd December and that the Corporation should pass the taxes by the 15th January, allowing 24 days for this purpose instead of 19 as before. Your Excellency will remember that on the occasion of the first reading of this Bill the Honourable Mr. Telang appealed to the sympathy of this Council to save him his Christmas holidays by requiring the Budget to be circulated to the Corporation before Christmas. In consideration of this appeal the Select Committee altered the dates. Under the sections as amended by them, it will be necessary for the Budget to be approved by the Standing Committee and forwarded to the Corporation not later than the 15th December and we have also extended the latest date on which taxes may be voted by the Corporation to the 25th January, thus allowing 40 or 41 days. It is reasonable and fair to allow the Corporation a sufficiently long time for the consideration of details and to enable them to arrive at a conclusion as to what shall be the amount of the taxation. But in Select Committee the Honourable Mr. Telang did not bring forward any further amendment of what we then fixed upon, nor does he now do so on his own account. He has taken up the wish of the Corporation as expressed in their most recent letter and asks the Council to give effect to it. The suggestion in that letter as to the extension of time is said to be based on information obtained from the Assessors. The Corporation would perhaps have shown more consideration for the Commissioner had they consulted him as to whether or not their proposed further alteration of dates would be a source of inconvenience. The assessor is subordinate to the Commissioner, and I am not aware in what terms his opinion was asked or given. But a subordinate cannot possibly be aware of all the circumstances telling for or against a change which are known to the heads of his department and, I think, we should listen to the officer at the head of the Executive Department, whose opinion on such a point as this must be more trustworthy than that of any subordinate.

The Honourable Mr. PHEROZESHAH MEHTA :—Allow me to point out that an amendment will be required in section 125 if this amendment be passed.

The Honourable Mr. NAYLOR :—Yes, quite so. I was going to suggest that.

The Honourable Mr. FORBES ADAM :—Your Excellency,—It seems to me that this is not a matter of very great importance, but as there is a wish on the part of the Corporation that if possible the dates, as suggested by the Honourable Mr. Telang, should be altered, I think their convenience might be met. As to what the Honourable Mr. Naylor has said about taking the opinion of the Commissioner, rather than the Assessor, in this matter the Commissioner would have had to go to the Assessor I expect to ask if he could do the work in the time.

The Honourable Mr. WEST :—Your Excellency,—It would perhaps be possible to hit upon a compromise which would meet the view of both parties. If we fixed the dates as the 10th November and the 31st January the time will possibly be sufficient. The matter was the subject of considerable deliberation in the Select Committee. From my experience I think it is a decided disadvantage to allow too long a time. A certain measure connected with the University was to be discussed. There was too much time allowed. It was expected by the Fellows that other opportunities of studying it would present themselves. Very few of the interested persons attended and the measure was exposed to the risk of being thrown out altogether. The Budget might afford a similar experience as the measure to which I refer. I hope the Honourable Mr. Telang will accept the compromise

The Honourable Mr. TELANG :—Under the circumstances I will accept it.

The amendment was accordingly accepted as modified.

The Honourable the ADVOCATE GENERAL moved that in section 129 after the words "Budget Estimate" in line 5 the words "or any item therein" be inserted. He said —Your Excellency,—My amendment is a very simple one and might be accepted at once. I propose that the section shall read "Subject to the exigency of sub-section (1) of the last preceding section, the Corporation may refer the Budget Estimate or any item therein back to the Standing Committee for further consideration, or adopt the Budget Estimate or any revised Budget Estimate submitted to them, either as it stands or subject to such modification as they deem expedient. provided that the Budget Estimate finally adopted by the Corporation shall fully provide for each of the matters specified in clauses (*b*) and (*c*) of section 126." The Corporation has a right to refer any item back. It would be a cumbrous process to refer back the whole Budget on account of a single item, and it will be far better to send back any item or items separately.

The Honourable Mr. NAYLOR :—Your Excellency,—When a proposal of this kind was first set forth I was myself disposed to agree to it; but the question was very carefully considered by the Select Committee and for reasons which the Honourable Mr. Mehta placed before us, we decided that it was better to leave the section as it stands. The Honourable Mr. Mehta has very much more experience than I can claim of the proceedings of the Corporation, and I shall leave it to him to express his views on this matter.

The Honourable Mr. PHEROZESHAH MEHTA :—Your Excellency,—It seems rather odd that I should be against this proposal, but my experience of the manner in which alone the Corporation can deal with the Budget has led me to form a somewhat strong opinion against the utility of the amendment. The power to refer back separate items to the

Committee can serve no useful purpose, while it is likely to be productive of unnecessary delay. It will be remembered that a Budget is not sprung upon the Corporation all at once. It is prepared by the Commissioner in the first instance who lays it before the Committee. The Committee carefully discuss and settle it, and send it with their remarks to the Corporation. If the Corporation do not agree with the main principles on which the Budget is framed, it is right and proper that they should have the power of referring it back to the Committee. That power is given by the section as it stands. If the main lines of the Budget are approved, then the Corporation are competent to deal finally with the separate items themselves, and they have the necessary powers to do so. The Commissioner, the Chairman of the Committee who introduces the Budget, and the members of the Town Council are all there to give any information that may be required. And a there has been an opportunity for every member of the Corporation to consider it beforehand, there will also be thus an opportunity of previously obtaining information a member may require. I consider it of some importance that members of the Corporation should be encouraged and required to study the Budget before it comes on for discussion. The power of referring back items would lead to a very loose way of dealing with the Budget; and items would be referred back to escape the effort of grappling and dealing with them at once, a tendency which is not unfrequently discernible in the deliberations of large bodies. The settlement of the Budget might be thus unnecessarily delayed indefinitely. Experience has shown to me that a power like that proposed to be given by the amendment would have very few occasions on which it could be at all usefully exercised, while it is very likely to be loosely and incautiously used so as to cause needless delay. There is an alternative, though rather circuitous, course by which the same object, so far as it is an useful one, can be gained. The Budget is never passed at a single sitting; and there is, besides, the power of adjournment with the new provisions contained in clause (*o*) of section 37. Any information that may be required to enable the Corporation to deal finally with a separate item, can always be asked for and obtained in the interval of two sittings.

The Honourable the ADVOCATE GENERAL :—The items may be referred back by a roundabout process, and I think it preferable that the Corporation should have the power to do so by a straightforward process.

The Honourable Mr. FORBES ADAM :—With all due deference to the views of the Honourable Mr. Mehta I think it would be a great advantage if the Corporation were able to send back particular items instead of the whole Budget which must occasion great delay.

The Honourable Mr. WEST :—Your Excellency,—The objection appears to be this, that members of the Council might go not quite prepared and knowing they could adopt this plan might have recourse to it and would, as was done in another public body to which I have already referred, put the matter off to such a degree as would occasion great inconvenience. It is obvious it would be a much longer process and would spin out discussions on the estimates to an interminable extent. I believe there are practical difficulties in the way. I have not the experience in the matter that the Honourable Mr. Mehta possesses. But if the estimates were discussed item by item I can see how great the inconvenience might be, which such a plan would almost inevitably occasion. I do not think we should be justified in departing from the view which has been put before us.

The Honourable the ADVOCATE GENERAL :—I did not suggest "item by item." The Corporation will just possess the same power as they have done to send back the Budget or any of its items.

The Honourable Mr. WEST :—Do you mean "any one item."

The Honourable the ADVOCATE GENERAL :—One or more items; but not perpetually doing this. Instead of sending back the whole Budget they will send back the item to which they object—the item or any number of items. This will prevent them from sending the whole Budget back—that is the principal thing.

The Honourable Mr. FORBES ADAM :—Under the section as it stands they would have to send back the whole Budget though it were but one item they objected to.

The Honourable Mr. PHEROZESHAH MEHTA :—The Corporation have every facility to deal with and dispose of that item themselves. There is nothing which the Committee can do which they cannot do themselves. While, on the other hand, facility to refer back one item, means facility to refer back any number of them in detail, and I am apprehensive that the power is likely to be incautiously misused.

The Honourable the ADVOCATE GENERAL :—But the present system seems to me like burning down the house to make a roast pig.

His Excellency the PRESIDENT :—It seems to me to be highly necessary that the Corporation should be enabled to pass the Budget within the time we have specified If cases occur in which a single item involves a question of great importance there will be no great harm in sending back the whole Budget. In matters of minor importance the process of reference would be dilatory and undesirable.

The Honourable the ADVOCATE GENERAL :—The aim of the amendment is to prevent the necessity, such as recently occurred, of sending back the whole Budget instead of a part of it.

The Honourable Mr. PHEROZESHAH MEHTA :—The honourable member is under a misapprehension; the Budget was not sent back.

The Council divided :—

Ayes.	*Noes.*
The Honourable the Advocate General.	Lieutenant-General His Royal Highness the Duke of Connaught.
The Honourable Káshináth Trimbak Telang.	The Honourable J. B. Richey.
The Honourable F. Forbes Adam.	The Honourable R. West.
	The Honourable J. R. Naylor.
	The Honourable Ráo Bahádur M. W. Barve.
	The Honourable P. M. Mehta.
	The Honourable Ráo Bahádur Behechardás Veharidás.

So the amendment was lost.

The Honourable Mr. PHEROZESHAH MEHTA moved that in section 129, line 10, the word "alteration" be substituted for the word "modification"; that in section 133, lines 29 and 30, the words "as far as may be" be omitted; and that in section 136, lines 6 and 27, the words "Governor in" be omitted.

The Honourable Mr. NAYLOR :—I am prepared to accept these amendments.

They were accepted accordingly

The Honourable Mr. WEST moved that with respect to the appointment of auditors the following amendments be made, *viz.* :—

(1) that in section 136, lines 26 to 28, the words "not exceeding, in the whole, five thousand rupees per annum" be omitted.

(2) that in section 137, line 1, the following words be inserted after the word "shall," *viz.* :—

"forthwith report to the Standing Committee any material impropriety or irregularity which they may at any time observe in the expenditure or in the recovery of moneys due to the Council or in the Municipal Accounts, and shall".

The honourable gentleman said :—The amendment I have given notice of in this section connects itself closely with the general theory of the relation of the officers of the Municipality to the Commissioner and the Corporation, some parts of which I have already stated to the Council. It appeared to me the other day, when we were discussing the question of keeping the municipal accounts, that as the Municipal Commissioner is responsible for keeping those accounts, he ought to have in the person of his Head Accountant some one directly responsible to himself under his control and in a general way nominated by himself. But at the same time, I think, I threw out what I felt very strongly, that the control of the Corporation should in the interest of that body as the representative of the public of the city be an effectual control, one exercised quite independently of the Commissioner and of his office ; and on reading the other sections of the Bill, it appeared to me that the establishment of auditors furnished the means by which this could be done It was only necessary to somewhat raise the status of the auditors, and make the appointment of them the duty of the Corporation, and place them functionally in a position to exercise powers of control, which were requisite to keep the Corporation thoroughly informed of what was going on. But in order that the auditors should possess a technical qualification, such as would enable them to discharge this very important duty and give up their time to it, it is necessary that they be skilled accountants, and I think it desirable that their emoluments should not be limited in the way in which they are by clause 3 of section 136. You cannot obtain two auditors at the rate of Rs. 5,000 per year for the two who will be able and willing to exercise the very important duties which should be discharged by the auditors. They should practically be controllers and have access to the accounts of the Corporation on an independent footing at any moment they may desire. And they should report forthwith every instance of irregularity which they may discover Therefore, I thought it was very necessary that this clause should be amended so as to enable the Corporation to put their auditors on such a footing that they might be officers of the greatest ability, and devote the whole of their time and be encouraged to do their duty in an effective manner by a certain increase of remuneration. That is the object I have in view. I trust from the point of view I have taken the proposal will commend itself to the Legislative Council.

The Honourable the ADVOCATE GENERAL :—Might it not be worth while to specify the sum of money to be paid to the auditors and that it should be put in the section. I am not prepared to suggest the sum.

The Honourable Mr. WEST :—That is a matter which should be left in the hands of the Corporation. My desire was to leave their hands free, as I thought they would find out what sum they would have to expend to get auditors of the required ability. But if the honourable members opposite would desire to have a limit imposed, I have no objection to it, but it should be much higher than Rs. 5,000.

The Honourable Mr PHEROZESHAH MEHTA :—I know the work has become very heavy, and there should be an efficient audit. It is necessary to have a concurrent audit going on from day to day. In these circumstances Rs. 5,000 is too little At the same time I know the Corporation are always inclined to be rather generous with the money of the ratepayers, and the tendency to give large sums in salaries is generally very strong. I do not say this with regard to the Corporation of Bombay only, for it is a tendency which affects all bodies placed in similar circumstances. I therefore think the Honourable the Advocate General's suggestion a very good one, that we should have some maximum fixed, and I would submit that it should be double the present amount, *i.e.* Rs. 10,000.

The Honourable Mr. WEST :—Yes, that will do.

His Excellency the PRESIDENT :—Then the amendment and the suggestion are accepted.

The Honourable the ADVOCATE GENERAL :—My only doubt would be whether you could get such a man for Rs. 500 a month. The Honourable Mr. Forbes Adam would be best able to tell us.

The Honourable Mr. FORBES ADAM :—That is quite sufficient. The amendment was accepted, clause (3) standing—" (3) The auditors so appointed shall receive such remuneration, not exceeding, in the whole, ten thousand rupees per annum, as the Corporation shall from time to time determine."

The Honourable Mr. WEST moved that the following new section be inserted after s. 137, *viz.* :—

" 137A. (1) The Governor in Council may at any time appoint an auditor for the purpose of making a special audit of the municipal accounts and of reporting thereon to Government: provided that the costs of any such audit shall not, without the consent of the Council, be chargeable to the municipal fund.

A special audit may be directed by the Governor in Council.

" (2) An auditor so appointed may exercise any power which an auditor appointed by the Council may exercise."

The honourable gentleman said :—Your Excellency,—The object of this is probably obvious. It has been found in England, where municipal matters are looked after with a good deal of interest, that the control of the Local Government Board is still necessary, especially in the matter of audit, and they have a right to institute independent audits on account of various public bodies in the country—all bodies one may say constituted of late years. In many Municipal Corporations formed before the Local Government Board was established that right does not I believe exist. It is a general principle in the constitution of new bodies that the Board shall have such authority, and it is quite obvious that occasions may arise in which the Government would feel it to be its duty to institute an independent audit in the interests of the public. An occasion of this kind might arise—a certain large

body of ratepayers might say " We are not being properly used in the accounts, and we have no one to appeal to except the Corporation ; they have taken their view, and we desire that the accounts shall be looked into in an independent way." And on their making such an appeal to Government, it is obvious that Government should have the opportunity of complying with their request. It is desirable also that public accounts should be looked into occasionally from a new standpoint, and if Government sends an official auditor and he takes his stand upon a different method than those which the ordinary auditors in their humdrm way have been accustomed to, he may discover many things which would not otherwise be discovered. As the expense of this is not to be the expense of the Corporation Government will be quite justified, whenever they feel the necessity, in making an independent audit, and they may do so occasionally to great public advantage.

The Honourable Mr. NAYLOR :—Your Excellency,—On this point I wish only to say a few words on behalf of those unfortunate and much misunderstood gentlemen, the framers of this Bill. The change which was made in the Bill as introduced upon the present law, by which the appointment of auditors of the municipal accounts was vested in the Governor in Council, and not in the Corporation, was made at the desire of your Excellency's Government. Mr. Ollivant was not in favour of the change, or at least he thought that the change, if any need be made, should be similar to that which the Honourable Mr. Telang had intended to propose—namely, that one auditor be appointed by the Corporation and one by Government. For myself, looking at the theory of the matter, it seemed to me more suitable that the auditors of the Corporation accounts should be appointed by an authority independent of and outside the Corporation itself. Besides the practice in England being, as the Honourable Mr. West has pointed out, in favour of this view, there is considerable precedent even in India itself for the adoption of such a course. The auditors of the municipal accounts of Calcutta are appointed by Government. So also are the auditors of the municipal accounts of Madras ; and in this presidency the auditors of the Local Boards are also appointed by Government. Further, on examining into what had been the history of the appointment of auditors by the Corporation, I was informed that for many years the auditors appointed by the Corporation are two gentlemen who have held office from year to year without any change, who are not experts and have no special capacity for auditing accounts. I have not the pleasure of the acquaintance of these two gentlemen, and do not even know their names, so that I shall not be credited with any wish to detract from their merits whatever they may be. But I state what I understand to be the fact merely for the purpose of explaining that on this account also it seemed to me that the proposal of Government was one worthy to be followed. That proposal is, moreover, supported in a memorial which is before this Council from the Bombay Ratepayers Association. Accepting the principle of the proposal contained in the Bill, they suggest that one auditor should be appointed by Government and the other by the ratepayers. There would be no objection to this, but that no machinery exists by which the views of the ratepayers in the matter could be ascertained. Thus all the facts appeared to justify the opinion I have expressed, that the appointment of auditors had better vest in Government than in the Corporation. But the proposal of the Honourable Mr. West, whilst being agreeable to the representatives of the Corporation, also practically secures all the objects which to my mind are required. Therefore, I shall certainly support his amendment.

The amendment was unanimously adopted.

XI The Honourable Mr. WEST then moved, without comment, that in s. 474, line 52, the figures " 137A" be inserted after the figure " (2)."

The Honourable Mr. TELANG subsequently asked:—Is it necessary to have this addition?

The Honourable Mr. WEST:—Yes, otherwise the auditor appointed by Government might meet with obstruction, and without the insertion of 137A he might have the door slapped in his face. It is better for conformity's sake that he should be put on the same footing as the other auditors.

The addition was agreed to.

XII The Honourable Mr. WEST proposed that the following be substituted for section 65B (3):—"Provided that if, on such a requisition as aforesaid being made, the Commissioner shall declare that immediate compliance therewith would be prejudicial to the interests of the Corporation or of the public, it shall be lawful for him to defer such compliance until a time not later than the second monthly meeting of the Corporation after he shall have declared as aforesaid. If at such meeting, or any meeting subsequent thereto, the Corporation shall repeat the requisition, and it shall then still appear to the Commissioner inexpedient to comply therewith, he shall make a declaration to that effect, whereon it shall be lawful for the president forthwith to name a committee of three councillors, who shall engage to keep secret, save as hereinafter provided, the existence and purport of such documents and matters as may be disclosed to them; and to the said committee the Commissioner shall be bound to make known and to disclose all writings and matters within his knowledge, under his control, or available to him, and embraced within the requisition, and the said committee having taken cognizance of the information, writings and matters so laid before them, shall determine by a majority, in case of difference, whether or not the whole or any part, and which part, if any, of such matters ought to be disclosed to the Corporation or kept secret either permanently or for a defined time, which decision shall be conclusive, and shall be reported to the Corporation at the next ordinary meeting thereof, where also the Commissioner shall be prepared to produce documents, and to make any report or statement requisite to give effect to the decision of the committee when called on to do so by the Corporation." The honourable gentleman observed: There was a general feeling, your Excellency, as I understand that some method similar or analogous to that adopted in the Houses of Parliament dealing with the question involved in this case would be acceptable to the Council, and I have endeavoured in a somewhat elaborate shape to meet the exigencies which might arise, and I now submit it for consideration.

The Honourable the ADVOCATE GENERAL:—I think the plan suggested by the Honourable Mr. West for meeting the difficulty, is a happy one. I shall be willing to withdraw my amendment which is at present before the Council in favour of it, if one or two alterations be made. In the first place, instead of a second ordinary meeting, I should say "next ordinary meeting," for it would not be wise to delay the disclosure too long.

The Honourable Mr. WEST:—The next ordinary meeting might be in two or three days.

The Honourable Mr. NAYLOR:—Yes, and sometimes on the same day.

The Honourable Mr. WEST :—I had in view a definite period, say about two months. But I think "the second ordinary meeting" would be only a reasonable time.

The Honourable the ADVOCATE GENERAL :—I must add that I doubt the expediency of the President naming the Committee. It simply leaves the matter in the hands of one man.

The Honourable Mr. WEST :—That has been the subject of a very careful consideration. If the nomination were made by a majority that would nominate three out of the majority, but if the nomination be in the hands of the president, he will be impartial, it may be supposed, as an intermediatory between the Corporation and the Commissioner, and will act with a sense of responsibility, which scattered members of the majority might not feel. This seems calculated to secure a more impartial decision.

The Honourable the ADVOCATE GENERAL :—In the House of Commons how is it?

The Honourable Mr. WEST :—Not by the majority. The Committee of Selection does it—one for the Government and one for the Opposition.

The Honourable the ADVOCATE GENERAL :—As to "permanently?"

The Honourable Mr. WEST :—I think there is something in that. There are frequently semi-private communications very good for their own purpose, but which are not altogether expedient for publication in the newspapers, and the Committee should have an opportunity of saying these documents shall not be published. When a controversy is going on between Government and the Corporation some unpleasant words at one stage or other may be made use of on one side or other or not relevant to the state of affairs which subsequently may obtain, and this is a reason why the correspondence had better be kept back. Discretion is left entirely to the Committee, and anything improper for publication will be withheld. I admit this is a matter in which there is a balance of considerations, but I think it safe to leave it to the discretion of the Committee.

The Honourable the ADVOCATE GENERAL :—After a certain delay I think it might be produced.

The Honourable Mr. WEST :—There may be some frivolous and personal matters which it will not be desirable to publish.

The Honourable Mr. NAYLOR :—In the Commissioner's office, as in any other public offices, letters are frequently received marked "Confidential." Such letters usually are not allowed to leave the office at all.

The Honourable the ADVOCATE GENERAL :—I do not suppose that the Honourable Mr. Forbes Adam would approve of the Secretary of the Chamber of Commerce receiving letters not to be presented to the Chamber.

The Honourable Mr. FORBES ADAM :—I think it is well known that this section does create a great deal of interest. The whole point arose in a manner which was referred to on the second reading—the case in which Mr. Ollivant remarked that if he had received correspondence from Government, he would not have produced it to the Corporation, and I feel personally that this puts the Corporation in a false position, if correspondence would not be forthcoming at such time as it is desirable to produce it. I would like to ask the Honourable Mr. West, and express a hope that he will leave out the words "either permanently or." As a matter of fact such circumstances are likely to be of very rare occurrence, and my own opinion is that it is desirable to leave out the words.

The Honourable Mr. WEST :—I entirely admit the force of what has been said. It is entirely on practical grounds that I thought these words might be put in, and I cannot but feel they are useful there. But we must take a balance between contending claims. Let us consider what the effect would be. Demi-official correspondence goes on very largely, and so long as people do not expect their letters will be disclosed, they write pretty freely, but directly they got to know that their papers were likely to be pulled out and made public at any moment to be discussed, they would not express themselves with the same degree of freedom, but would mark their letters private, and the Commissioner would feel justified, and indeed, bound, not to put them on the files of his office. Thus the history of the Corporation at a future time might sustain serious gaps through the absence of these letters. Complaints have been made in England several times during late years that matters, the subject of official correspondence, which ought to be on the records of the office, had been treated in this way, and so the history of the country is never to be found in the place where it ought to be. Similarly here unless some safeguard is provided correspondents may feel inclined to write "private," and then the correspondence will become the personal property of the person to whom it is sent. There is that apprehension that correspondence which is now demi-official will become private, and the Corporation records will suffer. However, I do not attach very great importance to the words, and I am quite willing to be guided by the sense of the Council. But, I think, we must see these difficulties will arise.

The Honourable the ADVOCATE GENERAL :—I think the addition of my words will tend to make matters work more amicably.

The Honourable Mr. PHEROZESHAH MEHTA :—To my mind it is difficult to imagine that any circumstances can possibly arise where it would be necessary *permanently* to keep back from the knowledge of the Corporation any documents concerning municipal business. I must confess I very much dislike this part of the proposed amendment However, in disposing of this matter, it will be remembered that the cases against which it is sought to provide are likely to be of extremely rare occurrence. In the whole history of the Corporation such a case has occurred only once, and even then the Corporation were prepared not to insist upon the production of the document in question, if they were assured by the Commissioner that the production was undesirable. The Commissioner, however, denied that the Corporation had any right to compel him to produce documents, and the real question involved in the dispute on that occasion became one of the assertion of the right of the Corporation. I am convinced that a little tact and discretion were all that were needed on that occasion, and there would have been no dispute at all. With regard to the composition of the Committee, if I were not afraid of suggesting something which would have the effect of still further lengthening out a terribly elaborate provision for a very remote contingency, I would suggest that the Committee may be composed of the President of the Corporation, the Chairman of the Standing Committee, and a third member elected by the Corporation. Such a Committee would be perfectly safe and impartial for all practical purposes.

The Honourable Mr. FORBES ADAM :—I am in favour of the Corporation electing the whole Committee instead of it being elected by the President. I have listened to what the Honourable Mr. West has said, and there is a good deal of force in it. But I would put more trust in numbers than I would in one man; therefore I think the Corporation not

the President should have the power to elect. I think that a Committee of five elected by the Corporation would be better than the Committee of three, and I would prefer the wording of the amendment of which the Honourable Mr. Mehta gave notice that the Commissioner shall certify in writing that compliance with any requisition would be prejudicial to the interests of the Corporation.

The Honourable Mr. WEST:—That might involve the loss of a day. I have no objection to a Committee being appointed in the manner suggested by the Honourable Mr. Mehta. The object is to get an impartial Committee.

The Honourable Mr. TELANG:—I think the Corporation might be left to nominate the three members.

The Honourable Mr. WEST:—I think that would defeat the object of the whole thing. The majority would nominate three of their own partisans if there were not feeling. In the House of Commons where there is a division member for member is chosen by either side.

The Honourable the ADVOCATE GENERAL:—I think the Honourable Mr. Mehta's suggestion is a good one, the President of the Corporation, the Chairman of the Standing Committee and one member would form an efficient Committee.

The Honourable Mr. WEST:—I have no objection to that. Then otherwise the section may stand. Does the Honourable the Advocate General agree to that?

The Honourable the ADVOCATE GENERAL:—You would leave out the words "either permanently or"? I think it would be better to specify six months.

The Honourable Mr. RICHEY:—It seems to me after reading the letter of the Corporation that if they had had the advantage of hearing the arguments on both sides they would not have sent the letter in its present form.

The proposal to omit the words "either permanently or" was put to the vote.

The Council divided:—

Ayes.	*Noes.*
The Honourable the Advocate General.	Lieut.-General H. R. H. the Duke of Connaught.
The Honourable Kashinath Trimback Telang.	The Honourable J. B. Richey.
The Honourable F. Forbes Adam.	The Honourable R. West.
The Honourable Ráo Bahádur M. W. Barvé.	The Honourable J. R. Naylor.
The Honourable Pherozeshah Mervanji Mehta.	
The Honourable Ráo Bahádur Beheharadas Veharidas.	

So the proposal to omit the words was carried.

It was further agreed that the Committee of Inspection should consist of the President of the Corporation, the Chairman of the Standing Committee and one member elected by the Corporation. On this understanding the amendment was accepted, so that the section stood as follows:—

"(3) Provided that if, on such a requisition as aforesaid being made, the commissioner shall declare that immediate compliance therewith would be prejudicial to the interests of the corporation or of the public, it shall be lawful for him to defer such compliance until a time not later than the second ordinary meeting of the corporation after he shall have declared as aforesaid. If at such meeting, or any meeting subsequent thereto, the corporation shall repeat the requisition and it shall then still appear to the commissioner inexpedient to comply therewith, he shall make a declaration to that effect, whereon it shall be lawful for the corporation to elect one councillor who with the president of the corporation and the chairman of the standing committee (or if the president of the corporation is also chairman of the standing committee, with the said president and one member of their own body elected by the standing committee) shall form a committee, who shall engage to keep secret, save as hereinafter provided, the existence and purport of such documents and matters as may be disclosed to them; and to the said committee the commissioner shall be bound to make known and to disclose all writings and matters within his knowledge, under his control, or available to him, and embraced within the requisition, and the said committee having taken cognizance of the information, writings and matters so laid before them shall determine by a majority, in case of difference, whether or not the whole or any part and which part, if any, of such matters ought to be disclosed to the corporation or kept secret for a defined time, which decision shall be conclusive and shall be reported to the corporation at the next ordinary meeting thereof, where also the commissioner shall be prepared to produce documents and to make any report or statement requisite to give effect to the decision of the committee when called on to do so by the corporation."

At this stage of the proceedings the Honourable Mr. Naylor proposed the acceptance of the following section instead of section 65 (3) (*c*) :—

"(*c*) On the occurrence or the threatened occurrence of any sudden accident or unforeseen event, involving or likely to involve extensive damage to any property of the corporation or danger to human life, take such immediate action as the emergency shall appear to him to justify or to require, reporting forthwith to the standing committee and to the corporation, when he has done so, the action he has taken and his reasons for taking the same and the amount of costs, if any, incurred or likely to be incurred, in consequence of such action, which is not covered by a current budget grant within the meaning of the expression as defined in section 130."

The proposal was accepted and the Honourable Mr. Mehta's amendment to sections 65 (3) (*c*), 115, 116 and 117 were dropped.

The Honourable the ADVOCATE GENERAL :—I would suggest that we deal with section 30 now; there is a slight flaw in it.

The Honourable Mr. NAYLOR :—Yes, but there are also some other clerical errors, and I propose to take them all together afterwards.

The Honourable Mr. WEST proposed that the following section be substituted for s. 143, *viz.* :—

Payment to be made to the council, in lieu of the general tax, by the Secretary of State for India in Council.

"143. (1) The Secretary of State for India in Council shall pay to the council annually, in lieu of the general tax from which buildings and lands vesting in him are exempted by cl. (*b*) of s. 142, a sum ascertained in the manner provided in sub-ss. (2) and (3).

"(2) The rateable value of the buildings and lands in the city vesting in the Secretary of State for India in Council and beneficially occupied in respect of which, but for the said exemption, general tax would be leviable from the Secretary of State for India in Council, shall be fixed by a person from time to time appointed in this behalf by the Governor in Council, with the concurrence of the council. The said value shall be fixed by the said person, with the general regard to the provisions hereinafter contained concerning the valuation of property assessable to property-taxes at such amount as he shall deem to be fair and reasonable. The decision of the person so appointed shall hold good for a term of five years, subject only to proportionate variation, if in the meantime the number or extent of the buildings and lands vesting in the Secretary of State for India in Council in the city materially increases or decreases.

"(3) The sum to be paid annually to the council by the Secretary of State for India in Council shall be eight-tenths of the amount which would be payable by an ordinary owner of buildings or lands in the city, on account of the general tax, on a rateable value of the same amount as that fixed under sub-s. (2)."

The Honourable gentleman said :—Your Excellency,—The object of this proposal is to define more closely, and as I hope, better, the relation between Government and the Municipality in respect of the taxation of buildings and the lands connected therewith in the occupancy of Government. It is a hopeless task to arrive at a perfectly satisfactory determination as to the method in which buildings and lands, the property of Government and used by Government in the exercise of its sovereign power, should be assessed for local purposes. Most of the essays on taxation touch more or less on the subject, and in many cases before the Courts very acute discussions have taken place with reference to the right principles of rating in such cases. One instance if I remember aright was the Newport Docks case. In every such case it appears there has always been much to be said on both sides. And the interests of the city and the citizens of Bombay are so closely interlocked with the interests of the presidency and the whole empire that it is impossible to say when on the one side the interests cease and the other comes in. It is like the analysis of the various shades which overlap and blend to form white. It is essential therefore that we should arrive at some compromise and endeavour to fix upon a basis and method of taxation as satisfactory as in the present state of human information we possibly can. It is obvious there are several considerations attaching to Government buildings which do not attach to ordinary buildings occupied for purposes of profit, which we are bound to consider and provide for. Take for instance this hall where we are now assembled—it would be very valuable for the chief room of a bank and would sell for a considerable sum on account of its situation. But if it were rated at all it would, supposing it were let to a bank or mercantile firm, be rated for a profitable, a beneficial occupation, which does not now exist. Government keeps some of its buildings for a quasi-beneficial purpose, as for instance, the Paper Currency Office, but generally speaking, as in the case of the police office and buildings of that description they are occupied in the interest of the public at large. In the case of other buildings the citizens and the whole community share the gain where by their occupancy some considerable benefit is derived. The community therefore ought to pay something. They should not pay the full rate paid by owners of buildings by which they derive large profits, but it is right they should pay something. Public

buildings are not always built on purely economical consideratior This place might have been run up as a chawl, but it would not be an ornament to the city and pleasing to every citizen who walks by, who undoubtedly gets a degree of pride as well as of profit out of it, and regards it with a certain degree of self-gratulation. If he says, "Make my city handsome and attractive that I may look upon it with pleasure and be proud of it," he should contribute towards the cost of doing so. Government here own very large spaces of unoccupied land and that land is at present given up in a great measure to the healthful recreation of the people. Now if Government were subject to be charged on that land at its mercantile value, it might say : "If we are to be charged with that we shall retaliate and charge 4 annas entrance," and so most of the healthful recreation ground in the city would be heavily charged and the health of the city would necessarily suffer. No doubt Government would be very hard pressed before it would retaliate in that manner. But there is hence a strong claim to considerations in dealing with public buildings, and they ought not to be placed entirely and without qualification on the same footing as if they were banks, mercantile buildings or offices of railway companies. Another standard too should be applied to public buildings which are so handsome and built on so fine a scale in Bombay. It has appeared to Government as being fair that a deduction of 20 per cent. from the mercantile value should be made in assessing the value of public buildings in Bombay for the purposes of rating for the municipal funds. The mode in which the assessment is to be made is somewhat a matter of detail. What is proposed is that a competent person should be appointed once in five years, who shall make his estimate, and he is to be a person approved by the Corporation. I suppose there can be no possible objection to that. No one could reasonably raise any objection. If in the course of five years Government raise other spacious and extensive buildings that will be an extension of their property on which there shall be additional revenue. It may be asked why have a period of five years. It would be undesirable to have the matter gone into year by year. It is better to fix a reasonably long time, and five years seem to me to be reasonable. I trust this clause will be accepted.

The Honourable Mr. FORBES ADAM :—Your Excellency,—After listening to the remarks of the Honourable Mr. West in support of this amendment, I feel there is no doubt in my mind that the principle involved is a sound one—that Government should regard these properties as occupying a special place, which should be recognised in Municipal taxation. But it is almost impossible for me to recognise, or as a representative of the Port Trust to accept this without bringing to notice section 144 affecting the property of the Trustees of the port. The Trust occupies a very peculiar and special position, and although I have not had time to go thoroughly into the whole matter as I would wish, yet I am prepared to submit to the consideration of the Council what in my view and my hope may possibly lead them, so far as my amendment is concerned, to a satisfactory resolution, that is, to a modification of its provisions. At present I only wish to say that I recognise the principle that Government should treat in a special way property which is only partially held for beneficial purposes.

The Honourable Mr. TELANG :—The question which has been now brought before the Council by the Honourable Mr. West is a question which has been a source of considerable trouble to this Council in times past. Many years ago, when the Municipal Act of 1872 was under consideration, the question was raised whether it was at all within the

power of the Council to assess for municipal purposes buildings held by the Secretary of State. That question is not now before the Council, and I will not therefore say anything in reference to it. I have heard what the Honourable Mr. West has said with regard to the matter under consideration, and there are, it seems to me, one or two points which are not quite satisfactorily settled by the honourable member's observations. In the first place I do not quite gather from the remarks of the honourable member why in fixing the rateable value as distinguished from the deductions to be allowed for, he proposes that in respect to Government buildings there should be a special person appointed to assess the value upon which taxation shall be levied. The original fixing of the assessable value on Government buildings and all other buildings in the city should, it seems to me, be made on such a basis that equal justice may be meted out to the poor ratepayer and the wealthy Central Government, and this can best be secured if the assessment is made by one and the same officer. I do not quite understand why Government is in this respect to stand on a different footing from the ordinary householder. With regard to the proposed reduction of eight-tenths on Government property I conceive there is a great deal in the arguments adduced by the Honourable Mr. West, but something must also be taken into account against it. It is to be remembered that it is not only Government which builds on other than purely economical principles. Private householders also build sometimes on other than economic principles. But no deduction is made on account of the æsthetic appearance of their buildings which may be equally pleasing to the eye with those large Government buildings to which the Honourable Mr. West refers Yet, surely, these houses in which æsthetics receive as much attention as accommodation or economy should meet with similar consideration. Another aspect of the question which has to be considered is this. The Central Government is the Government of the whole presidency, and if that Government parts with some of its power in certain areas in favour of Local Boards, the question is how much it should part with, at the same time, out of the general revenues derived from the whole presidency. Looking on the subject from this point of view I cannot see how this deduction is to be justified. It is a question which in my mind is not easy to solve. I speak subject to correction, but I understand that the direction in which the practice in England has in recent years tended in the matter of local rating of property belonging to the Central Government—and that is the way the matter should be looked at—is towards an assimilation of Government and private property on principle. I should prefer the amendment to the section as it stands. But I throw out these suggestions merely in order that the Honourable Mr. West and the other honourable members may see how far there is anything sound and practical in them.

The Honourable the ADVOCATE GENERAL:—I entirely accept the principle contained in the Honourable Mr. West's amendment, and I agree with him on the point regarding the nomination of a special person to assess Government buildings. The general way in which property taxes are fixed here is on the rent at which the property lets, with certain deductions; and if this system is to be applied to Government buildings Government would be an immense gainer. If you assess this building at the rent at which it would be likely to let the amount would be very small indeed. As to rating in the English counties it is well known that great houses are assessed at the rent for which they would let. In some great houses in my own part of England the amount is something ridiculous. A ducal residence, the outlay on which would represent a capital yielding an interest of many thousands a year, is not rated at more than four or five hundred per year. It is said by the assessor

that no person would dream of paying more than that amount. When you come to these immense buildings it will probably be found that the amount at which they are rated would not be arrived at in the same manner as that in which the rateable values of the ordinary houses of the town are fixed. Take the Secretariat. If we were to value it at what a private owner or a bank would give for it, the amount would be very small, indeed, compared with what is paid for it now. And I maintain therefore that a special officer does seem to be necessary. It is impossible, as the Honourable Mr. West has said, to state positively what the deduction ought to be, but I think the present deduction allowed of two-tenths, and not eight-tenths as the Honourable Mr. Telang observed, is by no means a liberal one. One verbal amendment I should like to suggest is that the word "taxes" should be expunged and "rates" substituted. "Taxation" is customarily applied to Imperial taxes, whilst "rating" is used to designate local taxes. Then as to the words "property tax." There may be a property tax in India some day, and it would not be desirable to make use of the term to describe any portion of the local rates. I would describe these taxes as rates throughout the whole clause.

The Honourable Mr. WEST :—I have gone on the principle of adhering so far as possible to the phraseology in the sections as they are drawn, and I therefore use the word "taxation" here because it is used throughout the Act. If you refer to section 139 you will find the word is used. If "rates" were the word used throughout, then I should have no objection whatever.

The Honourable Mr. PHEROZESHAH MEHTA :—I think the Honourable the Advocate General has shown that the amendment will rather cut at both ends as regards the income of the Corporation. So far as the property of Government is concerned he points out the necessity for appointing a special officer, because he is of opinion that Government buildings should be assessed in a special manner, and the special officer would take care to assess them at lower rates than those required by their full valuation.

The Honourable the ADVOCATE GENERAL :—My idea is that if assessed by the Municipal Assessor the assessment would be unfavourable to the Municipality

The Honourable Mr. PHEROZESHAH MEHTA :—Then I do not see why we should not be allowed to assess them through the Municipal Assessor and put the full rental on them.

The Honourable the ADVOCATE GENERAL :—That would be much less than the amount which Government is already paying.

The Honourable Mr. PHEROZESHAH MEHTA :—The assessment by a special officer would cut at one end, and the deduction of 20 per cent. now proposed cuts at the other. What I wish to point out is whether this percentage of deduction is not too large. I am quite prepared to admit that in the case of a large owner like Government an allowance should be made for the saving in the cost of collection and even of incidental litigation also. Now the cost of collection is, I believe, about three per cent. and it would be a liberal allowance to deduct five per cent. for the reasons I have mentioned. Another five per cent. might be allowed for the special character of the property and buildings owned by Government. A deduction of 20 per cent. strikes me as too large.

The Honourable Mr. WEST :—I am pleased to find, your Excellency, that the speeches to which we have listened afford a very fair illustration of the difficulty of arriving at an entirely satisfactory basis of taxation for public buildings. Your Excellency's Government considered this matter with a desire to be perfectly fair towards the tax-payer in the

whole presidency and the tax-payer in Bombay. Although Government is from time to time personified, it is only after all an artificial person, and it has no really personal interest in the matter. I think it desirable that a special valuation should be made by an officer appointed with the concurrence of the Corporation by Government. It would be extremely undesirable that the regular assessor or assessors, employed by the Corporation, should value Government buildings. If that plan were followed Government would receive its notices on countless dirty pieces of paper, and if an appeal were carried into the Courts on matters of assessment we should have Government engaged in a wrangling with the Corporation, and the result would be very undignified. I think the Council must have been struck with the Honourable the Advocate General's remarks as to the advisability of having a special assessor appointed. If the Corporation concurred with Government in appointing him, there seems to be no reason whatever for any one objecting to him. As to the æsthetic considerations on which the Honourable Mr. Telang dwelt with that love of æsthetics which is known to be a characteristic of that gentleman, such considerations in the individual are a purely selfish consideration or very closely connected with a selfish consideration; but Government, in raising handsome buildings, is not actuated by any selfish considerations at all—the only selfishness is in its desire to please its children in Bombay and raising the general credit of the empire by putting such handsome structures before the eyes of the people. If Government were rated on full value the assessment would obviously be too high, much money having been expended for the delectation of visitors to Bombay and the people of Bombay. Then the Honourable Mr. Telang points out that Government parts with one of its functions in committing Bombay to a Municipality, and it is a question how much of its own property should be exempted from taxation. This is one of the indeterminable problems to which it is not possible to arrive at a satisfactory solution. But the Honourable Mr. Telang, with his usual candour, has admitted that there is force in the arguments that the valuation should not be on the same basis as private property, and if Government chose to build these public buildings in some remote and obscure places they would be worth a quarter or one-tenth the value they are now. If they were built at Bándra, or at Thána, Government business—*qua* Government business—could be carried on just as well and the buildings would not be rated at anything like what they are in Bombay. Therefore, it appears to me quite reasonable that Government buildings placed in the centre of Bombay for public convenience ought to be allowed a very considerable reduction on account of their contribution to the general comfort and welfare of the city. We must go on the principle of compromises, but I do say that the Government of His Excellency has considered the matter in a very fair spirit and this amount of deduction can fairly be claimed. Similar remarks to those of the Honourable Mr. Telang were made by the Honourable the Advocate General, and I doubt not that the Honourable Mr. Mehta, having regard to the interlacing of the interests of different portions of the community, will admit that they are so closely entwined that we cannot do more than arrive at a generally satisfactory conclusion. The careful consideration Government has given to this question has brought us to the proportion here provided for—twenty per cent. of deduction, and in the absence of any mathematical evidence, I think this is a proper amount.

His Excellency the PRESIDENT:—I would only add one remark. Let us suppose Bombay had not been made the Capital of the Presidency and the question were still open, would not other towns be very pleased to give us a reduction far beyond two-tenths?

The Honourable the ADVOCATE GENERAL :—Would your Excellency allow me to ask the honourable mover if he will consider the question of a change of words—rates for taxes. The word rates is more suitable for local levies and taxes for Imperial.

The Honourable Mr. WEST :—I will consult with the Honourable Mr. Naylor upon the subject.

The amendment was then adopted.

The Honourable Mr. Mehta then proposed that to section 36 of the Bombay Port Trust Act, 1879, as it is proposed to amend it by section 144 of the Bill, the words "as the approximate amount properly payable by the Board on account of such general tax" be added. And the Honourable Mr. West proposed that in section 36 of the Bombay Port Trust Act, 1879, as it is proposed to amend it by section 144 of the Bill, lines 16 to 18, the words "a sum ascertained in the manner provided in sub-sections (2) and (3)" be substituted for the words "such lump sum as the Governor in Council shall from time to time determine;" and that the following sub-sections be added to the said section, *viz.* :—

"(2) The rateable value of the buildings and lands in the city vesting in the Board in respect of which the said tax would be leviable from the Board shall be fixed from time to time by the Governor in Council. The said value shall be fixed with a general regard to the provisions contained in the City of Bombay Municipal Act, 1888, concerning the valuation of property assessable to property-taxes at such amount as the Governor in Council shall deem to be fair and reasonable. Every such decision of the Governor in Council shall hold good for a term of five years subject only to proportionate variation, if in the meantime the number or extent of the buildings and lands vesting in the Board materially increases or decreases.

"(3) The sum to be paid annually to the Council by the Board shall be nine-tenths of the amount which would be payable by an ordinary owner of buildings or lands in the city, on account of the general tax, on a rateable value of the same amount as that fixed under sub-section (2)."

The honourable gentleman said :—Your Excellency,—The object of this amendment, like that just adopted by the Council, is to fix a principle on which the rateable value of the property of the Port Trust is to be determined. Government has given an equal amount of consideration to this proposal as to its predecessor, and it appears to them that a somewhat higher basis of assessment may reasonably be adopted on the property now in question than on buildings solely occupied for public utility. The Port Trust property is property on which very large sums are realised. It is true that the Port Trustees are not interested in the matter except as intermediaries between the merchants, shippers and ship-owners and the Municipality, which furnishes great comforts and conveniences. Though the Port Trust realises very great sums they have only *quasi*-beneficial occupation. Yet even in a representative character the Port Trust may properly be taxed for the advantages it enjoys. It may clearly be called upon to contribute to the general fund of the Municipality, not so much as the private property-owner, but something more than Government. A medium line has been drawn for it between Government and private property-owners in this respect—Government paying on 80, the Port Trust 90, and the private owner 100 per cent. A careful perusal of this

section, as I have read it, does not leave the assessment to the Municipal Assessor, who might be partial to the Municipality as against the Port Trust, but gives Government the power to fix the amount, and I think the reduction I have specified is a very fair basis.

The Honourable Mr. FORBES ADAM :—Your Excellency,—I have had great difficulty in dealing with this question and in making up my mind what position to take. Of course, the object we have in view now is to arrive at what is fair to the Port Trust and the Municipality, and although I have had great pleasure in supporting the amendments proposed by my honourable colleagues, I cannot expect to receive the same support from them. There were no doubts in the one case. There are doubts in the other. I confess there has always been and is still a grave doubt in my own mind as to how the Port Trustees should be treated on the subject of taxation. The Honourable Mr. West has referred to the profits realised by the Trust. But there is really no profit. All we have to do is to raise the revenue necessary to pay the interest on our loans, and if our revenue increases *pro rata* to reduce our charges on the trade of Bombay, and thus add to the commerce of the city and consequent prosperity of the Municipality. I may remind the Council that not very long ago a long correspondence took place between the Municipal Commissioner and the Port Trust, in the time of Mr. Ollivant, as to the assessment of the property of the Trust. This morning I had occasion to look into the figures contained in that correspondence, and I find that taking the basis which Mr. Ollivant thought was fair in an ordinary way and treating us as private owners, there was a vast difference indeed. As private owners we should have been assessed at Rs. 2,15,000. Government after full consideration allowed Rs. 1,61,000. I use the figures roughly. Deducting 20 per cent. from the former sum you get Rs. 1,72,000, and putting this against what we are paying Rs. 1,38,000, the difference is Rs. 34,000. In our present position Mr. West's amendment if carried will cause the Port Trust to pay more by Rs. 68,000 than at present, and if the Trust was treated as Government in the last amendment, that is rated twenty per cent. reduction, the difference would still be Rs. 34,000 against the Trust. I would like to submit to the Council whether the Port Trustees should not be treated differently from private individuals. The revenue of the Port Trust is largely enhanced because bandars which Government in former years allowed the public to use free of charge are now merged in the Trust property. The revenue of the Town Customs Bandar for the first year after the fees were imposed was Rs. 1,96,513, and then there was the Free Musjid Bandar, where an enormous native trade was done. The same wharfage fees are charged at them as are charged at bandars which were formerly private property. Wharfage fees are a direct tax upon trade, and the rates are fixed, not according to the measure of convenience afforded, but according to the financial requirements of the Trust. The Trust has to pay 4½ per cent. interest on the cost of properties purchased for it by Government. This interest is not earned by the land and the deficiency has to be made up from wharfage. Under the Municipal Act not only is the actual revenue of the Port Trust including wharfage fees proposed to be taxed, but also the value of vacant lands which the Trustees cannot let. The Trust is thus taxed twice over—once by reason of their having to make up from the wharfage fees 4½ per cent. interest on the cost of the vacant land, and the second time on the cost of the vacant land itself, at the rate at which it "may be reasonably expected to let." In the last settlement of Port Trust assessment Government allowed deductions from revenue claimed by the Trustees

on account of working expenses and considered them "reasonable," which the Honourable Mr. West's amendment would deprive them of. For example, under the Amendment Bill, the Trustees could not claim deduction of the equivalent of the old Police and lighting rates, namely 4 per cent. from the assessment value of their property. The Select Committee in paragraph 49 of their report, admit the logical correctness of such a claim, and in the case of the Trust there would be no difficulty in allowing it, as the Trustees' rates are paid for the year in one sum, and there are no other like instances as explained in the assessment correspondence. The Trust has conferred great benefit upon the town at its expense. The unwholesome foreshore along the eastern shore of the island, has been reclaimed. On Elphinstone and Mody Bay Estates alone it has already made ten miles of public roads and ten miles of drain, while the roads and drains of the city have been made at the expense of the Municipality.

I do not wish to be considered as the special pleader for the Port Trust here. If I professed to be this, doubtless the Port Trustees would repudiate me. But I merely wish to place before the Council the claims of the Trust on their merits to a substantial reduction on the full value of their property for rating purposes. I may remind the Council that the Port Trust are going to make provision in the way of public conveniences—latrines and water-supply—for the frequenters of their docks and wharves; not merely for their own employés but for the general public who resort there. Such considerations ought to weigh. If section 144, as recommended by the Select Committee, be passed, it will be possible fairly to consider the claims of the Trust. But if the Honourable Mr. West's amendment be accepted it would not be possible to pay much heed to them. I trust my statement will weigh with the Council, and I hope that the Honourable Mr. Mehta will also take into consideration the reasons why the Port Trust should be treated differently from private owners, and that the clause will be left as it stands.

The Honourable Mr. PHEROZESHAH MEHTA:—Your Excellency,—I do not think that if this amendment be passed, the Port Trust will be quite in the position apprehended by the Honourable Mr. Forbes Adam. When the question of the assessment of the Port Trust property was under discussion in 1884-85, Mr. Ollivant, on behalf of the Municipality, claimed the sum of Rs. 2,15,525 as the amount ascertained on principles of assessment accepted elsewhere as the right principles to be applied in assessing the class of property owned by the Port Trust. If the principles applied are not correct, the Port Trust could always claim to have the mistake remedied. What Government did on the occasion mentioned was that they found that Rs. 1,79,100, and not Rs. 2,15,525, was the sum payable according to the correct principles. They then allowed a deduction of 10 per cent., because they said that Port Trust property ought not to be rated according to the same strict principles which govern the rating of private property. In saying this it seems to me that Government forget that the principles which had been applied were the same as those applied in England to property of a similar character used for public purposes. I confess it seems to me to be an utter fallacy to contend that property which is beneficially occupied and used should be exempted from strict principles of assessment, because the bodies to which they belong discharge public useful purposes. The only argument that I find urged for exempting Port Trust property from strict principles of assessment is that the Port Trust helps the trade of Bombay, and thus promotes the

general prosperity of the city. But the same thing may be said of the mill-industry, an industry which has done not a little for the growth and prosperity of Bombay. But nobody contends that it should be treated in any exceptional manner and should not be called upon to pay for the services which the Municipality renders to it. It seems to me that the only sound principle to apply in all such cases is that all property, whatever be its use or purpose, should pay the ordinary rates and cesses for municipal services rendered. If the Port Trust benefits the trade of Bombay, so does the Municipality by making the city a safe, healthy and commodious place to carry it on. I therefore strongly hold that there is no case made out for not assessing the property of the Port Trust in the same way as if it belonged to private owners. At the same time I am willing to admit that, as I have said before in the case of Government, a certain percentage might be fairly allowed for the saving in the cost of collection, incidental litigation, and occasional loss. I have before pointed out that the cost of collection comes to about three per cent. and two per cent. might be allowed for the litigation and the loss. Instead of the deduction of 10 per cent. proposed by the amendment; it thus seems to me that five per cent. would be a fair and sufficient allowance. I will also call the attention of the Council to the period of five years for which the assessment is to remain fixed. That period, in the case of Government, is not open to much objection, as the property of Government is not liable to much variation. In the case of the Port Trust, however, their property is in a state of development, and it will continue to be so for some time to come. The large increases in the amounts payable for the last three years shows this. Under these circumstances I will ask the honourable mover of the amendment to consider if the period of five years is not much too long. For a long time it will simply mean that a not inconsiderable portion of Port Trust property will escape assessment altogether.

The Honourable Mr. WEST:—Your Excellency,—I think the two speeches we have heard, each of them representing the points of view of the Port Trust and the Municipality, fairly balance one another. The Honourable Mr. Forbes Adam says the rating value should be brought down very considerably, which Mr. Mehta thinks should be put up very considerably, whilst an equitable Government steps in between the two and endeavours to establish a fair basis. The Honourable Mr. Forbes Adam said that the object of the Port Trust is to benefit the trade of Bombay. No doubt that is so. The Honourable Mr. Mehta partly answers by saying so also does the mill-owning interests, which as a *tu quoque* seems to be fair. But that is not a sufficient answer to the claim. There is a stronger point which might be made by the Honourable Mr. Forbes Adam besides that he has made in reference to police and lighting, which is that the Port Trustees have to pay interest on loans—and a pretty high rate of interest—but then further reflexion shows that these are *quasi*-private property. They are potential property and should be liable to rates. No direct reduction is made for working expenses, but as there is still a deduction in this sense—you value property at what it produces, what it will realise per annum. And Government in making its valuation will not say "Here is a gross sum received per annum," but will deal with the gross profits, thus, as will be seen, making the deduction for working expenses indirectly. As to the maintenance of drains and the supply of water; these if we assimilate the Port Trust with private property, are not property subject to exemption. If the Port Trust spends money in this way it does not do so without increasing the value of its property and as to the provision of latrines and water I am glad to hear that the Port Trust is preparing to do this without

any further controversy. The public do not frequent their property for the purpose of availing themselves of these conveniences. As to the drains and roads whatever charges are imposed upon the Port Trust in this respect are disbursed by the Port Trust through charges levied in the form of dues on the ships and the trade of Bombay. So that effectually the tax is transferred to the trade of Bombay, which benefits from the Municipality on the one side and by this somewhat involved process bears the burden of taxation on the other. This seems perfectly equitable. The property, however, can only be regarded as *quasi* public property standing on the edge between private and public property. That is the view taken by His Excellency's Government, and the line is struck exactly between the rating value of the two. This is the fairest basis Government has been able to fix upon.

The Honourable Mr. FORBES ADAM:—I would just point out that it is the interest of the city and every one in it that the Port Trust should be enabled to cheapen and encourage the trade of Bombay. The whole city would benefit by this, and I would ask the Council to consider what I have urged against the amendment.

The Honourable Mr. Forbes Adam asking His Excellency the President to be excused for voting,

The Council divided:—

Ayes.	*Noes.*
Lieut.-General H. R. H. the Duke of Connaught.	The Honourable Ráo Bahádur Mahadeo Wasudeo Barvé.
The Honourable J. B. Richey.	
The Honourable R. West.	
The Honourable J. R. Naylor.	
The Honourable the Advocate General.	
The Honourable Kashinath Trimbak Telang.	
The Honourable Pherozeshah Mervanji Mehta.	

So the amendment was carried.

The Honourable Mr. Mehta's amendment was withdrawn.

The Honourable Mr. TELANG moved that sub-s. (2) of s. 149 be omitted.

The honourable gentleman remarked that he saw no reason why the Commissioner should require to see the instrument of transfer.

The Honourable Mr. NAYLOR:—The honourable member has mentioned this difficulty to me privately and I to some extent concur in his view. I propose to get over the difficulty by moving that for the clause he refers to, s. 149 (2), the following be substituted:—

"(2) On receipt of any such notice, the Commissioner may, if he thinks it necessary, require the production of the instrument of transfer, if any, or of a copy thereof obtained under s. 57 of the Indian Registration Act, 1877."

Act III, 1877.

The Honourable Mr. TELANG:—I withdraw my amendment in favour of that

The Honourable Mr. TELANG's amendment was accordingly withdrawn and that of the Honourable Mr. Naylor accepted.]

On Section 219 being reached the Honourable Mr. PHEROZESHAH MEHTA moved that in ss. 219, 223, 244, 259, 267, sub-s. (2), 289, 293 and 403, &c., the word "council" be substituted for the word "commissioner", and the words "when authorized by the council either generally or specially in this behalf" be omitted; and that in ss. 222, 250, 260, 264, 287, sub-s. (2), and 294, the word "council" be substituted for the word "commissioner."

The honourable gentleman confined his remarks to section 219, but observed that the result of this would govern the others which were to a similar effect. In speaking to the amendment proposed to section 219, the honourable gentleman said:—Your Excellency,—The object of my amendment is not to change the purport of the section, but to convey in simpler language what the section as framed at present endeavours to do in a round-about way. I propose that the word 'Corporation' should be substituted for the words "the Commissioner when authorized by the Corporation either generally or specially in this behalf." The scheme of the Bill, as now amended, I take to be this. By section 65 as amended the municipal government of the city is vested in the Corporation while the executive functions for carrying out what the Corporation may require to be done is vested in the Commissioner.

Now sections 62, 63, and 64 describe generally and collectively the duties cast by the Bill on 'the Corporation'; and the different clauses of these sections may be said to contain the short heads of these different duties. It will be observed that these duties are laid on the governing body—the Corporation only. When we come to chapter nine, we find that that and succeeding chapters are devoted to detailed provisions in reference to the general heads collected in the sections I have named, in their different clauses. For example, chapter nine, which relates to drains and drainage works, is a detailed expansion of clause (*a*) of section 62—"the construction, maintenance and cleansing of drains and drainage works, &c." Chapter ten which relates to the 'water-supply' is an expansion of clause (*b*)—"the construction and maintenance of works and means for providing a supply of water, &c., &c." And each of these chapters, so expanded in detail, contains, so to say, an introductory section enunciating the duty cast upon the Corporation. Section 219 is one of such sections; its words are almost the same as those of clause *a* of section 62. Under these circumstances it seems to me that as a matter of drafting, the proper word to describe the body on whom the duty is cast should be the word 'Corporation;' the words 'the Commissioner, *when authorized by the Corporation*, either generally or specially in this behalf' are a useless circumlocution to effect the same object. The use of the word 'Corporation' will not give executive functions to that body. Whenever the question is *raised* with regard to any section in the Act, on whom the duty lies of performing a special function, section 65, which is a general controlling section, will step in, and assign the executive functions relating to the performance of any act or duty to the Commissioner, all the others to the Corporation. It will be a cumbrous mode of doing things again to embody in some sections what is meant generally to be effected by section 65. I trust honourable members will observe that I do not propose this amendment with regard to sections which deal with purely executive matters.

The Honourable Mr. NAYLOR:—Your Excellency,—We have now arrived at the executive chapters of the Bill, and we are met on the threshold by a series of amendments, the object of which is to enact that the executive provisions of these several chapters shall be carried out under the direction and orders, not of the Commissioner, but of the Corporation. The effect of this series of proposals, if carried, would be that the name of the Commissioner would almost entirely disappear from these chapters of the Bill, and the Corporation would be solely vested with the powers which in the Bill as it now stands are, as I think, wisely distributed between the Corporation and the Commissioner. The Council must at a glance see that the point which is involved in these proposals of the Honourable Mr. Mehta and the Honourable Mr. Telang affect a very vital principle of the Bill,—the principle, namely, that in the exercise of his executive power the Commissioner, within such limits as the Bill expressly prescribes, shall be independent. In his speech on the second reading the Honourable Mr. Mehta took occasion to observe that the Bill which we have now before us was, as originally introduced, a retrograde measure, in that it fell back upon the policy of the Municipal Bill of 1865. He maintained that that policy was designedly abandoned by this Council in 1872, when the present Municipal Act was passed, and that in the Bill now submitted to this Council that policy is again revived, and in support of this proposition he quoted some remarks made at the third reading of the Bill of 1872 by the Honourable Mr. Rogers, in which that gentleman said, "A great deal of mistrust as to the power of the Municipal Commissioner has, I think, arisen from the wording of section 42, but the words 'entire executive power and responsibility for the purposes of this Act shall be vested in the Commissioner' do not mean to imply that he can do as he likes. He is simply the executive officer of the Corporation, with the power to carry out all that he is ordered to do by the Corporation, who must provide him with the necessary funds." Now, I do not question that that remark was made by the Honourable Mr. Rogers, but I submit that to quote a single extract from the whole of the proceedings which led to the passing of the Act of 1872 in order to illustrate the views which guided the Council in passing that Act was certainly not a fair way of arguing the case. The Honourable Mr. Mehta is not the only gentleman who has perused the proceedings of this Council in respect of the passing of former municipal Acts. I have had frequent occasion to do so myself and it struck me when the Honourable Mr. Mehta was quoting from those proceedings that the impression which he had derived from them was very different from what I myself had received.

The object of the Bill of 1872 was not to diminish the executive power of the Commissioner, as it had existed under the Act of 1865, but to strengthen the control over the expenditure of the Commissioner. The Honourable Mr. Tucker, when introducing the Bill of 1872, made the following remarks:—"In the matter of sanitary improvement I think there can be no doubt that great progress has been made and much good effected, but it was shown last year that the financial defects that marked the whole system of municipal administration still continued in the new, notwithstanding the control that was attempted to be exercised by the Bench of Justices and the Government." "When the Act of 1865 was introduced there was a deficit, as Mr. Cassells supposed, of 14 lákhs of rupees, but really, as has since been proved, of a considerably larger amount, and similar large deficits have recurred periodically; and the Municipality has been obliged, on two occasions, to raise large loans of 15 lákhs to meet its current expenditure. It was obvious that such a state of affairs could not be allowed to continue,

and at the request of the Bench of Justices last year a committee was appointed to enquire into the financial condition of the Municipality, and the result of the report of that committee, which showed that the municipal expenditure had largely exceeded its income, led to our re-considering again the whole system of self-government." Then further on he said:—"It was intended that in financial matters there should be control, and a special officer was appointed for that purpose. If that controller really had controlled, it is possible we might have been spared a great deal of what has happened; but unfortunately for the city and the Government, and for all concerned in this matter, the controller did not control, but became subordinate when he should have been superior." ....."Latterly no doubt the Bench of Justices have made a strong effort to control the Municipal Commissioner, but for a long time either from want of experience or want of persistence in their efforts or from certain inherent defects in the constitution of the Corporation they were unable to effect this object..... But there were also some defects in the law itself which prevented or impeded that efficient action on the part of the Justices which might have been anticipated. One defect was the undefined and uncertain number of members of which the Corporation consisted. There were between 300 and 400 Justices and at any meeting it was quite uncertain what number might be brought forward on one side or the other. It was, therefore, impossible that there should be any recognized system of opposition or any of that systematic organisation by which assemblies at home maintain regular and consistent action. And this was certainly a defect in the scheme as it emanated from the Council of 1865." In order to remedy these defects, the Bill of 1872 provided for converting the Bench of Justices into an electoral college, and for constituting the assembly, with which we are so well acquainted, the Municipal Corporation of sixty-four members—part elected by the ratepayers, part by Government, and part by the electoral college, and also an inner chamber or Town Council, whose special work was to control the financial administration of the municipality. There was no intention whatever, when the Honourable Mr. Tucker introduced the Bill of 1872, of in any way detracting from the authority for executive purposes which the Commissioner had enjoyed since 1865. In corroboration of this statement I will quote a few other passages from the speech of the Honourable Mr. Tucker, when introducing the Bill. He said:—"The chief object of the Act of 1865 was to establish a strong and efficient administration for the purpose of carrying out sanitary improvements, and for reducing the death-rate of the city, which was shown at that time to have advanced to a very unsatisfactory figure." Again he said: "As I said before, the object of Mr. Cassells in 1865 and of the gentlemen who supported him in this Council was to create a strong executive Commissioner, who would be able to provide promptly for the needs of the city and would not be trammelled either by colleagues or any other authoritative interference, except to a limited extent." And with regard to his own view he said: "The Municipal Commissioner, the executive officer, will be left with complete executive power within the limits assigned by the Budget and such other limitations as are within this Act. The only manner in which he will be controlled is that he will not be able to spend money on any scheme unless it has previously been approved and sanctioned, and unless a vote for it has been assigned by the Budget." These are the views which were expressed by the Honourable Mr. Tucker in introducing the Bill of 1872, which subsequently became the present Act III of 1872, the existing municipal law. Undoubtedly, that Bill was much altered after its introduction both by the Select Committee and in this Council. But no

material alteration was made in respect of the executive authority vested in the Commissioner. During the very lengthy debate which took place in this Council on that Bill the Honourable Mr. Forbes, who held in this Council the position which the Honourable Mr. Forbes Adam occupies at the present time, proposed an amendment that in the exercise of his executive power the Commissioner be subject to the control of the Town Council. His views and the views of the Honourable Mr. Bythell, who concurred with him, may be summed up in a few words extracted from the Honourable Mr. Forbes' speech. He said: "The Honourable Mr. Tucker says that the Town Council will have the power of the purse, but as the Municipal Commissioner is to be the person invested with complete executive authority, I believe there will be a deadlock ere long. The Town Council will not allow him to do as he thinks proper, because by long experience of municipal affairs this has been found to be a mistake, what a Commissioner does, not having always turned out to be most advantageous for the city Those persons who will compose the Town Council will probably be men who have had the experience of the working of the municipal constitution for the last seven years, whereas it is very probable that the Municipal Commissioner will be a man who has not had that experience in Bombay, and the result will tend to bring about the deadlock I have referred to. For my own part I am far more disposed to put confidence in the Town Council than place it in any single officer as to whose antecedents as regards business and experience we of course cannot form an opinion." The amendment, proposed by the Honourable Mr Forbes and supported by the Honourable Mr. Bythell, was considerably discussed and eventually lost by a majority of seven against two.

The remarks made during the discussion of that amendment by Mr. Tucker so fully explain the necessity for the Commissioner being an independent executive authority that I shall quote once more from his speeches. He said:—"The honourable mover of this amendment has complained that the Bill, as it stands, will be unworkable in practice, and he proposes to remove the main spring which will keep the machinery in motion. Undoubtedly, affairs will come to a deadlock if the chief executive officer is to be fettered in the manner suggested by the honourable gentleman. In England vestries and other local boards have always shown a tendency to inaction, and it is to avoid the errors of a system which experience has pointed out that we have, following the principle upon which Act II of 1865 was based, given to the Municipal Commissioner, within well defined limits in executive matters, the power to act on his own discretion alone. This is a cardinal principle of the Bill. Surely the Town Council will have sufficient influence over the Commissioner, as it is left to them, and to the Corporation, to prescribe the works he is to do, and to vote the supplies; and it may be properly left to his judgment to choose the best means of doing these works. I have no doubt that it is better to trust executive details to the will of one man than to the will of many, and I consider that a body constituted as this Town Council will be, if entrusted with the direct superintendence of all executive matters, a certain failure." And in another place he said:—"This section contains a distinct indication of the opinion of the Legislature that the Commissioner shall not be interfered with by the Town Council in his executive work, because he is to be the person who is responsible for the work being properly done. This distinct division of labour will enable the public and Government to know who may be to blame when anything goes wrong."

And once more he said:—"With reference to the observation of the honourable member who has just spoken, I may remark with reference to the existing Act to which

he alluded, that it was never our intention to carry out a radical change of system. We have throughout recognised the principle adopted by the Legislature in 1865, but when experience has shown there were weak parts in the Act passed in that year we have endeavoured to amend and strengthen them. One great fault of the present municipal constitution is that there is no board of direction or head to the Corporation. We have endeavoured to supply this omission, and have given to the Corporation an efficient board of management in the Town Council, and I believe the effect of this addition will be that the Corporation will henceforth be able to control the Commissioner in all points in which control is desirable. We never intended to subvert entirely the existing system of municipal administration, nor has any good reason been shown for such a course. Our design has been merely to make the former Act more perfect, and to remedy its defects so far as they had been demonstrated. This is the whole scope of the Bill, and it must be remembered that we are working now upon actual experience and not on speculative theories."

On the third reading of the Bill, the Honourable Mr. Rogers made the remark which was quoted by the Honourable Mr. Mehta the other day, and which I have since read to the Council. Now the Honourable Mr. Rogers was not in charge of the Bill, and any remark which may have fallen from him cannot be accepted as any indication of the intention of the Legislature. The intention of the Legislature is most clearly shown in the extracts from the discussion I have read, and that the Honourable Mr. Rogers did not mean the remarks made by him at the third reading of the Bill precisely in the sense in which the Honourable Mr. Mehta has taken them, is evident from an observation which the Honourable Mr. Rogers made during the discussion of the Honourable Mr. Forbes' amendment to which I have referred. That observation was as follows:—"By the introduction of the words proposed by the Honourable Mr. Forbes, the Municipal Commissioner will be made less independent and his executive power impaired." Once more I submit to honourable members of this Council that the real intention of the Legislature must be gathered, not from casual remarks made by one member of this Council, and that one not in charge of the Bill, but from the general course of the debate, and from the declared intentions of the gentleman who had charge of the Bill. At the third reading and in the last speech made on the subject in the Council by the Honourable Mr. Rogers, he said as follows:—"The honourable gentleman is of opinion that we have been, wholly wrong in allowing any independence of action to the Municipal Commissioner. In this we have followed the example set us in Act II of 1865 and for the same reasons which granted the powers of that Act. The mischief done under that law was not in consequence of the Commissioner possessing undivided executive authority and responsibility in carrying out the orders of the Bench of Justices, but because he managed to evade control in his expenditure and became reckless and improvident. We have now taken care to make the control of the Town Council over the Commissioner in financial matters thoroughly effective, and there would appear to be no good ground for depriving him of freedom of action in maintaining the sanitary condition of the city, and in the construction of works that have been duly sanctioned. In matters of this description latitude is necessary, and the public will benefit by an arrangement which leaves acts of this nature to a single man instead of to a Board."

That, your Excellency, is the real state of the case as regards the object of the Act of 1872 which is the existing law of the Municipality. In spite of prophecies to the contrary

by those whom the Honourable Mr. West has called independent members of Council the system of administration provided by that Act has worked extremely well. Undivided executive power placed in the hands of the Commissioner has proved in experience to answer not merely all requirements, but to answer to the entire satisfaction of the citizens of Bombay and of the Government, which watches as anxiously over the interests of the city as of the whole presidency. In support of this statement, I would point out that in 1877, when the Honourable Mr. Gibbs introduced the Bill which afterwards became Act IV of 1878 (the second of the two Acts under which the municipal government of Bombay is at present carried on), he said that the Act of 1872 "according to the consensus of opinion in Bombay had worked remarkably well." I have looked carefully through the discussions which took place in this Council in 1878, and I have failed to discover that this statement made by Mr. Gibbs at the very outset of the discussion on the Bill I speak of, was in any way challenged. Nor is this all. The Act of 1872 was passed as a temporary Act which was to be in operation for three years only, but power was given to the Governor in Council to extend its operation from time to time. It was extended by the Governor in Council on one occasion if not more frequently, and in 1878, when the Honourable Mr. Gibbs introduced the Bill to which I have referred, one of his objects was to declare the Act of 1872 to be permanent. That proposal was accepted, and the Act of 1872 was made perpetually the Act of 1878.

But your Excellency, since the Act of 1878 was passed, we have witnessed throughout India a growing desire for the introduction of what has been conveniently called local self-government; and the Corporation of this city, taking up the general feeling throughout the country, resolved to appoint a committee. I believe, in fact, that two committees were appointed. The first did not do very much, but the second reported on the subject. The purpose of these committees was that they should suggest for the approval of the Corporation such amendments in the Acts of 1872 and 1878 as would bring the municipal government of Bombay into general conformity with the new aspirations of the people for local self-government. The committee's report is contained in "Government Selection" No. 178, a compilation for the printing of which I obtained the sanction of Government with a view to assisting the discussion of the present Bill. It contains everything which has been written in the shape of a proposal for the amendment of the existing municipal Acts, and if honourable members will refer to it they will find that the committee I speak of was presided over by a well-known and very able citizen of Bombay, Mr. Grattan Geary, and that he was assisted by several gentlemen, both European and Indian, of large experience in the municipal government. The recommendations that committee made are, as I stated at the first reading of this Bill, to the effect that (1) the number of members of the Corporation should be increased from 64 to 72; (2) that the respective functions of check and control vested in the Corporation and Town Council be in no way lessened; (3) that the Chairman of the Town Council be elected by that Council; (4) that the position and duties of the Commissioner should remain unaltered; and (5) that his appointment continue to be made by Government. The report they made said: "A proposal has been made to the committee which if acted upon would entirely change the form of the executive authority. It was suggested that the Municipal Commissioner should be the Chairman of the Town Council and that the Town Council should be the executive authority, each of the members sharing with the Commissioner the responsibility for all acts of executive authority. The committee disapproved of this

proposal, considering that, unless there was an entire change of organisation, the general body of the Council could not of itself actually carry on the administrative work of the city which requires constant attention, great energy and special aptitude. At best, the Council would only meet once or twice a week to discuss and sanction the Commissioner's actions, and in all cases where urgency was pleaded they would be obliged to agree to the action taken by him and to share in the full responsibility for the same, although they might disapprove of what had been done. Practically he must still have sole executive authority; the Council's power would only be nominal." The Corporation adopted their committee's report and forwarded it with a letter dated 10th October 1884 and signed by the Honourable Mr. Mehta as their Chairman, to Government. Again, in their letter of 8th March 1886, on the subject of the first Bill drawn by Mr. Ollivant and myself, the Honourable Mr. Mehta wrote, on behalf of the Corporation, as follows:—"The Corporation recommend that the Town Council should retain their present powers intact and that the Commissioner should not be an *ex-officio* member of that body. He should continue to be the executive officer of the Corporation, and this being so the proposed Standing Committee and sub-committees thereof are undesirable. The provision for their appointment should be omitted from the Bill."

Now, your Excellency, I ask the Council whether in the Bill, as it now stands before us and as it was introduced, each one of the above recommendations of the Corporation has not completely been given effect to? The Corporation distinctly desired that the position of the Commissioner and his duties should remain unaltered. The adoption of this able report of the committee of 1884 shows that in that year the Corporation was eminently satisfied with the condition of things existing since 1872, and desired no important change. The few changes that they have desired have been embodied in the Bill now before us.

But there was appended to that report of 1884 a document of very great importance. It bears the signature of a well-known member of the Corporation who takes a large and wide interest in municipal affairs, and a very intelligent interest also. I allude to Mr. Javerilal Umiashankar Yajnik, and the proposal which stands over the name of that gentleman in a minute appended to that report is explained by him in the following terms:—"Hitherto the committees of the Town Council, like the Town Council itself, have been purely consultative bodies. They dispose of questions referred to them for their opinion. I suggest that the time has come when for the purpose of not only 'securing the due administration of the Municipal Fund' but of giving the members of the Municipal Corporation a larger share in the practical administration of municipal affairs, there should be working committees, each consisting of three or more members of the Town Council, or of the Corporation, as seems best, who should be entrusted with the duty of seeing that the administration of the department, with which the committee is concerned, is being carried on, as it should be, in conformity with Municipal Acts in force for the time being and with existing rules for the conduct of administration. The control which such bodies would be able to exercise would be more by way of help to the Municipal Commissioner, and in no way in conflict with, or antagonistic to, his authority as the chief executive officer of the Municipality. I notice that the formation of such committees is enjoined under section 23 of the present Municipal Act and under section 31 of Mr. Ollivant's draft. But both these sections are not to my thinking sufficiently comprehensive, and what is more, they do not provide for the remuneration of such Standing

Committees. I should propose four committees—(1) a works committee which should concern itself with watching the work of the engineering department of the Municipality and deal with questions relating to all municipal works present and prospective; (2) a sanitary committee having the supervision of the health department and the consideration of all sanitary questions; (3) a finance committee which should embrace the departments of accounts, revenue, and finance, and (4) a law committee charged with the consideration of all questions of law and cases of litigation which now and then arise in course of administration. Each of these committees will not only have the supervision of the work done in the department, with which it is specially concerned, but will act as a consulting body to the Municipal Commissioner, the Town Council, and the Corporation in respect of all matters affecting its department. The Municipal Commissioner is to be an *ex-officio* member of all such committees, while the Secretary to the Town Council should act as their secretary." That proposal was also concurred in by another member of the Corporation, Dr. Peterson.

This, your Excellency, was the state of things in 1885, when the duty of drafting a new Municipal Bill was deputed to Mr. Ollivant and myself. The Honourable Mr. Mehta has remarked that whatever may be the intention of the Act of 1872, the history of the last 10 or 15 years is that the Corporation have, whether rightly or wrongly, taken upon themselves the municipal administration of the city in some detail.

The Honourable Mr. MEHTA :—No, no.

The Honourable Mr. NAYLOR :—These are not quite the honourable gentleman's words. What he said was :—" The constitutional lines on which our municipal administration has been carried on since the present Act was passed have been these :—That the Corporation, with the help of the Town Council, was the supreme administrative body, with the Commissioner as its sole executive officer invested with full executive power and responsiblity; that the Corporation had the fullest control over the Budget, which it exercised, not simply generally, but by constant criticism and supervision, and in a way to bring home to the Commissioner that he was constantly responsible to the Corporation for the due discharge of his duties." I am not prepared to say that that is not a correct statement of the case; to a certain extent I agree with what has fallen from the honourable member. But that state of things has been found to be possible under the Act of 1872. Instead of that Act proving unworkable and leading to a deadlock, the Commissioner and the Corporation have worked harmoniously together. The Corporation by its general good sense and growing capacity for local government, and the increasing interest shown by its members in municipal administration, has contributed a very large share, indeed, to the success of the municipal administration of Bombay under the Act of 1872. To this fact I have never, so far as I am aware, taken any exception, nor have I indicated any opinion to the contrary. But what I maintain and what I have always endeavoured to maintain is that the successful administration of the Act, largely as it is due to the Corporation, is also very largely due—certainly as largely due—to the fact that it vested the Commissioner, within limits specially assigned, with full executive power, and that the Commissioner has accordingly, in all executive matters, exercised full, complete, and independent power. But when Mr. Ollivant and I came to draft a new Bill, the question arose whether the same system which we found in existence should be continued, or whether some different machinery should be devised. Mr. Ollivant took up the idea suggested

by Mr. Javerilal and Dr. Peterson in the minute I have quoted from, and we eventually decided to give shape and form to it in our first draft Bill, so that the members of the Corporation, to whom the Bill was to be submitted by the Governor in Council, might have a full opportunity of judging whether such a scheme as that suggested by those two gentlemen would be palatable to the citizens of Bombay and would be likely to operate beneficially. The result of that reference to the Corporation is known to the Council. The proposal was rejected *in toto*, and I may say without any reason being assigned. Not only was it rejected, but the idea on which our proposals were based was not even seriously entertained. Nor was any suggestion made by the Corporation in pursuance of which any other modified form of executive could be fixed upon, and the general supervision of the details of the municipal administration taken out of the hands of the Commissioner and placed in the hands of Working Committees. Our proposal that the Commissioner should be chairman of the Working Committees was not, I have now come to understand, altogether palatable to the members of the Corporation. But that was not an essential provision of our Bill. It was merely an incidental one and it was quite open to the Corporation to propose some modification of it, for this Council would, no doubt, entertain any reasonable proposal. But the absolute refusal of the Corporation to entertain the idea of Working Committees left no alternative to Mr. Ollivant and myself, but to do, as was done in 1872, viz., to recast our Bill so as to continue the same municipal constitution which was in existence and merely endeavour by improvements in detail to deprive the law as it then stood, and now stands, of all those inconsistencies and obscurities which have given the Honourable the Advocate General and the members of the legal profession and, also I may add, the Municipal Commissioner and his subordinates, so much trouble.

That is the history of the Bill up to the time of its introduction into this Council. Since its introduction it has been very generally disapproved on the score of its being a retrograde measure. The Honourable Mr. Mehta has very frankly admitted that the grounds on which he calls it retrograde are that, instead of continuing the policy of 1872, it went back and revived the policy of 1865. But I think I have established to the satisfaction of the Council that this is entirely a misapprehension on the part of the Honourable Mr. Mehta. What the Bill does is to continue in force the constitution created by this Council in 1865, continued by them in 1872, approved by them in 1878, and also approved by the Corporation themselves in 1884. I can well understand that to gentlemen outside of this Council who have had no special training to enable them to understand the bearings of a new project of law when it is placed before them, a measure of the complexity of this one may have given rise to many misgivings. Such a person may, perhaps, have thought on looking at the Bill as it came before this Council in the first instance, with its logical and systematic arrangement and distribution of powers, that some serious changes had been made to the detriment of the Corporation and Town Council, and to the advancement of the importance of the Municipal Commissioner. An idea of this kind was fostered by the opinion of eminent counsel and by the opinions of two firms of solicitors of this city which were published in the newspapers. I am not aware whether in the case of the eminent counsel, his opinion was procured in the manner which the Honourable the Advocate General has told us is not uncommon, viz., by indicating rather strongly in the case stated to the counsel the direction which it is hoped his opinion will take. But this, I may safely say, was certainly the case as to the two.

firms of solicitors; because it is a curious coincidence that the Corporation consulted their own solicitors regarding the Bill, and the opinion of the municipal solicitors with regard to it was very different indeed from that of the two other firms who were consulted. I will just read to the Council a passage which contains the pith of the letter of the municipal solicitors. They say: "But practically it seems to us that * * * * the controlling and sanctioning power of the Corporation in regard to these matters would be as effectually secured by the Bill as it is by the present Acts; the Commissioner obviously cannot undertake works without funds from which to pay for them, and (having regard to section 115), money cannot possibly be available to him for the purpose unless covered by a current budget grant. It will thus be in effect impossible for the Commissioner to undertake the construction of a sewer or aqueduct or the making of a street, unless the Corporation have previously sanctioned a budget grant for the purpose. The Corporation, under section 129, will have a discretion as to whether any particular work proposed to be undertaken is necessary or desirable, and will have the power to reject, if they do not approve, it; or, if they deem the information and materials before them insufficient to enable them to come to a decision, they will be able to refer back the budget estimate or withhold their sanction, unless and until such information as they may deem necessary has been furnished and they have been satisfied."

I have a few more remarks to make on the subject of the Honourable Mr. Mehta's amendment—they will occupy about a quarter of an hour, but as it is getting dark, if your Excellency now desires to adjourn the Council, I will conclude my observations at the next meeting.

His Excellency the PRESIDENT then adjourned the Council.

J. J. HEATON,

Acting Secretary to the Council of His Excellency the Governor of Bombay for making Laws and Regulations.

Bombay, 14th March 1888.

Abstract of Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Bombay on Saturday, the 17th day of March, 1888.

PRESENT:

His Excellency the Right Honourable LORD REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding.*

Lieut.-General His Royal Highness the DUKE OF CONNAUGHT, K.G., K.T., K.P., G.C I.E., G.C.S.I., G.C.M.G., C.B., A.D.C.

The Honourable J. B. RICHEY, C.S.I.

The Honourable R. WEST.

The Honourable the ADVOCATE GENERAL.

The Honourable KASHINATH TRIMBAK TELANG, C.I E.

The Honourable F. FORBES ADAM, C.I.E.

The Honourable J. R. NAYLOR.

The Honourable Ráo Bahádur MAHADEV WASUDEV BARVE, C.I.E.

The Honourable PHEROZSHAH MERVANJI MEHTA, M.A

The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS.

The City of Bombay Municipal Bill.

Consideration of the City of Bombay Municipal Bill in detail.

The Honourable Mr. NAYLOR (concluding his speech of the previous day on the Honourable Mr. Mehta's amendment to sections 219, &c.,) said :—Your Excellency,—When the Council rose on last Wednesday evening I was replying to the motion of the Honourable Mr. Mehta, by which he proposed to substitute in several sections of this Bill the word *Corporation* for the word *Commissioner*. I took the opportunity of going into the whole question as to the relative positions in the municipal administration of the Corporation and the Commissioner, and I showed, or at least I brought forward extracts from the proceedings of this Council in 1872 with the object of showing, and I think I succeeded in establishing, that the Honourable Mr. Mehta had entirely misconceived the object of the passing of the Act of 1872. That Act did not, so far as regards the relative position of the Corporation and the Commissioner, reverse the policy of the Act of 1865, as the Honourable Mr. Mehta presumed, but, on the contrary, continued the same relations between those two authorities which had previously existed. I further went on to show that in 1878, when the second of the two principal existing Municipal Acts was passed, the Act of 1872 was declared to have worked remarkably well, and was by this Council continued permanently in force. I also explained to the Council that in 1884 the Corporation appointed a committee to determine what alterations were desirable in the Municipal Acts, in order to import into the constitution a stronger element of self-government, and that that committee's report, which was adopted by the Corporation and forwarded to Government as an expression of their own opinion, recommended, among other things, that the Commissioner's position in the municipal constitution should remain unaltered. Further, I was able to point out to the Council, that on that occasion two members of the Corporation's committee appended their signatures to a minute in which a strong recom-

mendation was made that the executive work of the Corporation should, in future, be conducted through the means of working committees, of which the Municipal Commissioner should be a member. And I explained that when Mr. Ollivant and myself prepared the first draft of the present Bill, we took up the idea started by those two gentlemen, and endeavoured to put it into a shape in which members of the Corporation would be able finally to judge whether such a scheme as that foreshadowed by those gentlemen was one which would be suitable for the proper working of the municipal institution and agreeable to the members of the Corporation. I also showed that the Corporation, in reply, declined, in the briefest possible terms, to entertain the idea of working committees, and made no modified proposal whatever regarding the constitution of such committees. It appeared to be their opinion that the municipal constitution should be continued as it was. I wish here to correct an inaccuracy into which I fell, in saying that the Corporation gave no reasons on this occasion for declining to accept the working committees. What they did was to state, in the briefest possible terms, their unwillingness to have working committees and then, at the end of their letter, to refer to their previous letter with which the committee's report of 1884 was forwarded to Government. The committee's report of 1884 did deal with the subject of working committees, and gave reasons why the committee were unwilling to accept any such change in the constitution. Therefore by implication it may be said that the Corporation in 1886 did give their reasons for not wishing to have working committees. But what I particularly wish to bring clearly before the Council is that the Corporation showed a distinct and decided preference for retaining the existing form of constitution; that they were unwilling to adopt any system of working committees, and your Excellency has observed in the course of the debate upon this Bill that the dislike or distrust, if I may say so—for I think it amounts to distrust—of working committees is the real reason which is at the bottom of the wish of the Corporation and of the gentlemen who are their representatives in this Council, not to adopt any system of employing such committees for executive purposes. I also explained that this being the state of things in 1885, Mr. Ollivant and I, having no other course open to us, adopted the plan of drafting another Bill in which the present constitution was continued without any material alteration and with few changes, in fact, of any importance, except such as were necessary to clear the system of inconsistencies and contradictions which have impeded its proper working and were likely to give rise to friction. Then I also remarked on the fact that this second Bill, subsequently introduced into the Council, has been frequently called by gentlemen outside this Council and by some gentlemen within it a retrograde measure; but I think I succeeded in establishing that the reason why the Honourable Mr. Mehta called it retrograde, namely, that it fell back on the constitution of 1865 instead of continuing the constitution of 1872, is entirely erroneous. I also showed that if the Corporation had listened to the calm, well-considered advice of their own experienced solicitors they would have had reason to see that there was nothing at all revolutionary in the measure.

The Bill, as introduced, was not, in fact, intended to make any material change in the existing municipal system, but it included such alterations and additions as appeared to Mr. Ollivant and myself to be desirable. Neither he nor I absolutely approved of every thing in the Bill, because when two persons are set to perform such a task as was committed to us, it is impossible that on all points they should agree. Therefore several provisions which were inserted in the Bill were the result of a compromise of opinion between Mr. Ollivant and myself, some were not approved by me, while others were not

approved by Mr. Ollivant. But the Bill, as it was introduced, was an elaborate and very carefully prepared foundation, upon which we thought that this Council might reasonably be invited to base a revised municipal law to take the place in the local Statute Book, of the several scattered, inconsistent, and often unintelligible enactments which now encumber it. When moving the first reading, I specially mentioned that neither I myself nor the Government were irrevocably bound by anything in the Bill. I said: "The Bill has been drawn with the full knowledge that it will be very widely discussed by the public and by the Corporation, and that many changes and improvements will be suggested before it is finally passed. I am not instructed that it is the desire of Government to adhere to any particular provision of the Bill, if it can be shown that some other would be more suitable or workable. The object of the Bill is, I repeat, the promotion of the best interests of the city of Bombay, and not the enforcement of any fixed unalterable views." And as regards myself I said: "I am not prepared to say that I myself concur in all the allotments of authority in the Bill as it stands, and it is very likely that, after an interchange of views with the honourable members who will form the Select Committee, my opinion will change, even in respect of some of the instances in which I at present think the Bill is right."

In Select Committee, the Bill was subjected to a very searching scrutiny, and the large number of amendments made in it bear evidence that my honourable colleagues and myself discharged the duty placed upon us with every desire to obtain a law which should not only be sound and practical and capable of working without friction, but also one which should be equitable and just to the citizens of this great city. The only really important question of principle, on which there was for a considerable length of time any difference of opinion, was as to the general description of the functions of the several municipal authorities in section 65. I am willing to admit, as I admitted in Select Committee, that the exclusive residuary jurisdiction which sub-section (2) of that section, as it originally stood, would have vested in the Commissioner, would have introduced a feature into the municipal constitution which does not now exist. The words employed, in fact, imported more than I had myself intended. Therefore, after much discussion and consideration, it was finally agreed to recast the section in its present form, in which the rightful and proper position of the Corporation, as the governing body, subject only to such express exceptions as are contained in the Bill, is clearly recognised, and the same words which have always hitherto been used to describe the position and authority of the Municipal Commissioner are again employed, *viz.*, that "the entire executive power" is to vest in him, but "subject, whenever it is in this Act expressly so directed, to the approval or sanction of the Corporation or of the Standing Committee, and subject also to all other restrictions and limitations imposed by this Act." With the Bill as it left the Select Committee, the Honourable Mr. Mehta has already informed the Council, he, with certain exceptions, is perfectly satisfied. He says: "The Bill as it comes back amended in Select Committee is framed on sound principles. I can go further and say that the amended Bill has fully and clearly embodied the principles which were perhaps only timidly and tentatively indicated in the Act of 1872. In my opinion, my Lord, the constitutional part of the Bill is now placed upon a satisfactory footing." Therefore, with the principle of the Bill as it now is stated in the various provisions of the measure, the Honourable Mr. Mehta has expressed his entire approval; not only so, but I am happy to say that the Bill, as it stands, has passed the second reading in this Council,—a step

which, according to the rules of this Council, indicates that the Council have affirmed the principle of the Bill. We have now also passed, in our detailed consideration of the Bill, all the chapters which relate to the municipal constitution and to the duties and powers of the municipal authorities, and no material alteration has been suggested in them.

Now, your Excellency, I will ask the Council to consider what is the principle of the Bill which has been thus approved and accepted. As regards the position and power of the Municipal Commissioner, I have affirmed that it leaves him in precisely the same position which he occupied under the Act of 1865 and which up to this moment he still occupies under the Acts of 1872 and 1878. If the Council turn to section 4 of the Bill, they will find that at the very outset it is laid down that the municipal authorities charged with the carrying out of the provisions of this Act are, first, the Corporation, secondly, the Standing Committee, and, thirdly, the Municipal Commissioner. The second chapter of the Bill, which treats exhaustively of the municipal constitution, takes up, in their turn, the provisions relating to the nomination, &c., of each of these three municipal authorities and deals with them separately and fully. Then in chapter 3 the Bill goes on to describe the duties and powers of the several municipal authorities, and here again the duties and powers dealt with are those of the same three authorities I have already named. When we come to chapter, 4 we find that we leave behind us provisions dealing with the municipal authorities and come to municipal officers, and that the Municipal Commissioner is not treated as one of those officers. Thus, it must be clear to any one who studies the Bill with some little closeness that it purposes to establish three municipal authorities with distinct functions. No one of these three is the servant of the other, nor is any one the master of the other, in the ordinary acceptation of the term. The three authorities are to co-exist; their mutual relations and their respective powers in detail being very carefully and accurately described in the several chapters of the Bill dealing with the several subjects of municipal administration. The Honourable Mr. Mehta has told us that in the last few years the Corporation have initiated several useful reforms under the existing municipal system. That is a statement I do not question, but what I say is, that the Corporation will also be able under the present Bill to exercise the same power for good. There is nothing in the Bill, to the best of my knowledge, that will prevent the Corporation from exercising precisely the same functions and the same powers as it does at the present moment. Our desire and hope is that each authority will continue, within its respective sphere and subject to the limits assigned by the Bill, to act for the general good of the city, and that the result of the Bill will be greatly to facilitate the harmonious working of the municipal administration, and to prevent all friction. But for these purposes it is clear that the definition of the respective powers of the several authorities is all-essential.

Reverting to section 65, sub-section (2) thereof, says that:—"except as in this Act otherwise expressly provided, the municipal government of the city vests in the Corporation." That is the general declaration of the position and authority of the Corporation. It is governed by the first words "except as is in this Act otherwise expressly provided," so that it is necessary that the Act should distinctly provide what the exceptions are to be. The exceptions are of two kinds. In the first place, there are the powers of the Standing Committee, which are expressly provided for in various portions to the Bill, and, in the second place, there are the powers of the Commissioner. These

latter powers are generally defined in sub-section (3) of the same section, namely, as the "entire executive power for the purpose of carrying out the provisions of this Act." But if we wish to know what those powers precisely are, we must turn, as in the case of the Standing Committee, to the other parts of the Bill. Thus in the early portions of the Bill, which the Council have already passed, the Commissioner is vested with certain powers respecting the conduct of elections and the assessment and levy of municipal taxation. And when he comes to the chapters dealing with the details of the executive administration, any one who reads the Bill will naturally expect to find what powers the Municipal Commissioner really has in these matters. He will find, as, I say, he would naturally expect to find, that the Commissioner is authorised to maintain and repair municipal works, to construct, maintain and improve all roads, buildings, bridges and the like, belonging to or required by the Corporation, to take all necessary measures for watering, cleansing and lighting the public thoroughfares, and, in short, to do everything which is in its nature executive. But the reader will also find that generally in all large matters and matters largely affecting private interests, the Commissioner is prevented from acting, except with the previous approval or sanction of the Corporation or Standing Committee. Now it is a curious circumstance to which I ask the attention of the Council, that the Honourable Mr. Mehta and those who think with him, did not propose to substitute the word Corporation for the word Commissioner in those executive parts of the Bill relating to the conduct of elections and the assessment and levying of municipal taxation which the Council have already passed. Why, then, I ask is it sought to make these changes in the chapters now before us? What is the intention? Is it not to obscure the purpose of the Bill that, except to such extent as is otherwise expressly provided, the Commissioner is to be independent of the other two municipal authorities and is to be free to exercise his own judgment? or if that is not the intention, will that not be the effect of the proposal? I ask the Council to consider why there should be any objection at all to the name of the Commissioner appearing instead of the Corporation in these executive chapters of the Bill. There is here no new departure in drafting. The present Acts are worded in precisely the same way. With regard to bye-laws, the sections concerning which we shall come to later on, I may at once say that I am persuaded that the power, the *quasi* legislative power which these sections confer, is one which should vest, as it is really vested by the present law, in the Corporation, and when those sections are reached, I shall be prepared to concur in the suggestion that the word Corporation be inserted instead of the word Commissioner, and shall only ask the Council to consider another additional section I have drafted for the purpose of securing that it shall be the duty of the Commissioner to lay before the Corporation from time to time such draft bye-laws as he considers necessary for the proper conduct of his executive functions and for the purposes of the Act generally. But, with that exception, I am not prepared to accept the motion of the honourable gentleman and the other similar motions which are to follow, that the word "Commissioner" be omitted and the word "Corporation" substituted for it. If these motions be adopted by the Council, the result will be that the Legislature will entrust the Corporation with such duties as the maintaining and repairing of drains, the providing and maintaining of public necessaries, the managing and maintaining of water-works, the making of provision for the daily surface-cleansing of the streets, and such like. Such legislation will imply that in every executive detail in which they think fit, the Corpo-

ration shall be competent to issue orders which shall be carried out by the Commissioner. It will imply, in fact, that the Commissioner is the servant of the Corporation, with no independent authority or discretion, and whose only duty is to give effect to the directions of the Corporation. I ask this Council, whether the Corporation, a body of seventy-two gentlemen, who entirely decline to sub-divide themselves into working committees, is such a body as can be safely, conveniently or properly entrusted with such duties as these? The Honourable Mr. Mehta will no doubt tell us that this is not his intention, and I must apologise to him for having on the previous occasion misunderstood the gist of his speech by thinking it was his intention that the Corporation should control executive work in detail. I saw when I read his words that they do not bear this meaning. But there is a not inconsiderable party in this city and, I think I may say, there are some representatives of the party in this Council, who think that the Commissioner should be merely the servant of the Corporation; that he should act in every matter under their immediate direction. Who can say what view might be taken, under legal advice, of the Commissioner's position, if we accepted the Honourable Mr. Mehta's motion and the other motions like it, and merely preserved section 65, sub-section (3), which says that the entire executive power vests in the Commissioner? Might it not be said, "Yes, but looking at the express provisions of the executive chapters, the exercise of that power is subject at all points to the directions of the Corporation"? Is it not the duty of this Council to prevent any such possibility—is it not one of the chief objects of our Bill to free the law from any doubt or ambiguity, and should we not secure that object as completely as we can? On these grounds, I ask the Council to reject the motion of the Honourable Mr. Mehta for substituting "Corporation" for "Commissioner" in these several sections.

A reference has been made by the honourable gentleman to section 62, in which, as he very truly says, it is made the duty of the Corporation to construct roads and to maintain buildings and works and to provide for the other matters to which I have referred. But section 62 must not be read apart from its context. Sections 62, 63 and 64 must be read together, and the sub-heading of the chapter immediately above section 62 indicates at once what the object of these sections really is, namely, to define what duties of the Corporation are obligatory and what discretional. Sections 62 and 63 describe the obligatory duties of the Corporation; section 64 sets forth their discretionary duties. Section 62 merely enacts that the Corporation must do all in their power to effect the purposes which it mentions. It has nothing to do with the machinery by which those purposes are to be carried into execution. For that the Bill makes other provisions, which I have already alluded to at considerable length.

To the second part of the Honourable Mr. Mehta's motion I take no objection,—that is, to the omission of the words in italics. These words "when authorised by the Corporation either generally or specially in this behalf," I may say, I regard as mere surplusage. They were agreed to by the Standing Committee in the hope of satisfying the minority, by "making assurance doubly sure" against the Commissioner's executing works, without their having been previously approved by the Corporation. But if honourable members will turn to section 66, they will find it distinctly laid down as a general principle which governs everything in this Bill, that the exercise by any municipal authority of any power conferred by the Act which would involve expenditure, shall, with one or two exceptions, be subject to the following provisoes, namely,—"(*a*) that, such

expenditure, so far as it is to be incurred in the official year in which such power is exercised, shall be provided for under a current budget grant, within the meaning of that expression as defined in section 130; and (*b*) that if the exercise of such power involves, or is likely to involve, expenditure for any period or at any time after the close of the said official year, liability for such expenditure shall not be incurred without the sanction of the Corporation." Now, your Excellency, that section was inserted for the express purpose of making it perfectly clear that the Commissioner should be tied, in the exercise of his executive power, by the orders, resolutions, and decisions of the Corporation upon their budget and by any supplementary resolution concerning finance which they might pass during the year. In the budget chapter also every possible precaution has been taken to give the Corporation a complete control over the expenditure of the municipal income. With the power to call for returns, plans and estimates, and the power to decline to permit any expenditure whatever, it must be obvious to the Council that it is entirely in the hands of the Corporation to sanction or not to sanction any specific class of expenditure, whether it be for the construction of any buildings or the execution of any work which the Commissioner desires or suggests should be undertaken or for any other purpose. Moreover, the final framing of the budget being in the Corporation's own hands it is perfectly open to them to initiate schemes and to insert provisions in the budget for carrying out such schemes. Therefore, your Excellency, I say, this section 66 not only binds down the Commissioner not to exceed the limits assigned by the Corporation, but it also disenables him from carrying out any work which has not been approved by the Corporation. In the Select Committee, however, this matter occupied a very considerable amount of our attention and I intimated to my honourable colleagues that I was quite prepared, if any doubt should still remain in their minds as to its being necessary for the Commissioner to go to the Corporation before proceeding with any such important work as the building of a new bridge or the starting of a new drainage system, to add words which would make it still more clear that the Commissioner was not to be able to do anything of this kind, without the special consent of the Corporation. That is the history of the introduction of these words. But to my mind they are simply surplusage, and I shall be very glad, from a draftman's point of view, to see them omitted; but if the honourable member still prefers that they should remain, I have no objection.

The Honourable Mr. PHEROZESHAH MEHTA :—I will ask your Excellency's permission to say a few words before this discussion proceeds further, as I think it will tend to remove a considerable amount of misapprehension, and disencumber the debate on my amendment of a considerable amount of irrelevant matter. My Lord, I must express my extreme surprise at the turn which my honourable friend, Mr. Naylor, has chosen to give to this debate, and the complexion he has put upon an amendment which I regarded substantially to be of a somewhat formal character. The Council will remember that, in proposing it, I pointed out that it was directed to substituting a simpler and more appropriate word for the very same object which the section had in view, in place of the circuitous phraseology which was adopted in the section to carry out that object. But to my utter astonishment, my honourable friend says that it is intended and calculated to transfer executive powers and functions from the Commissioner to the Corporation. I am at a loss to conceive how the Honourable Mr. Naylor could have possibly imagined that such could be the object of the amendment, in view of what took place in the Select Committee about this very matter. He knows that nobody has

been more staunch and unwavering than myself in his allegiance to the constitutional principle of vesting the whole executive power and responsibility in a single officer, call him the Commissioner or what you like. In fact, I have been astonished, and if I could say such a thing in a grave deliberative assembly like this, I have been amused at the charge brought against me by him of seeking to destroy the integrity of that principle. If anybody has been throughout consistent and constant, with regard to it, it is I, as I shall presently show; while it is my honourable friend, as he has himself confessed, who has been guilty of inconstancy. He admits that he was led away for a while to transfer his affections to a fairer rival; he was tempted, and he fell; the seductive charms of what he at one time thought a more attractive candidate for his regard, betrayed him into abandoning the Commissioner with his sole executive power and responsibility, in favour of executive sub-committees with the Commissioner as chairman. I have never wavered in my allegiance, and I repeat that I was never more surprised than when my honourable friend charged me with seeking, by my amendment, to transfer executive functions from the Commissioner to the Corporation, especially after what took place in the Select Committee about this very proposal. My honourable friend will remember, that when, after a protracted discussion, it was decided to alter section 65, as it now stands, and to accept the constitutional scheme embodied in it, I proposed that the word Corporation should be substituted for the word Commissioner in section 219 and several others, and the acting Advocate-General, Mr. Macpherson, who was then on the committee, immediately acknowledged that, with the constitutional alteration in section 65, it was right and proper that the word should be so substituted. He will also remember that thereupon the proposal was accepted, and a note made of the different sections in which the word should be substituted. He will further remember that it was on the next day that he proposed to substitute the present words "the Commissioner, when authorized generally and specially on this behalf" as expressing with more certainty, that the Corporation were to have the administrative, and the Commissioner the executive, functions in carrying out the different matters mentioned in the different sections. Though I contended that my proposal was the simpler method of doing the thing, the more circuitous phraseology was adopted. But all throughout that discussion, it was acknowledged that there was no question involved in either proposal of transferring purely executive functions to the Corporation. Therefore it is that I am now surprised at the Honourable Mr. Naylor's now contending that the intention and effect of my amendment is to do any such thing. Before, however, I point out that he is entirely mistaken in so thinking, I will refer, as briefly as I can, to the contention he has elaborately placed before the Council, to show that the charge against the Bill as originally framed and introduced, of being a retrograde measure, is unfounded. So far from being unfounded, this retrograde character was not so fully exposed by me when I spoke on the second reading as I might have. The honourable member says that the Bill was not retrograde, since it followed the Acts of 1865 and 1872 in vesting the full executive powers in the Commissioner. But that was not why I called it retrograde. I denounced it as retrograde, because it deprived the Corporation of the powers of initiation, criticism, and supervision, which it possessed and exercised under the Acts of 1872 and 1878. Under the Act of 1865, the Bench possessed no such powers, and the Honourable Mr. Cassels, in his speech in introducing the Bill—I quoted the whole extract in my speech on the second reading—said distinctly that the Bench were to have no power of initiation, and that beyond the

power of the purse, the Bench could in no way control or question the Commissioner except by dismissing him by a vote of censure. Now let us see what was done in this respect by the legislation of 1872. In my speech I ventured to describe the constitutional lines on which the municipal administration was carried on since the passing of that Act. The Honourable Mr. Naylor, when I asked him to read the passage itself, was obliged to admit that he could find no fault with my statement of them. The Council will remember that I took care to say that those lines were perhaps only timidly and tentatively indicated in the Act. I also said that it was doubtful whether they were "fully or clearly expressed." What I did emphatically say, however, was, that such was the way in which the Act was understood and interpreted in practice for the last fifteen years, and that the Corporation had ever since been exercising the fullest powers of initiation, criticism, and supervision, which powers the Bench did not possess under the Act of 1865. My honourable friend has not ventured to dispute this proposition. In fact he has been obliged to admit it fully. If this interpretation and understanding of the Act of 1872 was wrong, the Act of 1878, which was passed to render it permanent, would have surely tried to remedy the misapprehension. That it attempted to do nothing of the sort cannot but be regarded as a ratification of that interpretation and understanding by the legislature. The Honourable Mr. Naylor cited a number of passages from the speeches of the honourable Mr. Tucker on the first and second reading of the Bill of 1872, to show that the full executive power remained as before in the Commissioner, and that the constitutional lines were not altered. I was fully aware of those passages. They only confirm what I had said, that, at that time, Government, very nervous about dangers, as they thought, of the doubtful experiment they were launching for trial, spoke with a very uncertain and hesitating voice. They explained things at one time in one way, and at another in another. In fact, they were indicating the new departure in a timid and tentative manner, so much so that on the third reading, the Honourable Mr. Bythell, a most able and accomplished member of the European mercantile community at that time, drew forcibly their attention to it in the following passage:—"I have, however, heard it argued that we, who object to the Commissioner being placed in a position that must bring him into antagonism with the Town Council, are led away by a figure of speech, that sec. 42, which says that the sole power and responsibility shall be vested in one Commissioner, must not be read literally, that the other portions of the Act so bind him down that he virtually cannot move hand or foot without the sanction of the Corporation. Well, then, I answer if he really will, and *is intended to be* the servant of the Corporation, why annoy the public by deluding them into the belief that Government are so distrustful of the Corporation that is to be, that they take care to render the body to a great extent powerless by placing all the real power in the hands of their own nominee?" It was in answer to this challenge that the Honourable Mr. Rogers made the declaration I quoted from his speech on the third reading. I think I have now shown that I was strictly accurate in my account of the legislation of 1872, and its practical outcome. The Act of 1872 was thus clearly in advance of that of 1865 in so far as it permitted the Corporation to claim and exercise the powers of initiation, and of criticism and supervision over the Commissioner. Now let us turn to this Bill as originally introduced, and I will beg the special attention of the Council to section 65, the constitutional section, as it originally stood:—"Respective Functions of the several Municipal authorities:—65 (1) The respective functions of the Corporation, of the Town Council and of any committee appointed under section 41 shall be such as are specifically prescribed

in or under this Act. (2) Except in so far as authority is expressly vested by or under this Act in the Corporation, or in the Town Council, or in any such committee as aforesaid, and subject, whenever it is in this Act expressly so directed, to the approval or sanction of any of the bodies aforesaid, *the duty of carrying out the provisions of this Act rests exclusively in the Commissioner*" Now the authority expressly vested in the Corporation by the Bill was the power of sanctioning the budget. But beyond that, all other powers, legislative, administrative, executive, or of any other sort whatsoever were thus exclusively vested in the Commissioner. Indeed, the honourable framer of the Bill, after giving the power of the purse, no doubt, to the Corporation, made a present of the whole residuary authority and jurisdiction of every sort to the Commissioner. And it will be observed that for the first time since 1865, the section about vesting the executive power in the Commissioner disappears. The omission is fraught with the most significant results. In the Act of 1872, the inclusion of such a clause left matters open to the implication, that all others, except the executive powers vested in the Commissioner, remained with the carefully constituted and elective body called into existence by the Act. All that was completely swept away by the new provision. It was freely admitted in the Select Committee by the honourable member in charge of the Bill, that the constitutional provisions were intended to take away from the Corporation all powers of initiation, criticism and supervision. Now I ask honourable members of the Council, if a Bill, with such provisions, did not deprive the Corporation of the powers which it had exercised for fifteen years, by the quiet, but effective, device of professing to give useful definitions, if it did not go back to the principles of the legislation of 1865 which denied those powers to the Bench, and that in fact if it was not emphatically and distinctly a retrograde measure, worse even than the Act of 1865, in so far as the deprivation of the powers was more express, pronounced, and definite. It seems to me that the bill, as originally framed, cannot escape from being deservedly characterized as retrograde. Then, my Lord, I have said that it is not my honourable friend, Mr. Naylor, who is entitled to call himself the consistent champion of the integrity of the constitutional principle vesting full executive powers in a sole officer. My Lord, speaking for myself and the Corporation, it is we who can claim to be so. In my speech on the second reading, I alluded very briefly to a paper read by me in 1871 on the great municipal reform question of the day. If I were not afraid of taking up the time of the Council, I could show that in that paper I strongly advocated that principle, not on account of any special distrust with regard to the capacity or powers of the citizens of Bombay, or of the members of the Corporation, but on general principles, applicable to Bombay in common with all other cities, as pointed out by such liberal thinkers as John Stuart Mill, Herbert Spencer and others, who strongly lay down that executive functions are best performed by a single officer, and that there are grave dangers in entrusting them to boards or sub-committees, as experience has over and over again proved. The same principle was steadfastly asserted by the committee of the Corporation appointed in 1883. True, that there was a minute to the report of that committee by my friend, Mr. Javerilal, concurred in by my friend, Dr. Peterson, suggesting executive sub-committees. That proposal was considered and discussed in the full Corporation, and it was almost unanimously rejected. It met with the same fate when Government sent the draft Bill, as first drawn, to the Corporation. The Honourable Mr. Naylor says that it was not an essential feature of the scheme of executive sub-committees proposed in it, that the Commissioner should be

chairman. I think I can venture to say that it was. I can say with some degree of confidence that, as regards Mr. Ollivant's idea of it, it was the most important feature of the scheme. The Honourable Mr. Naylor says the Corporation rejected it without assigning any reason. But he is mistaken. In the last paragraph of the letter I addressed to Government on behalf of the Corporation, it is to this scheme they refer when they say:—"That they find the new Municipal Bill is drawn on lines widely divergent from those recommended by the Corporation in their letter No. 1013 of 10th October, 1884. The Corporation still consider that the principles on which they proceeded in making the recommendations contained therein were *sound in theory and cautiously founded on the results of their working* ever since the formation of the present municipal constitution." In their letters to Government on this Bill, the Corporation have steadfastly adhered to their mature and well-considered opinion on this point. So that I repeat that it was with the most unqualified surprise that I heard my honourable friend, Mr. Naylor, enter into an elaborate argument, to show that my amendment, which I considered to be of a most harmless and innocent character, was really intended to transfer executive functions and powers from the Commissioner to the Corporation. I have shown that the acting Advocate-General, Mr. Macpherson, and even Mr. Naylor for a short time, considered it only as a question of different ways of doing the same thing. And that, I again say, it really is. It is true that we have now come to those portions of the Bill, which deal largely with executive functions. But the various parts are prefaced by sections which, so to say, are headings taken from the different parts of section 62, which lays down what functions it is incumbent upon the Corporation to perform. Now look at section 219 as it stands. He (the Commissioner) shall "construct such new drains as he shall from time to time deem necessary."

The Honourable Mr. NAYLOR:—You are overlooking the amendment made by the Standing Committee.

The Honourable Mr. PHEROZESHAH MEHTA:—How?

The Honourable Mr. NAYLOR:—"He" has been struck out, and "be" has been substituted for "deem."

The Honourable Mr. PHEROZESHAH MEHTA:—I am glad you have pointed that out. But to revert to my argument, clause (*a*) of section 62 refers to the "*construction, maintenance, and cleansing* of drains and drainage works and of public latrines, urinal and similar conveniences." If the use of the words "construction, maintenance, and cleansing" in this clause do not signify that they are executive functions, why should the same words do so in section 219? I say they would not equally in the one case as in the other. Section 219 would have to be interpreted in the light of section 65, and with the word Corporation in it, equally in section 62, would mean that the administrative part of the function would be with the Corporation, the executive with the Commissioner. It would thus be in harmony with the constitutional scheme now accepted by the Council. The Honourable Mr. Naylor seeks to effect the same object by a circuitous phraseology:—"The Commissioner when generally or specially authorized by the Corporation in such behalf." I believe the simpler way of drafting the section is the one suggested by me, and it is this point, and no other, which I have brought before the Council for discussion by my amendment.

The Honourable the ADVOCATE-GENERAL:—I think, your Excellency, we have wandered rather far away from the amendment before us; with the result that the honourable mover of the Bill has delivered a second reading speech upon the Bill, thereby compelling the Honourable Mr. MEHTA to deliver a reply. We have, whether we like it or not, accepted the principle of the Bill on its second reading; and it is not now open to any of us to do more than to try and carry out that principle. That is the object, I understand, of the Honourable Mr. Mehta's amendment; though on this particular amendment I differ from the Honourable Mr. Mehta. I cannot see how the Honourable Mr. Naylor can suggest that some of these amendments are a departure from the principles adopted on the second reading. I submit there is not a single amendment on the paper before us which does not express the desire of the mover to carry out the principle of the second reading. On the application of that principle there may be some differences amongst us. For my own part I differ on this section from the Honourable Mr. Mehta; but I do not say that is the case with regard to all the sections on this long file, for one section struck me at once—section 294—and if the word "Commissioner" is retained there, without some explanation, it may lead to a conflict with other sections. But with regard to this section I should say there are two sides to the shield as usual. I take it that under section 62 there can be no doubt that what I may call constitutional maintenance is vested in the Corporation; but on the other hand it is quite clear that under section 65 executive maintenance is vested in the Commissioner. In all this part of the Bill we are dealing with what I may term executive maintenance, and therefore to my mind the "Commissioner" and not the "Corporation" is the right term to use. However, I do not think it a very important matter; for if we read "Corporation" we must interpret it as exercising administrative functions, if we read "Commissioner" we must interpret it as exercising executive functions. I would like to say that I shall ask to propose one short amendment if this amendment of the Honourable Mr. Mehta is rejected. As to these words in italics, I look, as every lawyer will do, with horror at the expression "generally or specially authorized." Every authority under this section is special, and I shall ask that "generally or specially" shall be omitted. Perhaps I may be allowed to say one word more now, because we have arrived at the discussion of the executive details; and to suggest to the Honourable Mr. Naylor, who is in charge of the Bill, that before the third reading he should cut down the Bill by omitting some details in it. They are a disastrous legacy from previous Bills. For the one I refer to he is not responsible. Section 331 deals with the manner in which to lay gas-pipes; it lays down what shall be the distance between a gas-pipe and a water-pipe, the length of the pipes, and even the material of which the filling shall be made. No doubt that represented the opinions of engineers in 1865, but as to whether it is the best way at the present time the framers of the Bill should not decide. It may safely be left to the executive officers' discretion. Nothing can be more dangerous than for individual members to move amendments interfering with the executive details, and I do not propose to do so. But I would suggest, for the honourable member's own convenience, that he should remove some of those sections which as I have pointed out are excrescences.

The Honourable Mr. WEST:—Your Excellency,—I do not desire to enter into the discussion which this subject has occasioned, though I think nothing can better illustrate the wisdom of the judges at home in refusing to admit the speeches of members

of Parliament as to the meaning of the various enactments. It is better to see what the details are, and how they fit in with the general scheme of the Act as developed in other sections, rather by reference to general principles. Here I think we should be involved in a difficulty if we adopted the amendment of the Honourable Mr. Mehta. Section 65, defining the duties of the Commissioner, says he shall carry out all the provisions of this subject, except wherever it is otherwise expressly so directed, to the approval or sanction of the Council or Standing Committee. He has for the purpose of carrying out the provisions of this Act certain powers. But if we alter section 219 according to the amendment, the Act would require that not the Commissioner but the Corporation should maintain and keep in repair the Municipal drains. That would be no longer the function of the Commissioner but of the Corporation, for it would specially provide that the Corporation should carry out this work, and the Corporation would thus be undertaking executive work which is clearly no part of their function. The maintenance of the drains would properly vest in the Commissioner, whereas the initiation and resolution that the drains be constructed is clearly the function of the deliberative body. It is like keeping a pair of boots in good order or is merely cleaning them—that is the executive function which the Commissioner must perform for the Corporation who owns them. To order the boots to be cleaned is the owner's work. Look at this section as you will, it is clearly executive, strictly executive, if it is anything at all. Maintenance of the drains is what is involved, not their suspension or any proposal to stop them up. That would come within the functions of the Corporation, but their maintenance is merely carrying out the policy of the Corporation. I agree with what has fallen from the Honourable the Advocate-General as to the "special or general authority." But the matter lies so much in a nut-shell that it is needless to expend more words upon it.

The Honourable Mr. NAYLOR :—I would like to say, your Excellency, with regard to what fell from the Honourable Mr. Mehta, that I was never prepared to substitute, and never had any intention, in my mind, of substituting in these chapters the word Corporation for the word Commissioner. The Honourable Mr. Macpherson, no doubt, was at one time inclined to the Honourable Mr. Mehta's view, but my recollection is that he did not finally make up his mind on the point until the Select Committee's report was prepared, and, as he then expressed his concurrence in the report and in all the proposed amendments, I am justified in concluding that his ultimate opinion coincided with mine.

The Honourable Mr. PHEROZSHAH MEHTA :—The substitution of "Corporation" for "Commissioner" was suggested by the Honourable Mr. Macpherson. It was so far accepted on the first day that a note was made of all the sections in which the word was to be substituted. I have got here the note I made at the time in my copy of the Bill.

The amendment was then put to the vote.

The Council divided :—

Ayes.	*Noes.*
The Honourable Kashináth Trimbak Telang.	Lieutenant-General H. R. H. the Duke of Connaught.
The Honourable F. Forbes Adam.	The Honourable J. B. Richey.
The Honourable Pherozshah Mervanji Mehta.	The Honourable R. West.
The Honourable Ráo Bahádur Behechardas Veharidas.	The Honourable the Advocate-General.
	The Honourable J. R. Naylor.
	The Honourable Ráo Bahádur Mahadeo Wásudev Burve.

So the amendment was lost.

The Honourable the ADVOCATE-GENERAL then moved that the words "generally or specially" be omitted from section 219. The honourable gentleman merely observed: I have given my reasons for this already. I think it very undesirable to leave the section as it stands in that respect.

The Honourable Mr. NAYLOR:—My only fear is that, if you omit these words, special authorisation may be considered necessary for each separate work. A great deal of trouble will be caused if a large number of small matters cannot be brought up for sanction under one general head.

The Honourable Mr. TELANG:—I quite agree with the Honourable the Advocate-General as to the desirability of the amendment.

The Honourable Mr. WEST:—I have the same fear as the Honourable Mr. Naylor; otherwise I am quite willing to accept the amendment.

The amendment was accordingly agreed upon.

The Honourable the ADVOCATE-GENERAL:—I do not propose to move the omission of these words wherever they occur. I presume they will be dealt with as consequential verbal amendments.

The Honourable Mr. TELANG moved:—That in section 220, line 10, the words "uncovered by any building intended to be used as a dwelling" be substituted for the word "whatsoever."

The honourable gentleman remarked:—The object of this amendment is obvious on the face of it. I think the section as it stands most objectionable. No public drain should be allowed to pass under any building used or intended to be used as a dwelling. By a subsequent section, no one is allowed to build over a municipal drain, and that is enough reason why the Municipality should not be allowed to run a drain under a building already existing. The preservation of health would be rendered impossible.

The Honourable Mr. NAYLOR:—Will the honourable gentleman also move his amendment to section 228 at once in order to save time?

The Honourable Mr. TELANG:—Yes; I move that in section 228, line 10, the words "uncovered by any building intended to be used as a dwelling" be inserted after the word "land."

The Honourable Mr. NAYLOR:—The power given by these sections, honourable members will understand, is a very necessary power, and the sections are purposely expressed in general terms. It is impossible to say where a drain may have to run, it may be necessary to take it anywhere. Engineering difficulties in this respect in Bombay are very great, and I understand it is sometimes inevitable to carry a drain under existing buildings. Of course, there would be the alternative of purchasing the building and then using the land as desired; but this would be extremely expensive. Sub-section (3) of section 220 provides that the owner shall receive compensation, and if, by reason of a drain being carried under any building, a nuisance would be likely to be created, I have no doubt the owner would receive considerable compensation. I may observe, too, that the words of the proposed amendment are so very wide that they will cover any building—a little bit of a wall, or the corner of a verandah, and their introduction would very

much impede the operations of the municipal officers. The section is taken from the English Public Health Act. so there is a good precedent for it. The principle is recognised in England, that a public drain may be carried under any land whatsoever, and it seems to me it must be recognised by this Council. It will always be an expensive matter to take a drain under an existing building and it is not likely to be done when it can be avoided; but when there is no other means of completing a drainage system, such a course is imperative.

The Council divided :—

Ayes.	*Noes.*
The Honourable the Advocate-General.	Lieutenant-General H. R. H. the Duke of Connaught.
The Honourable Kashinath Trimbak Telang.	The Honourable J. B. Richey.
The Honourable Ráo Bahádur Mahadeo Wasudev Burve.	The Honourable R. West.
The Honourable Pherozeshah Mervanji Mehta.	The Honourable F. Forbes Adam.
The Honourable Ráo Bahádur Behechardas Veharidas.	The Honourable J. R. Naylor.

The amendment was lost by the casting vote of His Excellency the President.

The Honourable F. FORBES ADAM moved :—That there shall be added a proviso at foot of section 225—" Provided that no owner of a private street shall for the purpose of branching the drain thereof into a municipal drain be required to construct a drain for a greater length than 100 feet beyond the limit of such private street." He said :—Your Excellency, under the present Port Trust Act the Municipality are bound to take over drains and roads so soon as they are constructed, and at present there are many almost completed. Under this section the Municipality will have to connect them with municipal drains if they wish to take them over. On the Port Trust's Mázgaon property the drains would have to be carried half a mile to meet a municipal drain. If the drains are not connected with the municipal drain I take it the Municipality will not take over the roads or drains on this property, and the Port Trust would have to maintain and repair both roads and drains long after they were completed or used for adoption by the Municipality. In moving this amendment I merely ask that the Port Trust shall be treated as private owners are treated.

The Honourable Mr. NAYLOR :—The Honourable Mr. Forbes Adam has himself in his last few words pointed out what appears to me to be the refutation of the grounds upon which he bases his claim. The words of the section are not imperative in any sense. They are merely entitling, and the right they confer is subject to the conditions which are specified in the clauses (*a*), (*b*) and (*c*). The section cannot apply unless first of all the owner, for some reason or other, wishes to connect the drain of his street with a municipal drain. In this respect the Port Trust property is in the same position as private property, and if the Port Trustees do not wish to have the advantage of connecting their drains with the municipal drains, they are at perfect liberty to make their own arrangements. Under sections 229 and 230 there is power given, as the Honourable Mr. Forbes

Adam has said, to the Commissioner to compel an owner of property to connect his drains with those of the Municipality when any part of his premises is within a hundred feet of a municipal drain. If the premises are beyond that distance, the Commissioner has power only to compel the owner to connect his drains with a cesspool. If the Port Trust property is further than a hundred feet from a municipal drain, the Trustees are at perfect liberty to make other convenient arrangements for the discharge of the contents of their drains. The report of the Select Committee upon this matter says :—"With reference to section 225, we have considered the question raised by the Trustees of the Port as to whether Government, in determining, under section 38 of the Port Trust Act, disputes between the Municipality and themselves regarding the sewering of roads which they propose to hand over to the Municipality, should not be authorized to exempt them from the requirement of clause (*b*) regarding the branching of the drain under a road which is to be handed over into the municipal drain. Our opinion is that it would be invidious to place the Port Trust in a better position in this matter than other owners of private streets, and we have, therefore, not thought it proper to insert any special provision in the Port Trust's favour."

The Honourable Mr. FORBES ADAM :—I am glad to hear the word "entitling" used. It struck me that if the section were compulsory it would prove a very great hardship indeed on the Port Trust, who would in some cases have to construct a drain on land which the Municipality would inevitably have to drain sooner or later.

The Honourable Mr. WEST .—The matter is left open to the Port Trust, but perhaps it would make that point clearer if the wording were slightly altered—say : "desiring to connect shall be entitled to do so." It is not intended to impose a duty upon the owner of private property, but an advantage conferred upon him.

The Honourable Mr. FORBES ADAM :—I do not press the amendment.

It was accordingly withdrawn.

The Honourable Mr. TELANG had given notice of the following amendment :—That in section 225 (*a*), line 11—12, the words "licensed" and "in token of its having been made by him" be omitted, but remarked ; I do not know whether it would be convenient to take this amendment after that of the Honourable Mr. West on section 354.

His Excellency the PRESIDENT :—It will be quite convenient, and we will take it after the adjournment.

The Honourable Mr. WEST :—I shall not oppose the Honourable Mr. Telang's amendment, but I think my amendment will meet his difficulties.

The Honourable Mr. TELANG :—I think it will with a slight modification of the words.

The Honourable Mr. WEST :—Yes ; I dare say I can accommodate you in that way. However I am sure that the Council will accept my amendment.

The Honourable Mr. WEST moved. :—That in section 354, the following sub-section be inserted after sub-section (1), *viz.* :—

> "(1A) If any applicant for a license to act as a surveyor is a licentiate of civil engineering or a person who has passed some test of professional qualification equivalent to that for a licentiate of civil engineering, his application shall not be refused by the Commissioner, except with the approval of the Standing Committee

and upon the ground that the applicant is unfit, through incompetency, misconduct or other grave reason, to hold such license."

The honourable gentlemen remarked:—I think I understood the Honourable Mr. Mehta to say he considered this amendment satisfactory, and would not press his amendment in face of this.

The Honourable Mr. PHEROZESHAH MEHTA :—That is so.

The Honourable Mr. WEST :—Then your Excellency I have only to move that the sub-section I have submitted be inserted after sub-section (1). The section as it stands seems to put a rather arbitrary power into the hands of the Commissioner, which would be strongly resented by persons who thought they were competent, and might impose an undue burden on people who obtained their diplomas in the University of Bombay—a higher test of efficiency than the Commissioner could apply. No reports could be better than those furnished by the University in its degree. But, of course, there may be cases in which the recepient of such a diploma may have fallen into dissolute habits, or his natural negligence may have brought him into disgrace. Such a man might under certain circumstances pass plans of such an undesirable character that, if carried out, they might affect the neighbourhood with disease. These are considerations which I had in view when I framed this amendment. A license is required for the prevention of mischief; but any one who has obtained a University degree in engineering will be granted a license, unless, as I say, there be some reason why it should be withheld. Professional ability will be thus ensured, and the public saved from mere pretenders. In section 225 a few words are required, which I propose to add to line 12: "In token of its having been made by him or under his own supervision." The Honourable Mr. Naylor suggests that in sections 337 and 341 small amendments are desirable · "In token of its having been prepared by such surveyor or under his supervision". I trust that will meet the approval of the Council.

The amendment to section 354 was adopted without comment, and the verbal amendments to sections 225, 337 and 341 were also accepted by the Council.

The Honorable Mr. Mehta then withdrew his amendments to section 337 and others, *viz.* that "sections 337, 341, sub-section (2) and so much of sections 354, 355 and 356 as relates to the licensing of surveyors be omitted."

The Honourable Mr. FORBES ADAM moved that the words "dock, wharf or other place of public resort", in lines 6 and 7 of section 247, be omitted; also the words "or as workmen or labourers" in lines 9 and 10.

In so doing the honourable gentleman remarked:—Your Excellency, this is another amendment which I have to move on behalf of the Port Trust, and I hope the Honourable Mr. Naylor will not raise any objection to this. Under section 37 of the Port Trust Act the Trustees are bound to admit free to the whole of their property such of the public as may think fit to come. I think Government will admit that the position of the Port Trust in this respect is different from that of any other of the bodies which can be called public. Large numbers of the public daily pass over the property of the Trust without conferring any benefit whatever upon the Trust. It is different with a railway station. The company, to which the station belongs, benefits directly or indirectly from every person who enters their station. A railway company works for a profit for individuals. The Port

Trustees administer their estate solely for the public benefit. The subject of drains has always been a point of contention between the Municipality and the Port Trust. The Port Trustees are subject to great hardships in this respect, and I maintain that seeing the Port Trust derive no advantage, direct or indirect, from the resort to their property of the general public, that it should be the duty of the Municipality to provide the necessary accommodation for them. This is a function which properly belongs to the Municipality. The omission of the words, as I propose, in this section will have the desired effect.

The Honourable Mr. NAYLOR:—Your Excellency, as the Honourable Mr. Forbes Adam has observed, this question has been a point of contention between the Port Trust and the Municipality for some considerable period, and it has also had to be considered by Government. The principle which underlies the section is that all those who attract people to their premises, whether for the purposes of trade, or manufacture, or business, or for amusement, or for traffic, shall provide the people so attracted with the accommodation which is necessary for them. The Port Trustees have argued, as the Honourable Mr. Forbes Adam now does, that their case is different from that of other large proprietors in the city of Bombay, but to me it seems that, whether it be a railway-station, a market, or a mill, the same arguments apply with equal force. The Port Trust attract people to their docks and wharves, and business is carried on there; they are, therefore, bound to provide the necessary accommodation. That is the view which has always been taken by Government and that is the view which guided the Select Committee when they refused to make any amendment to the section in favour of the Port Trust, who in paragraph 54 of their report said: "The Trustees also object, with reference to section 247, to their being held liable to provide latrines, &c., for the accommodation of the public who resort to the wharves and docks on their property. They admit their liability to provide such accommodation for their own employés, but they argue that latrines, &c., for public use on their wharves and docks should be provided at the expense of the Municipality. We are of opinion that the section, which will impose this liability on the Trustees, should stand as it is. The principle that those to whose premises the public are attracted for purposes of trade or traffic should provide for the public accommodation appears to us to be a fair one; and we think that the Trustees have failed to establish a case for special treatment, as they do not differ from other proprietors, except in the large extent of their property."

The Honourable Mr. FORBES ADAM:—The Honourable Mr. Naylor has not satisfied me that the Port Trust should not be placed in a different position from other public bodies in Bombay. I would ask your Excellency to take a vote.

The Council divided:—

Ayes.	*Noes.*
Lieutenant-General His Royal Highness the Duke of Connaught.	The Honourable J. B. Richey.
The Honourable Kashinath Trimbak Telang.	The Honourable R. West.
The Honourable F. Forbes Adam.	The Honourable the Advocate-General.
	The Honourable J. R. Naylor.
	The Honourable Ráo Bahádur Mahadev Wasudev Burve.
	The Honourable Ráo Bahádur Behechardas Veharidas.

So the amendment was lost.

The Honourable Mr. TELANG moved, without a comment, the following amendment: That in section 258, line 1—2, for the words "if he thinks fit" the words "with the sanction of the Standing Committee" be substituted.

The Honourable Mr. NAYLOR:—Your Excellency,—I must oppose this motion of the honourable gentleman, on the ground that the matter which it affects is purely an executive one. Cases may arise requiring prompt action. In giving orders under the section, the Commissioner would have generally to depend on the opinion of his executive engineer or other qualified engineer officers, and the matter is one in which I see no necessity for the Standing Committee being consulted. The Commissioner would act upon regular principles, well-understood in the profession. On the other hand, if owners knew that the issue of orders was in the hands of the Standing Committee, they would be inclined to make an appeal to the compassion of the members of the Committee individually, and private considerations, rather than the actual merits of the case, would guide the decision. Mr. Charles informs me that it is imperative that such work as the section contemplates should be done by trained workmen, particularly where, as sometimes happens, the drain concerned may have to cross water mains. Very careful supervision is necessary, as careless work may seriously affect the value of the property concerned. The proper person to decide in such matters is, I take it, the Commissioner guided by his subordinates.

The Honourable the ADVOCATE-GENERAL:—I do not know whether the Honourable Mr. Naylor has noticed it or not, but there is a repetition here In section 492 the same power as is conferred by this section is given over again. Would it not be best to leave out this section altogether? Section 492 provides more elaborately for the same thing, and includes most other sections.

The Honourable Mr. NAYLOR:—I think the Honourable the Advocate-General is under a misapprehension. Section 492 refers to cases where the owner is called upon to do certain work, and refuses to do it.

The Honourable Mr. WEST:—This section, as I understand it, has reference to work not likely to be done in a proper way and consistent with the public health or welfare. By it the Commissioner is enabled to take such work out of the owner's hands and do it by skilled workmen and subordinates whom he will always have at his disposal. It appears to me a necessary provision; for if work were roughly done, we might have water escaping into gas, or drains into water. I am not sure that any great evil would arise by a reference to the Standing Committee, but there would be a fear of feelings of kindliness influencing members, and the result might be badly done work.

The Honourable the ADVOCATE-GENERAL:—The Honourable Mr. Telang's amendment is quite justified. As a question of convenience it seems very important here.

The Honourable Mr. TELANG:—To my mind, the arguments seem to point in favour of the Commissioner always doing the work, and never leaving the private owners any opportunity of doing it themselves.

The Honourable Mr. WEST:—Where there is no danger of public inconvenience the owner might be left to do the work. How will it do to introduce the words: "may when it shall appear necessary"? Perhaps that will meet your susceptibility. It implies mere option. Perhaps Mr. Naylor will accept the change.

The Honourable Mr. PHEROZESHAH MEHTA :—I think the Commissioner should have the power to do some of these works himself. But there should be some guarantee that he would not afterwards present a very extravagant bill. I should not object to his doing the work, as it is very important that the work should be properly done. Indeed, I would be in favour of making the clause compulsory if it could be provided that the charges made upon the private owners were not extravagant.

The Honourable Mr. FORBES ADAM :—There is a great deal of danger of what Mr. Mehta speaks of—an extravagant bill. The Port Trust has had some experience of that. We have found ourselves able to get work done much more cheaply than it is by the Municipality.

The Honourable the ADVOCATE-GENERAL :—That is always the case with anything done by public bodies.

The Honourable Mr. NAYLOR :—The Honourable Mr. Forbes Adam's statement is, I believe, not admitted by the Municipal Commissioner, and it should not be accepted without inquiry.

The Honourable Mr. WEST :—Would you refer it to the Standing Committee, in case of difference of opinion, as to what the charges should be? It would be easy to introduce a clause to provide for this.

The Honourable Mr. RICHEY :—The Municipality may come in for an action if the private owner can make out a good case. Under section 505 the power of appeal is given before the Chief Judge of the Small Causes Court.

The Honourable the ADVOCATE-GENERAL :—Yes; that may be done, but still the clause does not contemplate that all the work shall be done.

The Honourable Mr. TELANG :—I withdraw the amendment.

The Honourable Mr. TELANG then moved that in section 267, line 26, the word "corporation" be substituted for the words "standing committee." The amendment was accepted.

The Honourable Mr. FORBES ADAM moved :—That there be added to section 269, clause 2—

"Provided that this section shall not apply to any public wharf, dock or pier of the Bombay Port Trust."

The honourable gentleman said :—Your Excellency,—The argument used by me in my last amendment is the same I have to use here. I can only press now, as I did before, the fact, which is clear to my mind, that there is a difference between the Port Trust and other public bodies. An immense number of people pass over the Port Trust land as passengers after having passed through the long dusty roads of Bombay, and we have to supply them with drinking water when they get to us. The Municipality should provide them with water when they are on our property, as they do to other people on their streets and highways.

The Honourable the ADVOCATE-GENERAL .—I felt in the last case there was great hardship. In this case I think the Municipality should make some arrangement in proportion to the number of passengers as apart from the number of people the Port Trustees employ. That would be a remedy, I think.

The Honourable Mr. PHEROZESHAH MEHTA :—As the Commissioner still sits on the Port Trust, the Board will always be able to get at him on the subject.

The Honourable Mr. FORBES ADAM :—I am afraid the Municipal Commissioner will hardly help us.

The Honourable Mr. WEST :—The section only requires the provision of water for the people employed ; you need not provide for other persons. If you will not extend your charity to others, you will have to put watchers over the supply, and give tickets to your employés—those who have tickets to have access to the convenience; while those who have not, shall not. But I suppose the trouble and expense of this would be greater than the expense you will now be put to.

The Honourable Mr. FORBES ADAM :—Would it not be possible to leave out the word " occupying " and leave it " employed " ?

The Honourable Mr. WEST :—That would meet the particular case of the Port Trust, but it would cut off the operation of the clause as regards other large interests. The Port Trust is undoubtedly a very important institution in Bombay ; but it is not the whole of Bombay. There are many other cases in which the retention of the word would be very important.

The Honourable the ADVOCATE-GENERAL :—The Municipality in some way should make a contribution.

The Honourable Mr. WEST :—The furnishing of water by the Port Trust to the people who resort to its property is a piece of charity on their part of which we have heard a good deal.

The Honourable Mr. FORBES ADAM :—We by no means wish to deprive the Municipality of the privilege, or to deprive them of the pleasure they would derive from that charitableness.

The motion was withdrawn.

The Honourable Mr. TELANG moved :—That in section 277, line 1, after " may " add the words " with the sanction of the Standing Committee."

The honourable gentleman, after reading the section as he proposed to amend it, said : —Your Excellency,—It has been said that if certain matters were left to the Standing Committee there would be canvassing of an objectionable character, but in respect to the matter now before us, at all events, I do not see how that could be. On the contrary I think it undesirable that the Commissioner should exercise such powers as he is here empowered to exercise, without first obtaining the sanction of the Standing Committee.

The Honourable Mr. NAYLOR :—Your Excellency,—This is a matter which appears to me to be entirely one of executive detail, and when cases occur, in which it is desirable to cut off the water-supply, it is necessary that it should be done promptly. The question of cutting off the supply arises principally (1) when default is made in the payment of water tax, (2) on failure to repair connections with water mains, and (3) in the event of water being wasted, or of some other abuse of the right of supply. These are matters with which the inspecting officers become acquainted and by them the Municipal Commissioner is informed, and it is his duty, as the executive authority, to deal with them. It may sometimes be necessary, in order to bring a defaulter to his bearings, to cut off the supply of water at once, and it would be extremely inexpedient that the question of cutting it off should be a matter of contention for a month in the Standing Committee. The object of the executive is to show a good revenue, and as the water-supply is one means

of increasing that revenue, it is not at all likely that the power contained in this section would be used, without real necessity.

The Honourable the ADVOCATE-GENERAL :—Although it is in the interest of the suppliers of water to encourage the consumption, yet it has been found in London that the water companies use their power extremely frequently and under such circumstances that at times the magistrates have come down rather sharply on the companies. It is an extreme remedy to deprive a whole building of water merely because the owner refuses to pay. There might be many persons, besides the one it was intended to punish, who would be affected very seriously; and I think it would be wiser if the sanction of the Standing Committee were made necessary.

The Honourable Mr. NAYLOR :—If that is the general sense of the Council, I am quite willing to agree.

The amendment was accordingly accepted.

The Honourable the ADVOCATE-GENERAL moved :—That in section 287 (2), line 16, the words "widen, extend or otherwise improve any such street or" be omitted.

That in section 289, clause (*b*) be restored.

He remarked :—The question raised by my amendments, your Excellency, is the border line between the duties which the Commissioner shall exercise on his own behalf and those which he shall exercise only with the authorisation of the Corporation. The clause which I propose to alter deals with the former class; the second which I propose to restore, with the latter class of duties. I think that, with respect to the widening of streets, the subject should rest for final decision with the Standing Committee or the Corporation, for it so happens that the widening or the extension of a street may often be a greater matter than the construction of a new street. The extension of New Oxford Street was a greater job than the making of many new streets in London. I propose, therefore, to amend section 287 by omitting the words mentioned, and to let section 289 (*b*) remain as it was.

The Honourable Mr. NAYLOR :—Your Excellency, I quite agree that the Honourable the Advocate-General is right in saying that the widening or extension of a street is frequently equivalent to an extensive new work. But the simple answer to that objection is that no such work as he describes can be undertaken or executed by the Commissioner, unless the Corporation first of all grants the money. Therefore, unless the Corporation have already had the scheme under consideration, with the plans and estimates, and have satisfied themselves that the work ought to be done, the Commissioner cannot, under the constitutional sections—No. 66 especially—undertake the work at all. But although it is true that the section now before us may sometimes cover a very large work, yet, on the other hand, it will most usually apply to a number of small works—the taking of a corner here and a corner there—an operation which goes on from year to year in a city like this to a very large extent indeed. In order that the Commissioner may have power to deal with such cases as they occur from week to week, it is necessary that the section be left in its present form, otherwise the Commissioner would be seriously hampered and delayed in the important duty of effecting from time to time, as opportunity offers, small improvements in streets, by his having on each occasion to wait until he could, after much discussion, obtain the sanction of the Corporation. It is a matter which affects

the convenience of the administration, and I hope the Council will allow the clauses to remain as they now are.

The Honourable Mr. PHEROZESHAH MEHTA :—This discussion brings out more clearly one of the reasons for which I proposed the substitution of the word "Corporation" in this and other sections. The Corporation has the fullest powers of initiation under this Bill. Now see how the sections in question might possibly be interpreted. The Corporation may consider that a particular road should be made or widened, and may sanction a sum of money for that purpose only. If the Commissioner be of a different opinion as to the usefulness of the road, though he cannot make the road which he may prefer, still he may as the sections are worded, feel himself justified in refusing to carry out the wishes of the Corporation. He may imagine that the initiative is in himself under these sections and the Corporation could only give sanction to what he should propose.

The Honourable Mr. WEST :—The work is put in the Budget and accepted by the Corporation, and that throws upon the Commissioner the necessity of carrying out the work. If he tries to over-ride the Corporation, he has over-stepped his duty, and the Corporation would immediately pass a vote dismissing him. But if the Council will look at section 66 they will see that, if the Commissioner proposes to carry out any extensive work, it must have been provided for in the current budget grant. To pass such an amendment as this would be to throw a great deal of detail work upon the Corporation. The way to look at the matter is from a practical point of view. The Commissioner should have power to carry out his duties, for he would be censured if he betrayed the trust imposed upon him.

The Honourable the ADVOCATE-GENERAL :—Widening and extending were considered of such importance under the old Act that sanction was required for both, and I have never heard of any complaint having been raised of this provision having worked unsatisfactorily. When you come to widen and enlarge it may mean a very large undertaking indeed. I would greatly prefer, then, that we take out the words "widen or extend" and leave "otherwise improve."

The Honourable Mr. WEST :—"Improve" may involve a very large expenditure. The best thing to do would be to leave in all the words, and add "in such a manner as shall not involve an expenditure beyond" a certain amount. The question will be what amount shall be fixed—something between two and five thousand rupees.

The Honourable Mr. PHEROZESHAH MEHTA :—There might be practical difficulties in working such a provision. At present, the Corporation allots in the budget about Rs. 40,000 for acquiring set-backs while special provision is made for new roads.

The Honourable Mr. WEST :—Had we not better specify this? The words which will meet the Honourable Mr. Naylor's views are these : "Within the limits of the budget grant for the purpose and so as not on any one work to spend more than Rs. 2,000, unless a larger expenditure has been approved of by the Corporation."

His Excellency the PRESIDENT :—The Honourable Mr. Naylor requires time to draw up a new clause. Do you consent to that?

No honourable member offered any objection. So the further consideration of the matter was postponed.

The Honourable the ADVOCATE-GENERAL then moved :—That in section 294 after the word *may*, in line 2, the words "with the sanction of the Standing Committee" be inserted.

The honourable gentleman remarked that the consent of the Standing Committee ought to be required under this clause, and I should like to invite the attention of the honourable mover to it, for it seems to me that we have two clauses on this subject which may come into conflict. The provisions are the same as in sections 90, 91, and 92. And then as to the words "the Commissioner may acquire"—*acquire* is the wrong word to use—the Commissioner does not acquire, but the Corporation. It is only a matter of drafting which I trust the Honourable Mr. Naylor will amend.

The Honourable Mr. NAYLOR:—The meaning of this section will be best illustrated by my attempting to explain how it will work. Let us suppose that the Corporation have sanctioned the making of a new road through the heart of the city; plans and estimates have been placed before the Corporation; and they have sanctioned the expenditure of money for acquiring the land and for constructing the road. This is done by means of a budget grant. It then becomes the duty of the Commissioner to carry out the work, and the first thing he has to do is to acquire the land. He does not acquire it on his own authority at all, but simply because the undertaking has been sanctioned by the Corporation. The undertaking cannot be carried out unless the land is first of all acquired. Now, this section is a general one which empowers the Commissioner to take the necessary steps for acquiring land for the purposes of such a road. Land may be acquired by the Corporation not merely for roads but for drains, buildings, or other purposes; this section applies merely to land required for roads. Its object is to show what extent of land may be taken up and for what purposes. Its clause (*a*) provides that land and the buildings, if any, standing thereon may be taken up for the purpose of either making a new street or of improving an existing one. Then clause (*b*) further provides that, if it seems expedient, land outside of the intended regular line of the street may also be taken up. But, as I said before, there are other cases in which land may be required by the Corporation, and there are two sections—sections 90 and 91—which apply not only to land taken up under this section 294, but to land taken up for any purpose whatever. Section 294 is to meet a particular case; section 90 applies to land acquired for any purpose whatever. To revert to the case of the street—the Commissioner having got the work sanctioned by the Corporation, proceeds to take up the land necessary for the street and, also, some and which will be outside the regular line of the street. He goes to the neighbourhood and tries to make terms with the owners of the land, but section 90 provides that when he does this, he shall be limited by such maximum rates and prices as the Standing Committee may from time to time deem fit to lay down. At present almost every agenda paper of the Town Council contains several references from the Commissioner in which he asks for their sanction to his acquiring a piece of land here and a piece there at such and such a price. These sanctions are usually given by the Town Council as a mere matter of form, as there is an understanding between the Town Council and the Commissioner that in certain localities land is worth a certain price and he may rely upon getting the Town Council's sanction if he obtains land within that price. The object of section 90 is to prevent the necessity of the Commissioner's bringing each of these small items before the Standing Committee separately and to enable the Standing Committee to say to him, "In a certain portion of the city you may agree to pay up to such and such a rate for land." This will be a very convenient way of working, and will save a great deal of unnecessary trouble. At the same time the Commissioner will, as regards the price he pays for land, be under the supervision of the Standing Committee In

case he wishes to exceed the maximum rate allowed by the Standing Committee, he must take their special sanction ; or, if he finds it impossible to come to terms with the owner, he must go to the Standing Committee before asking Government to put in force the Land Acquisition Act for the compulsory acquisition of the land. With regard to the acquisition of land by agreement, there is one other important safeguard, which has been inserted by the Select Committee, on the motion of the Honourable Mr. Mehta. Sub-section (3) of section 90 provides that no agreement for the acquisition of land shall be valid, if the price to be paid exceeds one thousand rupees, unless and until such agreement has been approved by the Corporation.

The Honourable the ADVOCATE-GENERAL :—After hearing the Honourable Mr. Naylor's explanation I would ask leave of your Excellency to withdraw my amendment. I would still urge that as a safeguard it would be better to add the words "under the provisions of sections 90, 91 and 92." I think it would be much better to have that reference, to introduce a saving clause which may prevent a great deal of litigation.

The Honourable Mr. NAYLOR :—If we do that in one case we ought to do it in all

The Honourable the ADVOCATE-GENERAL :—As a matter of fact you ought. Whenever I have found it, I have made a note of it. I think honourable members will agree with me as to the expediency of making an addition to the effect that this section is guided by sections 90, 91, and 92.

The Honourable Mr. NAYLOR :—I must say that I should prefer to leave it as it is.

The amendment was withdrawn ; but the suggestion of the Honourable the Advocate-General was adopted.

The Honourable Mr. TELANG moved :—That in section 295, line 1, the word "shall" be substituted for the word "may".

The amendment was adopted without discussion.

The next amendment moved by the Honourable the ADVOCATE-GENERAL :—That in section 299, line 8, "the word "or" be omitted and that after the word "damage" the words "or expense be inserted" was also adopted.

The Honourable the ADVOCATE-GENERAL moved :—That to section 301, clause (1), the words "with the approval of the Standing Committee" be added.

The honourable gentleman remarked :—This section refers to a matter essentially dealing with private rights. The Commissioner in fixing the levels of roads, their direction, and their means of drainage, interferes with the rights of every owner of land. The question is whether the Commissioner ought to do that, and whether it would not be preferable that he should have the sanction of the Committee.

The Honourable Mr. NAYLOR :—Your Excellency,—This matter was considerably discussed by the Select Committee, but it was thought that, as the matter was purely a professional one, the Standing Committee, as a whole, would not really be competent to deal with it.

The Honourable Mr. TELANG :—I do not see why the Standing Committee should not be consulted. The matter is not essentially a professional one, and the Commissioner is not necessarily a better authority on professional matters than the Committee.

The Honourable Mr. NAYLOR :—The Standing Committee is likely to be canvassed, and if influenced by private feelings in such a matter, as apart from professional advice, very grave mistakes might be committed by them.

The Honourable Mr. FORBES ADAM :—I think the Honourable the Advocate-General's amendment should be accepted. The possibility of canvassing the Standing Committee is not a matter to which we can attach importance. In my opinion, it would be better to have this safeguard.

The Honourable Mr. PHEROZSHAH MEHTA :—The Commissioner has to depute all these matters to subordinates, and it is thus in their power to exercise a good deal of oppression; very great hardships are likely to be caused if there be no such safeguard as proposed.

The Honourable Mr. NAYLOR :—Your Excellency, as the general opinion of the Council appears to be against me I will not press my views.

The amendment was accordingly accepted.

The Honourable Mr. TELANG moved :—That in section 303, line 5, add "with the sanction of the Standing Committee" after "may"

The honourable gentleman remarked :—This, your Excellency, is one of the suggestions of the Corporation, and they desire the sanction of the Committee should be necessary.

The Honourable Mr. NAYLOR :—The considerations are here precisely the same as those with respect to section 301, and I am willing to follow what has been decided upon that section.

The amendment was adopted.

The Honourable the ADVOCATE-GENERAL moved:—That in section 309A after the word "thing" in line 8, the words "so as to form an obstruction thereto or encroachment thereon" be added. The amendment was accepted.

The Honourable Mr. TELANG moved that sub-section (2) of section 314 be omitted.

He said :—Your Excellency,—This sub-section is capable of being worked in practice in a very oppressive manner and the people who are likely to suffer are those who can hardly even hope to obtain any redress, or indeed even to demand it, and I should prefer to strike out the whole sub-clause.

The Honourable Mr. NAYLOR :—Your Excellency, the latter part of this sub-section was struck out in Select Committee on the ground that it appeared to put into the hands of municipal officers the means of inflicting hardship on hawkers. But the former part of it was left standing, in order that those officers might have the power of removing any person who acts in contravention of the section, *i.e.* who, by hawking goods for sale in the streets or by squatting on the streets and exposing goods for sale, causes obstruction. The honourable gentleman contends that this would be a hardship to the persons concerned; but I am unable to concur with him. It is in open places round about a municipal market that the provision will most frequently apply. Hawkers and squatters come together in large numbers about the markets, and they will become a great nuisance to people who wish to go into the markets and do their business there, if there is no power of removing them. Under sub-section (1) of the section, there is, of course, the power of arresting persons who so offend and taking them before a Magistrate, and having them fined. In fact, that power is already possessed by the police under the Bombay Police Act of 1860. But

it is a very much greater hardship to such persons to arrest them and take them before the Magistrate and have them fined than it is merely to require them to "move on." The loss of time involved in their prosecution is an increase of punishment. Besides this, a great deal of trouble is given to the Magistrates and police and to all concerned in prosecuting such offenders, and, after all, the end of such a prosecution most often is that the man being a very poor man is fined two annas and dismissed with a caution, and he at once returns and repeats the offence. The object of the section is to enable municipal officers to put down the nuisance. I do not see that any hardship can accrue from giving them the necessary power to prevent it.

The Honourable the ADVOCATE-GENERAL :—How is the Commissioner to exercise this power?

The Honourable Mr. NAYLOR :—By delegating it to his subordinates.

The Honourable the ADVOCATE-GENERAL :—But he has no staff of municipal police.

The Honourable Mr. NAYLOR :—There are the market officers.

The Honourable the ADVOCATE-GENERAL :—But this is not one of the sections under which you have a penalty.

The Honourable Mr. NAYLOR :—Resisting a public officer is an offence punishable under the Penal Code.

The Honourable Mr. PHEROZESHAH MEHTA :—I opposed this section very strongly in Select Committee. As the Honourable Mr. Naylor puts it, it seems that it is in the interest of the poor hawker that the section is devised. It will work, however, only in the interest of the lucky officer appointed to hunt the hawkers. If a few pice or annas are paid, the hawker becomes harmless and will be allowed to remain; those who do not will be marched off.

The Honourable Mr. NAYLOR :—And then go back and do it again.

The Honourable Mr. PHEROZESHAH MEHTA :—Not if he does not pay. It is not to his interest to go back again otherwise.

The Honourable Mr. FORBES ADAM :—People should be prevented from obstructing the street; otherwise persons going along the road are in danger of being run over.

The Honourable Mr. TELANG :—It must be remembered that the operation of the section is not in terms confined to the vicinity of municipal markets, but extends to the whole city. The useful part of the section is covered by other enactments and it is almost better to remove the whole section.

The Council divided :—

Ayes.	*Noe.*
The Honourable the Advocate-General.	The Honourable J. R. Naylor.
The Honourable Kashinath Trimbak Telang.	
The Honourable F. Forbes Adam.	
The Honourable Pherozeshah Mervanji Mehta.	
The Honourable Ráo Bahádur Behechardas Veharidas.	

So the amendment was carried.

The Honourable Mr. NAYLOR :—Then I propose, as a consequent amendment, that the first sub-section be omitted, so that section 314 be removed altogether.

The Honourable the ADVOCATE-GENERAL :—Yes; leave the whole thing to the police.

The proposal was adopted.

The Honourable Mr. TELANG moved :—That in section 318, line 15, the word "special" be inserted before the word "damage."

The Honourable Mr. NAYLOR :—I am willing to accept this amendment.

The amendment was accordingly accepted.

The Honourable Mr. PHEROZESHAH MEHTA moved that sub-section (2) of section 325 be omitted.

The honourable gentleman remarked :—Your Excellency,—I think this is one of those matters which it is easier to be looked after by the corporate body, and the expense borne in common. I do not think the private house-owner should be bound under a penalty to see that the number put on is kept in good order and not meddled with. Such provisions are practically nugatory.

The Honourable Mr. NAYLOR :—Your Excellency,—The amendment moved by the Honourable Mr. Mehta is to remove a sub-section the provisions of which have been the law in Bombay for some years past. Nor is this law confined to Bombay alone. It is the law in every Municipality throughout this presidency and the law in the metropolis of London, and it is probably also the law throughout the whole civilised world. In London, not only is the occupier bound to keep the number painted, but to put it up originally. Here, when it has been put up by the Municipality, he is merely bound to keep it in repair. I do not think it very much matters who puts up and maintains these numbers or at whose expense it is done, but I see no reason for departing from what is the law elsewhere. It entails very little expense to the occupier, and although it may not throw much expense on the Corporation, if they are left to do it, still the cost to individual occupiers is so trifling, that it seems better to let the responsibility rest upon them.

The Honourable the ADVOCATE-GENERAL :—Your Excellency,—I had the same amendment as this on the paper. It is not an important matter, but rather tells against some of us here. I am sorry to own that I am an offender in this respect. I am afraid I have never taken any steps towards keeping my number properly painted and in good order. It would be much less trouble to have a man go round with a ladder and a pot of paint and put all the numbers right, just as the lamp-lighter goes round to light the lamps.

The Honourable Mr. RICHEY :—The question is, whether people would not take greater care of their own property than they would of other people's. At present the owner would be careful of his number; but if the expense is not his own, he will be careless, and it would be rather hard to get a conviction against him.

The Honourable Mr. NAYLOR :—As the general feeling appears to be in favour of it, I will accept the amendment.

The amendment was accordingly accepted.

The Honourable Mr. TELANG moved that the following proviso be added to clause (*b*) of section 346, *viz.* :

"provided that any person whose building is so disapproved, may by written notice to the Commissioner, require that the position and direction of the future streets in the vicinity of his intended building be forthwith laid down and determined, and if such requisition be not complied with within three months from the date thereof, may, subject to all other provisions of this Act applicable thereto, proceed with the erection of his building."

The honourable gentleman said :—Your Excellency,—Under the section as it stands there is no limit to the time during which the Commissioner may leave the position and direction of the street undetermined, and this is hard on the individual owner It seems to me the proviso I have here drawn up would meet the case.

The Honourable Mr. NAYLOR :—Your Excellency,—The clause on to which the Honourable Mr. Telang proposes to fasten this amendment is one for which there is considerable necessity, because Bombay is a growing city, and neighbourhoods which are at present unoccupied by houses or have only a few houses scattered here and there over them, may within a very short time have numbers of houses springing up Sometimes houses spring up so suddenly that they are built and finished before the municipal officers are well aware of their existence, or, at least, before those officers can take measures to secure their being erected with a due regard to the future requirements of the neighbourhood, whether as to sanitation or as to the direction and width, &c., of the streets which should be laid out therein. The matter is one which it is difficult to provide for satisfactorily, and I have myself foreseen the hardship which the Honourable Mr. Telang refers to. The difficulty is how best to provide against it On the one hand it is necessary that the Commissioner should be able to step in and to prescribe how new houses shall be constructed with reference to the probable future requirements, and, on the other hand, it is expedient that he should not be able to interfere, without sufficient reason. On these grounds, after consulting the Commissioner, I have come to the conclusion to accept the proposed proviso; but I must ask the Council to extend the period which the Honourable Mr. Telang proposes. It would be too short a time for the Commissioner to do what is necessary, and for the questions involved to be finally settled. It might be found necessary at times to have a special survey, and the consideration of this and its results could not be satisfactorily dealt with in the time Moreover, one or two months would be required to get the sanction of the Corporation for a special survey. If the honourable gentleman will substitute for three months one year, I shall be glad to accept his amendment.

The Honourable Mr. PHEROZESHAH MEHTA :—I was prepared to suggest six months: twelve months is much too long a time. A special survey need not take very long.

The Honourable Mr. NAYLOR :—It would take the ordinary officers a longer time than it would take special officers, as they would have their other duties to attend to simultaneously.

The Honourable Mr. PHEROZESHAH MEHTA :—Not more than a month. It seems reasonable that some time should be given, but to prevent a man from building upon his land for a year is unreasonable. Six months are ample

The Honourable Mr. FORBES ADAM :—Six months is long enough in any part of Bombay.

The Honourable Mr. NAYLOR :—Then I agree to six months.

The amendment was agreed to, with the substitution of six months for three.

The Honourable Mr. TELANG moved:—That in section 350, lines 2 to 4, the words "there shall be reasonable ground for suspecting that" be substituted for the words "in the opinion of the commissioner it shall be necessary to ascertain whether"; and that the following sub-section be added to the section, *viz.*:

"(2) If it shall thereupon be found that in the erection of such building or the execution of such work, nothing has been done contrary to any provision of this Act or of any by-law made under this Act at the time in force and that nothing required by any such provision or by-law to be done has been omitted to be done, compensation shall be paid by the commissioner to the person aforesaid for the damage and loss incurred by cutting into, laying open, or pulling down the building or work."

The Honourable Mr. NAYLOR:—I have no objection whatever. A similar provision reproduced from the present Municipal Acts, is to be found in section 253 of the Bill.

The Honourable the ADVOCATE-GENERAL:—This just brings it into harmony with the corresponding sections.

The amendment was accepted.

The Honourable Mr. TELANG moved:—That in section 351, lines 5 to 7, the words "or any time within six months after the compelation thereof" be omitted.

The honourable gentleman said:—Your Excellency, the provision by which the Commissioner is authorised at any time within six months after the completion of a building to have it opened for the purpose of inspecting it, and ascertaining whether or not any provision of this Act has been contravened, seems to give too long a time. There is enough time to inspect it while it is in course of erection, and it seems likely to occasion much inconvenience, not only to the owner but also to the occupier, if the Commissioner chooses to open it up six months after completion.

The Honourable Mr. NAYLOR:—Your Excellency,—The objection taken to this section is not, I understand, to the inspection of the building, but to the time allowed after the completion of a building within which inspection may be had. The annual number of houses built in Bombay is about a thousand, and they are often run up so rapidly that there is not time to make a proper examination of them whilst they are under construction. They are sometimes completed within four months from their commencement. These facts will show the Council that a very large staff of inspectors indeed would be required, if it were necessary for the inspection to be limited to the time during which a building is being erected. The Local Government Board in England has promulgated a model by-law, in which power of inspection is given "at any reasonable time during the progress or after the completion of a building." Under this by-law there would be no definite limit to the time within which municipal officers might claim to inspect a building after its completion. But in adapting this by-law to Bombay, we have been more considerate and have thought it fair to fix a definite limit. In the Bill, as introduced, the limit was one year. The Select Committee have cut the period down to six months. That is quite a reasonable time and I think it should stand.

The Honourable the ADVOCATE-GENERAL:—I quite agree that it is essential to have a building open for inspection some time after its completion. It is quite right that sufficient time should be given, and it seems to me that three months will be sufficient.

The Honourable Mr. MEHTA :—The Ward Inspectors constantly watch and inspect buildings while they are in course of construction ; and departures from the plans passed are easily detected.

The Honourable Mr. RICHEY :—Every man makes a mistake, but surely it is competent for a builder to ascertain his rights and to keep within them before he completes his building. If he does that, he need not object to it being open for six months.

The Honourable Mr. FORBES ADAM :—Three months is sufficient, your Excellency, and I would ask the Honourable Mr. Naylor to accept the suggestion.

The Honourable Mr. NAYLOR :—Very well.

The amendment was then withdrawn and "three" was substituted for "six" in line 6 of the section.

The Honourable Mr. NAYLOR :—Might I suggest that after the word "work" in line 15 of section 351 we add the words "or his successor in interest."

The Honourable the ADVOCATE-GENERAL :—You want "successor in occupation" rather than "successor in interest."

The Honourable Mr. NAYLOR :—It is the owner of the building we want to get at.

The Honourable the ADVOCATE-GENERAL :—Then say "or holder of the building," it might be his executor ; it is just a question of words.

On the suggestion of the Honourable Mr. Naylor, the point was left over, in order that he might consider what words would be most suitable for adoption.

The Honourable Mr. PHEROZESHAH MEHTA proposed to strike out the words "surveyors and" from lines 5 and 6 of section 356.

The Honourable the ADVOCATE-GENERAL :—I quite agree with Mr. Mehta that the clause ought to be omitted. It would be unfair to pay every man the same, and might drive good men out of the profession.

The Honourable Mr. NAYLOR :—This is quite a new proposal to me, and I should wish to have time to consider it. Let it be adjourned till Monday next.

This was agreed to.

The Honourable Mr. TELANG moved :—That in section 358 (2), line 18, the words "an honorary" be substituted for the word "a,"—saying :—Your Excellency, this is one of the amendments suggested by the Corporation. There seems to be some reason in it, for, if the men of the fire-brigade held other offices, they might not be available when wanted.

The Honourable Mr. NAYLOR :—Your Excellency,—The history of the fire-brigade is that up to recently it was a part of the Bombay Police, and the Municipality is considering, or is about to consider, the formation of a fire-brigade of its own. Hitherto police officers have been employed in the brigade ; but the present idea appears to be that the police should not be so employed and that the members of the fire-brigade should be full-time men. Sub-section (2) of this section leaves it open for police officers to be members of the fire-brigade without requiring that they should necessarily be appointed thereto. It is left optional whether or not they should be also members of the fire-brigade The words of the sub-section will not prevent the carrying out of the proposal that the police should not be entertained in the fire-brigade and they will also admit of the enrolment of honorary members of the brigade.

The Honourable Mr. PHEROZESHAH MEHTA :—I do not see why members of the fire-brigade, who would generally have very little to do, should not be employed on work which would not prevent them from being readily available when wanted.

The Honourable Mr. FORBES ADAM .—I quite agree with the remark of the Honourable Mr Mehta.

His Excellency the PRESIDENT :—If employed for other purposes it would make it impossible for the police to work as firemen. I do not think it wise to amend the section as honorary firemen would not be of much use.

The amendment was withdrawn.

The Honourable Mr. TELANG moved :—That provision be made for payment by the Commissioner of compensation in respect of premises pulled down by the fire-brigade, unless clause (*b*) of section 360 in which no fire has occurred.

The Honourable Mr. NAYLOR :—Your Excellency, the provision in clause (*b*) of section 360 to which the Honourable Mr. Telang refers is not a new one. It exists in the present Municipal Acts and in all Acts, I believe, of a similar nature regulating the duties of fire-brigades. The case is governed, however, by section 362, the effect of which is that if premises in the neighbourhood of a fire are damaged by the operations of the fire-brigade, the owner may recover compensation from the fire insurance office, if he has been prudent enough to insure his property. It is quite necessary that there should be this security for persons who suffer from the operations of the fire-brigade, but if the Corporation undertook the responsibility of compensating such persons, their liability might at times be very great indeed.

The Honourable the ADVOCATE-GENERAL :—I have never heard of a legal decision affecting the point, but I do not know whether the section is valid.

The Honourable Mr. NAYLOR :—I have not a copy of the Metropolitan Fire Brigade Act by me, but my recollection is that the Fire Brigade are not liable for damages, if they pull down a building to save it and other buildings from destruction by fire.

The Honourable Mr. RICHEY .—So long as the fire-brigade keep within their limits, I do not think they could be compelled to compensate owners whose property had been pulled down to save it and adjoining property from destruction by fire.

The Honourable Mr. FORBES ADAM :—Of course it must be remembered that in Bombay fewer properties are insured than is the case at home. In nine cases out of ten at home the houses are insured, but then it is not so here, and I quite think with Mr. Naylor that if the Corporation undertook to pay compensation it would be undertaking a very large responsibility indeed.

The Honourable the ADVOCATE-GENERAL :—I would make it a matter of discretion, so that the Corporation might have power to compensate in case of a mistake on the part of the brigade.

The Honourable Mr. PHEROZESHAH MEHTA :—Cases of hardship might occur. But it seems to me unsafe to impose a burden of so uncertain, and in some case possibly of a very heavy character upon the Municipality. It is a very heavy and an unknown burden.

The Honourable Mr. NAYLOR :—As the law stands, it is an inducement to people to be prudent and insure their property.

The Honourable Mr. TELANG—I withdraw the amendment.

The Honourable Mr. FORBES ADAM moved —That in section 374, in line 14, after the word "purpose" the following words be inserted, *viz.:* "for the temporary deposit thereof."

The honourable gentleman said:—Your Excellency, with reference to this matter, the Select Committee in their report said—"The Port Trustees express a fear that under section 374, the Commissioner may require them to convey nightsoil from parts of their property to so great a distance as, say, Kurla, on the ground that the place for the "final disposal" of such matter provided under clause (*b*) of section 371 may be there. The wording of sections 371 and 374 does, no doubt, leave the Commissioner a wide discretion, but not more, we think, than is expedient. It is unlikely that the Commissioner would impose any unreasonable requirement, under the sections, either on the Port Trustees or any other occupiers." There undoubtedly is a wide discretion left to the Commissioner, but I hold there is no reason why that should be so. Under section 372, temporary deposit only is provided for, and the same should be done here.

The Honourable Mr. NAYLOR:—The difficulty with regard to this section, so far as concerns compliance with the Honourable Mr. Forbes Adam's proposals, is that, as a matter of fact, no places of temporary deposit are ever provided for nightsoil, and members of this Council will understand that it is extremely undesirable that any such places should be provided. What is wanted is that nightsoil shall be carried away as quickly as possible to its place of final deposit, and that is what is required by this section. It seems to me a very necessary requirement. As regards dry rubbish, it is only required that it shall be conveyed to a place of temporary deposit, but the case of nightsoil is very different. Depôts are provided, in connection with the sewage system, at Carnac Bandar, at Kámáthipura and at Girgaon, and provision has been made in next year's budget for two new depôts of this kind. The section imposes no special responsibility upon the Port Trust. The rule is the same for the Port Trust as for any other owner of property, and it is very necessary in the interests of the community and for the sanitation of the city that discretion should vest in the Commissioner as to the places where nightsoil should be deposited.

The Honourable Mr. FORBES ADAM:—Would you agree to the insertion of the word "nearest" receptacle?

The Honourable Mr. NAYLOR:—Yes. I have no objection.

The Honourable Mr. FORBES ADAM:—Then I withdraw the amendment.

The honourable gentleman's motion was withdrawn, and the word "nearest" was inserted before "receptacle" in line 13 of section 374.

The Honourable Mr. FORBES ADAM then moved that at the end of section 381 there be added:—"Provided that, if the unwholesome or filthy condition of such premises or such nuisance, as abovementioned, is caused by the discharge of, or by any defect in, municipal drains or other municipal appliances, it shall be incumbent on the Commissioner to cleanse such premises at the expense of the Municipality."

The honourable gentleman said:—Your Excellency, in support of this amendment, I would like to point out that the municipal drains running into basins cause a very serious nuisance. Here is what Dr. Hewlett in a letter says of one of them:—"The hideous nuis-

ance of the Colába nightsoil is as rank as ever. No change has taken place, and three-fourths of the nightsoil of Colába still discharges into the sea here well above high-water-mark. The tank which receives the nightsoil was, as on my former visit, uncovered and disgusting. The preventive officer on duty stated that, on occasions when the mail boat has anchored off Pilot Bandar owing to lowness of tide, he has observed passengers passing this outlet in steam launches having to make free use of their handkerchiefs to avoid the unsavoury greetings of this offshoot of our local self-government system." That is one. Here is what he says of another:—" The condition of Kassára Basin is, if possible, worse than formerly. No words can exaggerate its offensiveness. This appears to be altogether due to the Mázgaon drain, which discharges far above low-water-mark. Considering the importance of the sanitary state of this basin, its immediate proximity to the large establishment of the P. and O. Dockyard, something should be done, and without delay, to improve it. The measures absolutely needed are the utilizing of some old water-pipes to carry the contents of the drain well below low-water-mark. This would cost so little that it is difficult to understand why it has not been done before. Afterwards the basin should be dredged, but to do so until the drain has been moved more seawards would be useless. One of the employés of the P. and O. Company, who lives at the Dock, stated that on several occasions he became ill from the effects of this drain, and that absolutely when eating his food tasted of his surroundings." These, your Excellency, are strong reasons in favour of my amendment, and they urge, more forcibly than I could do, the necessity of something being done. I would therefore ask the Council to let my amendment stand.

The Honourable Mr. NAYLOR:—Your Excellency, I am thoroughly taken by surprise in this matter. I was unable to gather from the honourable gentleman's notice the precise object of the amendment he was about to propose. I expected it was a proposal in the interest of the Port Trust, but it now seems to be, rather, in the interest of the community at large. I am not acquainted with the details to which the Honourable Mr. Forbes Adam has referred, and I would ask that the subject may stand over until Monday that I may make enquiries.

This was agreed to.

The Honourable Mr. TELANG moved that the following words be added to clause (*a*) of section 407, *viz*: "and shall not cancel or suspend any such license without the approval of the standing committee," which was agreed to.

The Honourable Mr. TELANG moved:—That in section 408, lines 1 and 2, the words " or has reason to know " be omitted.

The honourable gentleman remarked:—Your Excellency, I propose that these words be omitted. It seems quite unnecessary, and besides also unreasonable, to punish any person who merely " has reason to know." It is unnecessary because you can punish the chief offender, who must " know " and not merely " have reason to know."

The Honourable Mr. NAYLOR:—Your Excellency, the legal members of this Council will well know the difficulty of proving actual knowledge. The object of the words, to which the honourable member objects, is to give reasonable facility to the prosecution to establish a charge of an offence against the section. I hope the Council will leave the section as it stands.

The Honourable the ADVOCATE-GENERAL :—I have heard judges lay down their views upon points of this kind in the strongest terms. In civil cases it is well to employ such words, but most undesirable in criminal cases, where the criminal gets every benefit. It is contrary to the principles of the law; and the question is, how are you to prove reasonable grounds for knowledge?

The Honourable MR. NAYLOR :—This form of expression is a common one in our criminal enactments. I did not anticipate that the Honourable the Advocate-General would take exception to it. Had I done so, I would have suggested to your Excellency, as the hour is late, to adjourn the proceedings before we came to this amendment. Perhaps, the best course will now be, if your Excellency approves, to let it stand over till the next sitting.

His Excellency the PRESIDENT then adjourned the Council.

J. J. HEATON,

Acting Secretary to the Council of His Excellency the Governor of Bombay for making Laws and Regulations.

Bombay, 17th March 1888.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Bombay on Monday, the 19th of March, 1888, at 12 noon.

PRESENT:

His Excellency the Right Honourable Lord REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding.*
The Honourable J. B. RICHEY, C.S.I.
The Honourable R. WEST.
The Honourable the ADVOCATE GENERAL.
The Honourable KASHINATH TRIMBAK TELANG, C.I.E.
The Honourable F. FORBES ADAM, C.I.E.
The Honourable J. R. NAYLOR.
The Honourable Ráo Bahádur MAHADEV WASUDEV BARVE, C.I.E.
The Honourable PHEROZESHAH MERVANJI MEHTA, M.A.
The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS.

The City of Bombay Municipal Bill.

Consideration of the City of Bombay Municipal Bill in detail.

The Honourable the ADVOCATE GENERAL, with reference to his notice of a motion to amend sections 287 and 289, which was discussed at the sitting of the 17th instant, said :—Your Excellency,—the Honourable Mr. West has prepared a form of amendment to section 287 which I will accept.

The Honourable Mr. NAYLOR :—Your Excellency,—With reference to sub-section (2) of section 287, I have endeavoured to meet the views of the Honourable the Advocate General by proposing that the following words be added at the end of that sub-section, *viz* :—" Provided that no widening, extension, or other improvement of a public street, the aggregate cost of which will exceed five thousand rupees, shall be undertaken by the Commissioner, unless or until such undertaking has been authorised by the Corporation".

The Honourable Mr. TELANG :—Even up to Rs. 5,000 the work will still be subject to section 66 ?

The Honourable Mr. WEST :—Yes.

The Honourable Mr. TELANG :—Under the circumstances I am content.

The amendment proposed by the Honourable Mr. Naylor was agreed upon and the Honourable the Advocate General's motion was withdrawn.

The Honourable the ADVOCATE GENERAL's amendment that in section 289, clause (*b*) be restored, was also withdrawn.

The Honourable the ADVOCATE GENERAL moved that in section 296, clauses (*b*) and (*c*) be omitted, and that after the word *or* in line 7 the words "to take down such building to an extent exceeding one-half thereof, such half to be measured in cubic feet"

be added, and that in sub-section (2) after the word "down" in line 36 the words "to an extent exceeding one-half thereof, such half to be measured in cubic feet" be inserted.

The honourable gentleman said :—Your Excellency,—The amendment which stands in my name is an amendment which I move in consequence of my experience in the High Court of the way in which the set-back sections have been dealt with; and I very much wish we had on the Council a Judge of the High Court before whom such cases have come. I think the Honourable Mr. West, when one of the Judges of the High Court, sitting on the Original Side, never had any of these cases. It is not like coming down on a house which is dangerous to health and where stringent measures are justifiable. The section will bear, as the corresponding ones in the present law do, very harshly upon individual owners; and the Judges have commented strongly upon the present section. But the new section will act more stringently than the old ones. As the section stands at present it is utterly unsupported by any English precedent, and as I said is likely to work so harshly that I was asked by an eminent member of the Bar to urge that it be amended. Under the Metropolitan Management Act where a house is being removed you may claim a set-back, but not under such circumstances as are set out in the Bill before us. No doubt the present law gives a power nearly as stringent, and it is because of this that we have cases in the High Court. The gentleman of whom I spoke has now a case in the High Court which illustrates the harshness with which these clauses act; and, I remember one case in which I was engaged—it was before Mr. Ollivant's time, I will not say in whose time it was— in which it was clear the Commissioner knew nothing at all about the circumstances under which the set-back was claimed, and had merely been acting under the advice of his subordinates, and the Municipality had to pay very heavy costs. The section as amended by me will bear less harshly upon the private owner; and I have framed it according to the precedent of the Metropolitan Management Act which no doubt was framed under the advice of some of the most eminent and capable surveyors in London.

The Honourable Mr. NAYLOR :—Your Excellency,—Perhaps no part of this Bill has received more attention from Mr. Ollivant and myself than these two sections, 296 and 298. Our object was, in revising the subject of set-backs, in the first place to render the law as clear and as free from ambiguity as possible, and in the next to render it as little harsh to private owners as, consistently with the wants of the community at large, it could be made. The section as it stands is based, as the Advocate General has admitted, upon the existing law, which has been in force in Bombay certainly since 1865.

The Honourable the ADVOCATE GENERAL :—No, the law was very largely altered in 1878.

The Honourable Mr. NAYLOR :—My recollection is not quite clear upon the point, but I think you will find there has been no alteration since 1872.

The Honourable the ADVOCATE GENERAL :—Yes, since then; and it is those changes coupled with the rebuilding clauses that have occasioned the difficulty.

The Honourable Mr. NAYLOR :—At any rate the section is based on the law of the present time. In a city such as Bombay considerable facility, perhaps considerably more than in a city like London, is necessary, in the interests of the public at large, to secure set-backs, and I gather that the principle which underlies the present law that

whenever the owner of a house is undertaking considerable alterations or repairs to his building, it shall be proper for the Municipality to step in and say "we claim a set-back and you must make your arrangements accordingly". Looking at the great need of widening and improving streets in this city, there seems nothing unreasonable in this provision. Section 296, as it stands, proposes to allow the Commissioner to claim a set-back in three cases. First, when the owner proposes to rebuild ; second, when he proposes to make such alterations or repairs as are specifically described in clauses (*b*) and (*c*) ; and third, when he proposes to remove, reconstruct or make any addition to any portion of a building which is within the regular line of the street. To the first and third of the three occasions, I take it, the Honourable the Advocate General has no objection. His objections are against the clauses (*b*) and (*c*), which relate to alterations and repairs. Clauses (*b*) and (*c*) divide houses for the purposes of this question into two kinds. There are in Bombay these two kinds of houses—frame buildings and those which are not frame buildings. Now, in the case of buildings, not frame buildings, in which the walls are entire and the stability of the house depends upon the walls, we propose that whenever the owner intends to remove more than one-half of any external wall or party wall, or wall which supports the roof, such half being measured in superficial feet, the Municipality shall be entitled to claim a set-back. Where the stability of a house depends upon posts and the spaces between the posts are merely filled in with brick-work or other material, the house is called a frame building. In the case of such a building we propose that whenever more than one-half of the posts in any such wall as I have described are to be removed, such half being measured in superficial feet, the Municipality shall be entitled to claim a set-back. The question therefore between the Honourable the Advocate General and myself is whether the Municipality shall have power, as at present, to claim a set-back when more than one-half of what is called in the present Acts a main wall, but which we have more clearly defined as a main wall, party wall, or wall which supports the roof, is removed. Looking at the extreme desirability of giving the Municipal Commissioner power to widen and improve public streets in this city in which the streets originally were so narrow, and looking at the very vast improvement which has taken place in this respect in consequence of the policy of the present Acts during the last few years, I trust the Council will think twice before taking from the Commissioner this very valuable power and altogether crippling him in his ability to improve the public streets. There are two points in which, even if the Honourable the Advocate General's principle should be approved of by the Council , I would still strongly urge that modifications similar to those contained in the section before us should be admitted, namely (1) as to whether the measurement shall be in superficial feet or cubic feet, and (2) as to whether the measurement shall be above ground-level only or both above and below ground-level.

The Honourable the ADVOCATE GENERAL :—As to the ground-level I shall not object ; but as to the measurement by cubic feet I am convinced it is the right method, besides it is the practice at home.

The Honourable Mr. NAYLOR :—I was going to say that these two points will entail a very vast amount of litigation and give a great deal of trouble to municipal officers and to all parties concerned, if the Council should accept the Honourable the Advocate General's motion. The practical difficulties in ascertaining cubical measurement are very great,

whereas superficial measurement is simple and easy. For instance, if the wall opposite to us were measured in superficial feet the operation would be a very simple one, but if in cubic feet, all the doors and windows, and niches must be allowed for, and all projections, juttings and variations must be separately measured and taken into account. A small mistake in the calculation might lead to a great deal of litigation and much ill-feeling. It was on this account that, after considerable and careful discussion of the question, I agreed with Mr. Ollivant that the measurement should be in superficial, instead of in cubic feet. With regard to sub-section (2) of section 296 I am in the unfortunate position of not having heard what the Honourable the Advocate General said, but I rather think he has misapprehended the precise bearing of that sub-section. It will operate only when any building or any part thereof *within the regular line of a street* falls down or is burnt down, or is taken down.

The Honourable Mr. WEST:—If that part within the line of street falls down the owner need not build it up again, but if he does it may be taken back to the line. If it should fall down at the back, no matter: it will not be interfered with—if at the front and within the line it will be interfered with only on rebuilding.

The Honourable Mr. TELANG:—Your Excellency,—My sympathies are most strongly in favour of the amendment of the Honourable the Advocate General. This is one of the provisions of this Bill the tendency of which, to my mind, is adverse to the interest of the individual citizen, and looking at the question from that point of view I must say I am very much dissatisfied with the proposal which the Honourable Mr. Naylor says has probably received the greatest attention of any part of the Bill. I have given some attention to this section, and I find the Honourable Mr. Naylor and I look at it from very different standpoints. Doubtless the framers of the Bill looked at it from the executive point of view, with, perhaps, a too exclusive regard to the improvement of the city, and sometimes were prepared to ride rough-shod over the rights of private individuals; whilst I have always maintained that the interests of private individuals should be most fully considered in this desire for the improvement of the city. I am not prepared to concede that in such circumstances as are referred to in section 296 the community at large should have the right to interfere with the interests of the private individual; and as to what the honourable member says about the difficulty of calculations being made in cubic feet, I do not see that there is any trouble at all comparable for one moment with the trouble the private owners would be put to, and in many cases without any possibility of appeal under the other system. The honourable member points out that the clause as it stands has existed for a considerable number of years, and considerable improvement in the streets has been effected. The Council on the other hand is also bound to consider that there has been a considerable amount of oppression upon individuals and that there have been complaints which have elicited from the Judges observations not at all favourable to the law as it stands. It is the duty of the Council to provide that the law shall not be so stringent. The tendency of course has been to get as much out of the private owners as possible. But this I think is a mistake. I must say that in this matter my sympathies are with the individual as against the community, except in exceptional circumstances—and these exceptional circumstances are amply covered by the amendment of the Honourable the Advocate General.

The Honourable Mr. PHEROZESHAH MEHTA :—Your Excellency,—I am in entire sympathy with the object which the Honourable Mr. Naylor has in view in this section. I fully go with him in his desire to see the city improved as fast and as much as possible. But I shall vote for the amendment of the Honourable the Advocate General, as his method seems to me to be a more fair and reasonable one than the method proposed in the Bill.

The Honourable Mr. WEST :—Your Excellency,—It must be admitted that this section presents considerable difficulties, and although I do not remember that any cases such as have been alluded to by the Honourable the Advocate General ever came before me in the High Court, I have heard and read of such cases. But here one must look at matters from both points of view. The Municipal Commissioner must be armed with a reasonable discretion for the benefit of the city. He must see that the ventilation and accessibility to certain portions of it are secured and endeavour to enhance the general comfort and welfare, though, in enabling him to do so, we must see that these ends are obtained with a minimum of inconvenience to private individuals. It is no doubt a very difficult thing to lay down any precise rule on such a subject. In London the rule is to calculate the cubical contents. Of course, it does not follow that this would be altogether satisfactory here, where the tendency is to spread the buildings over the greatest possible space, and where if it were made a rule in the case of alterations to insist on a set-back, the owner would make it by increasing the cubical contents as a whole by building over an open space or back-yard or otherwise would enlarge the back part of his house by building it higher. If the amendment, which the Honourable the Advocate General has thrown out, be carried, the owner will be enabled to increase his cubical contents by building up his premises at the back or piling them up higher and avoid the set-back altogether. He will thus have done a deleterious thing in addition to defeating the Commissioner in his desire to improve the line of street. I put it to honourable members whether this will not be a decided obstruction in the way of street improvement. The owner will clearly be tempted to increase the cubical contents by building over back-yards. The object is that where really substantial alterations are being made the municipality may step in and say: "You are making great changes in this house, you must take into consideration the welfare of your neighbours, and if you move an external wall or party wall you should be subject to have your frontage set back for the benefit of the city at large which benefits you." Unless the Commissioner has the power it is proposed he shall have, a man having a substantial wall will throw out a verandah along the edge of which he or his successor erects a wall again. If the section remains as it stands the Commissioner will be able to prevent this. It seems necessary to include walls supporting the roof, though there may certainly be such cases in which the Commissioner ought not to interfere, because without such a provision one wall may be built just inside or outside another and thus it will be open for the owners to throw fresh obstacles in the way. I have not been able to hit upon any expression which will modify these clauses, as from some points of view might be desired and at the same time preserve their efficacy. I would ask the honourable member whether it is not better, seeing there are such difficulties on every side, to leave some discretion, as is proposed in the Bill, in the hands of the Commissioner, subject, if honourable gentlemen should desire it, to a reference to the Standing Committee. Against that the Honourable Mr. Mehta would say there would be the possibility of canvassing the Standing Committee. There may be some difficulty about

this, but I think it better than adopting the amendment proposed by the Honourable the Advocate General. Would not a section providing for such a reference answer the purpose? If the Honourable the Advocate General's amendment were carried, I am afraid we should have owners doing their work piecemeal in this way; supposing one wants to alter three-quarters of his house, he would do a quarter now and a quarter again and so proceed in fact through the whole house, the obstruction finally being just as great as before, in fact greater than before, for he has erected a substantial building in the place of a defective one, and the prospect of improvement is thus made more remote than before. I think it would be best to leave the matter in the hands of the Commissioner subject to appeal or reference to the Standing Committee. I must say I feel some difficulty about this, but I think it would be better than adopting the amendment proposed by the Honourable the Advocate General. Building operations here are different from building operations in London, and though the rule suggested by the Advocate General may be good and sound for London, it is not good and sound for Bombay. There is no such thing, or practically no such thing as building out verandahs and then running up a wall on the outer edge in London as there is here. The effect of the amendment would be that five years hence we should stand exactly as we are in the matter of street improvement. With a view to meeting the difficulty I would ask the Honourable the Advocate General if he would not be satisfied by the provision for a reference to the Standing Committee as I have suggested. Compensation is always paid to owners, so that except for the mere susceptibility and personal feeling—sentimental feeling about the roof over your head or "the house in which I was born," perhaps there is not much in it. I would ask honourable gentlemen opposite to accept my suggestion and if they will do so, I will endeavour to persuade the Honourable Mr. Naylor to add it to the section.

The Honourable Mr. PHEROZESHAH MEHTA:—Your Excellency,—I would like to add one word to what I have already said. If you make this section too strict, the direct result will be that you will defeat your own object of improving the city. Owners will put off repairs as long as possible as is even now the case, and you will have numerous ruinous buildings all over the town. As to the open spaces and back-yards there are very few of them left now in the old parts of the town remaining to build upon.

The Honourable Mr. WEST:—If there are few of these spaces left all the more reason to keep the few we have.

The Honourable the ADVOCATE GENERAL:—The section would be found to work so stringently that houses would be like the famous knife which was just the same though it had a new handle twenty-five times and a new blade twenty-five times. The owner would leave the front of the house as it stood and continue repairing every other part of the premises.

The Honourable Mr. WEST:—That is where we differ as to the means and prospects of improvement. Unless the Commissioner has the power which is here sought for, improvement will be impossible and the streets will remain hideous and impassable besides shutting out light and air.

The Honourable the ADVOCATE GENERAL:—The necessity for light and air in London is far greater than here; and however treacherous the sun may be, he certainly does help us in our back streets in Bombay.

The Honourable Mr. NAYLOR :—This Bill has been before the public for many months, and not a single complaint has been made in any quarter whatever of those enormous hardships which the Honourable Mr. Telang says the public has suffered. And although the Corporation went through the Bill with very great care they made no suggestion regarding section 296, except that walls supporting the roof should not be included, because they might happen to be inner walls.

The Honourable Mr. TELANG :—No, but the question here is as between the Corporation on the one side and the private individual on the other. On this question I should attach much less weight to the views of the Corporation than to their views on the other points we have been dealing with.

The Honourable Mr. WEST :—The Honourable Mr. Naylor says he does not attach much importance to the fact, but throws it in merely as a make-weight. It is evident owners have not suffered very severely.

The Honourable Mr. RICHEY :—It seems from what the Honourable the Advocate General says that people who make complaints and complaints as we hear are increasing, are anything but inarticulate. They are not only able to speak themselves but to pay others to speak for them.

The Honourable Mr. WEST :—Will not the Honourable the Advocate General accept this provision as to a reference to the Standing Committee ?

The Honourable the ADVOCATE GENERAL :—No, I cannot do so.

The Honourable Mr. WEST :—The Honourable Mr. Naylor is willing to strike out the words about "inner walls which support the roof".

The Honourable the Advocate General :—I must press for a vote.

The Council divided :—

Ayes.	*Noes*
The Honourable the Advocate General.	The Honourable J. B. Richey.
The Honourable Kashinath Trimbak Telang.	The Honourable R. West.
The Honourable Ráo Bahádur Mahádev Wasudev Barve.	The Honourable J. R. Naylor.
The Honourable Pherozeshah Mervanji Mehta.	
The Honourable Ráo Bahádur Behechardas Veharidas.	

So the first part of the amendment was carried.

The Honourable the ADVOCATE GENERAL, with reference to the second part, the proposal to insert in section 296 (2), after the word *down* in line 36, the words "to an extent exceeding one-half thereof, such half to be measured in cubic feet," said .—After the explanation of the Honourable Mr. Naylor, I will not press that amendment, your Excellency.

The Honourable the ADVOCATE GENERAL moved that in section 298, clause (*b*) be omitted.

The honourable gentleman said :—Your Excellency,—The subject here concerned is not a very important one as the fact of a house being out of alignment does no one harm but the owner himself. In this matter it may be left to the self-interest of the owner whether or not he shall build up to the line of street. I do not think it is necessary to have any such interference in this case as is set forth in the clause.

The Honourable Mr. NAYLOR :—Your Excellency,—The Honourable the Advocate General's argument goes further than his proposal and seems to cover the striking out of the whole section. There are streets and streets. In some it is highly desirable there should be a uniform line, otherwise the recesses formed by the walls of houses not up to the line may be resorted to for purposes which may make the street very insanitary. The cases in which sets-forward would be permitted or required are not such as would involve any hardship and I think it is desirable to leave clause (*b*) of section 298 as it is. But as the last amendment of the Honourable the Advocate General has been adopted by the Council, and one effect of it is to substitute cubic measurement for superficial, I am quite willing that in this section cubic measurement shall take the place of superficial, so as to bring the two sections into uniformity.

The Honourable the ADVOCATE GENERAL :—These cases are so rare that I do not remember a set-forward case ever coming forward.

The Honourable Mr. WEST :—In my own experience I have many times found these recesses in streets extremely inconvenient. A passenger walking along the street naturally enough continues straight along until he gets to a recess when a cart comes up and he is splashed with the mud or crushed with the wheels of the cart. Into such recesses in London costermongers love to take their trucks and wheelbarrows instead of keeping to the road or the causeway. Then too you travel round a good many angles in going along and the distance is very much increased as a consequence. This would not be the case if the houses were in line or if people would build a wall or railing across where their houses stand back. Here it would not be costermongers with their barrows, but you would have the driving in and out of *reklahs*. If you had *reklahs* drawn by spirited bullocks rushing in at a point where you could least avoid them, the disadvantages of the recesses would become patent. In houses to be built of course the evil can be avoided, but in the case of alterations to existing houses also there can be no hardship. The section, the Honourable Mr. Naylor reminds me, would be satisfied if there were a wall built across so as to secure the straight line, and I think you had better accept the section as it stands.

The Honourable the ADVOCATE GENERAL :—I have no strong feeling in this matter, but there is really no necessity for the section.

The Honourable Mr. NAYLOR :—Do you withdraw the amendment?

The Honourable the ADVOCATE GENERAL :—Yes, I will accept the section as it stands; except that I would ask you to substitute cubic feet for superficial.

The amendment was accordingly withdrawn, but the word "cubic" was substituted for "superficial."

The Honourable the ADVOCATE GENERAL :—With regard to section 304 I find that power is given if any single owner in a new street objects to the placing of lamps and so forth, the Commissioner shall not do so. I think it should be left to the majority.

The Honourable Mr. WEST :—Then what you propose would be met by striking out after the word "or" in line 19, the words "any one of the owners" and substitute the words "or of the greater part thereof."

The Honourable Mr. NAYLOR :—The result will be that the majority in interest will govern the case.

The Honourable the ADVOCATE GENERAL :—In England it is the majority in number ; but I think this is an improvement.

The amendment, however, was adopted in the form suggested by the Honourable Mr. West.

The Honourable Mr. TELANG moved that clause (*e*) of section 346 be omitted —Your Excellency,—I propose to omit this clause as I think it may operate very harshly and to the injury of the class of people for whom it is intended. A certain limited amount of accommodation only exists in the island, and there is a very limited amount of space on which to build. I see the clause is based upon the Metropolitan Management Act I do not know much about the matter except from books, but I was reading an article the other day by Miss Octavia Hill in which she said that Londoners could hardly get a view of the sky at all unless they went away from London. We need not fear that the building of high houses here will have that effect—at least for many years to come. What I most fear is that the result will be to decrease the accommodation available for people who require accommodation which is very undesirable in the interests of the whole city. It is on this account I move the amendment.

The Honourable Mr. NAYLOR :—Your Excellency,—In a corresponding section of one of the Metropolitan Acts it is laid down that no building, except a church or chapel, shall be erected on the side of a street, which shall exceed in height the width of the street without the consent in writing of the Metropolitan Board of Works. The regulation in London is, therefore, more severe than the Bill, in which we propose that the limit shall be one and a half times the width of the street. There is not so much necessity in Bombay for building to a great height as there is in London, if the relative value of ground in the two cities is considered. The need to build high buildings in London is greater than in Bombay, if the Honourable Mr. Telang's remark has any force in it, for we may suppose that Londoners wish to get a view of the sky by getting above the fog. But great as are the reasons in London for erecting tall houses, the Legislature has nevertheless prescribed a very moderate limit which may not be exceeded. The reason for such a limit being fixed is not to be found in architectural considerations merely ; it has reference more especially to the sanitary necessities of the city. The density of the population in this city is fifty per cent. greater than it is in the worst parts of London. That alone is a sufficient reason why the clause should stand. The limitation is worthy of adoption by the Council and I trust it will be permitted to stand.

The Honourable the ADVOCATE GENERAL :—I have not been able to trace whence the last words of the clause "or three times the width of the building" came from under the Metropolitan Management Act.

The Honourable Mr. NAYLOR :—Those words were, I believe, suggested by the Municipal Engineer. They have reference apparently to a matter affecting the stability of a building.

The Honourable the ADVOCATE GENERAL :—Then I do not think it should be here at all. Though the buildings may be limited to the width of the street in England, you will find the farther south you get the higher the buildings are. There is less necessity for such limitation. Take Genoa or anywhere else in Southern Europe and you will find the height of the buildings proportionately great. Travelling up through Italy and France to England you find the streets widen in proportion to the buildings in them.

The Honourable Mr. WEST :—Your Excellency,—I would remind the Honourable the Advocate General as a classical that in Rome, old Rome of the Ædiles, there was a general limit to the height of buildings, and that limit was about 80 feet. This rule has been recognised in almost every capital in Europe — certainly in Paris and Vienna. In Paris a height of I think about 80 feet is even now the limit except on the Boulevards. The proportion of the height of buildings in London is in accordance with the width of the streets. But if the illustration of the south of Europe is to be brought in, I would remind the Honourable the Advocate General of the Neapolitan proverb which says : "where the sun comes in, the doctor is kept out". It is most essential to the preservation of health that the sun should come in for a certain time daily. If it does not, your street will be unwholesome. The access of light and air is of at least as great importance here as in a northern city on account of the very high temperature which prevails. Eighty degrees is a temperature at which vegetable matter runs into very rapid decay, and that is less than the normal heat of Bombay. Unless you have plenty of light and air to carry off the miasma health suffers. It would be peculiarly detrimental to the health of the inhabitants to build high houses and that is surely sufficient warranty for a provision of this kind. Sanitary science pronounces it to be necessary. Old Rome was certainly more enlightened than mediæval Rome and other mediæval cities in these matters, and the same reason which led to her rules being laid down and the fixing of a general limit should guide us in deciding upon such a limit as the health of the inhabitants demands.

The Honourable Mr. FORBES ADAM :—Your Excellency,—I agree with the Honourable Mr. West and the Honourable Mr. Naylor as to the necessity for preventing over-crowding. My attention was drawn to the matter when the provisions of the Bill were discussed in Select Committee, and I think it absolutely necessary that the Corporation should have power to limit the height, or owners, with a view to increasing their rents, would construct their buildings far higher than is desirable. I do not think the provision at all too severe or I should be inclined to support the amendment.

The Honourable the ADVOCATE GENERAL :—Will you strike out the last part of the clause about "three times the width of the building" ?

The Honourable Mr. WEST :—The Honourable Mr. Naylor says he is willing to strike out that.

The Honourable the ADVOCATE GENERAL :—Then so far as I am concerned I will accept it.

His Excellency the PRESIDENT :—I think the matter has been very fairly put by the Honourable Mr. Forbes Adam that owners with a view to increased receipts would be tempted to build higher than is consistent with the requirements of public health. The section is necessary to protect the poorest class of lodgers.

The Honourable Mr. TELANG :—I will withdraw the amendment. I feel the force of what has been said. I had been guided by the fact, which is also one not without weight, of the increasing number of people coming to Bombay and the want of available accommodation.

The amendment was withdrawn, on the understanding that the words "three times the width of the building" were struck out.

The Honourable Mr. PHEROZESHAH MEHTA moved that so much of section 356 as relates to surveyors be omitted, remarking: I have already stated my reasons for moving this amendment.

The Honourable Mr. WEST :—Your Excellency,—Here as in another place it would be improper that surveyors should be subject to the same regulations as in the case of plumbers. I would suggest that "surveyors" be struck out.

The Honourable the ADVOCATE GENERAL :—How can you regulate the wages of plumbers?

The Honourable Mr. WEST :—If found impracticable it will not be attempted, but I think the effect of this clause will be to prevent gross imposition. The necessity for it had become evident.

The Honourable Mr. PHEROZESHAH MEHTA :—I do not object to the regulation as to plumbers, Your Excellency; it is with regard to surveyors that I object.

The amendment was agreed to.

The Honourable Mr. WEST drew the attention of honourable members to the regulations affecting the fire-brigade under section 363 and following sections. The honourable gentleman said :—Your Excellency,—Under section 368 as it stands a man whose house takes fire is to pay a contribution towards the expenses of the fire-brigade. He will be subject to a tax which the Commissioner shall fix from time to time, whereas the neighbour whose house remains standing and who would be in a better position to pay a tax than the other is exempted. This is absurd and must lead to unsatisfactory consequences. Arrangements for the suppression of fires in great cities are of the utmost necessity and the inhabitants ought to be required to pay for the maintenance of such appliances for the extinguishing of fires in proportion to the value of the property they possess in such cities according to their absolute or selling value. The provisions here are plainly anomalous and as under section 139 the duty of levying taxes for specific purposes is thrown upon the municipality I propose that a tax shall be imposed for the purpose of defraying the costs of the fire-brigade and appliances for the repression of fires. What I propose is that beginning at line 11 of section 363 the whole of the clauses included in the following portion of the chapter shall be struck out and that instead we add a rule to section 139, making it the duty of the municipality to levy in conjunction with the general rate or tax on property for the purpose of providing for the expenses of the fire-brigade not less than $\frac{1}{4}$ or more than $\frac{3}{4}$ on the rateable value.

The Honourable Mr. FORBES ADAM :—Your Excellency,—I regard the amendment put forward by the Honourable Mr. West as a very great improvement indeed and shall have much pleasure in supporting it. The special tax will be for the benefit of the whole city and will cover all properties. Heretofore those who were prudent enough to insure

their premises had in a certain sense to keep up a fire-brigade for the benefit of those who were not insured.

The Honourable the ADVOCATE GENERAL :—What is the advantage of having separate tax instead of having it a part of the general property-tax?

The Honourable Mr. WEST :—The proposal is that it shall be in addition to the general tax and that public buildings, port trust property and private property shall be on the same footing, and the most convenient place to provide for it is after clause (*c*) in section 139. The words to be added will be: *and in addition thereto a tax of not less than* $\frac{1}{4}$ *nor more than* $\frac{3}{4}$ *per centum in order to meet the expenses imposed by section so-and-so,* the sections herein stated. It is desirable to avoid complications and to secure that the income under this heading shall be devoted to the special purposes for which it is created.

The Honourable Mr. FORBES ADAM :—The Port Trust provides its own fire-engine and the expenses might fall upon them also in the general rate.

The Honourable Mr. WEST :—The Port Trust might throw their fire-brigade into the general service.

The Honourable Mr. FORBES ADAM :—There may be some difficulty about that.

The Honourable Mr. WEST :—Most of the banks in London and Paris have a fire-engine of their own and so also have most of the railway stations at home. If they choose to have these additional means of security there is no harm done.

The Honourable Mr. FORBES ADAM :—As to the Port Trust they are employed in protecting their own property or ships and property by the side of a quay or wharf.

The Honourable Mr. WEST :—The Port Trust can transfer the sums they charge shipping to the Corporation and trust to this extra precaution.

His Excellency the PRESIDENT (to the Honourable Mr. FORBES ADAM) :—Do you insure as well as keep a fire-engine?

The Honourable Mr. FORBES ADAM :—Yes.

His Excellency the PRESIDENT :—Then doubtless the insurance companies will reduce your premium if this proposal is adopted and you will reap the benefit of the reduction in the same way as private insurers.

The Honourable Mr. FORBES ADAM :—There is an immense amount of property very temporarily on Port Trust property in which the Port Trust have no permanent interest.

His Excellency the PRESIDENT :—You are in the same position as the owner of a picture gallery in which pictures are temporarily exhibited. He insures in addition perhaps to keeping a fire engine of his own and recoups himself from the owners of the pictures. The Port Trust will recover its contributions to the general tax from the ship-owners.

The Honourable Mr. FORBES ADAM :—Not quite. The Port Trust engines protect public property as well as the property of the Trustees.

The Honourable Mr. WEST :—In this case the part of the public who bear the burden get the advantage.

The Honourable Mr. FORBES ADAM :—That is the difference. The Port Trust do not get the advantage though they bear the burden.

The Honourable Mr. WEST :—I think the plan I propose will meet the difficulty. All will pay according to the interest to be guarded.

The Honourable Mr. PHEROZESHAH MEHTA :—Your Excellency,—I had given notice to move that section 365 be omitted, but the amendment submitted by the Honourable Mr. West goes to the very root of the matter. At the same time I do not see the necessity of specifying any minimum. Property is usually insured on a quarter per cent and a very small additional amount will be required for the proposed measures.

The Honourable Mr. WEST :—I mentioned $\frac{1}{4}$th as a rough estimate. As to what the actual cost would be I suppose it would be something like the present scale.

The Honourable Mr. NAYLOR :—The present contributions by the insurance companies amount to some Rs. 35,000. The actual cost of the brigade is considerably in excess of that sum. In the budget-estimate for the coming year, the amount is put down at nearly a lákh, and there is a great demand for an increase of fire brigade stations, especially by the mill companies. The insurance companies, as I have said, contribute Rs. 35,000 ; a tax of $\frac{1}{4}$th per cent. on the property of the city will produce about Rs. 40,000, so that $\frac{1}{4}$th seems to be the amount at which it is desirable to fix the minimum.

The Honourable Mr. WEST :—It is desirable that the duty should be imposed upon the Corporation of keeping the minimum sufficient for their purposes and to maintain the appliances in a state of efficiency. What I propose is that we add these words : "*and in addition thereto a tax of not less than* $\frac{1}{4}$*th and not more than* $\frac{3}{4}$*th per cent of their rateable value in order to provide for the expense necessary for fulfilling the duties of the Corporation arising under Chapter XIV of this Act,*" and to take out the remaining clauses of that chapter. Will that meet your views, Mr. Mehta ?

The Honourable Mr. PHEROZESHAH MEHTA :—Yes, except as to the necessity of fixing a minimum.

The Honourable Mr. WEST :—It is desirable to bring section 62 (*j*) within this expression also. Of course the last three lines of section 363 will have to come out

The Honourable Mr. TELANG :—The Municipal Commissioner in his letter upon this subject says : "When I say that as far as a general rate for fire preventive purposes is concerned such a rate is already covered by the consolidate rate, I refer only to immoveable property and exclude from consideration machinery, which is not rateable under the Municipal Act. But machinery and various kinds of moveable property equally need protection from fire, and as a matter of fact I understand that of the total property now insured in Bombay about $\frac{3}{4}$ths belong to this class. If any system can be devised for imposing a special rate on property of this class which is not insured, or on all property of this class, abandoning the present contribution from the Companies, there will be no objection on equitable grounds, but there will be great difficulties in assessing the rate. As things at present stand, it may be said that while insured immoveable property pays twice over and insured moveable property and machinery pays once, uninsured moveable property and machinery does not pay at all."

The Honourable Mr. WEST :—You may carry refinements as far as you like and discriminate principles as far as you can, but you will find the advantages of a special tax are so great as to render it the best possible means of providing for this purpose.

The Hónourable Mr. PHEROZESHAH MEHTA :—The only question is whether there is any need for raising the present 8 per cent. to 8¼, thus insisting upon raising funds when the 8 per cent. would suffice for all purposes.

The Honourable the ADVOCATE GENERAL :—Does the honourable member know how far the rate is levied at home.

The Honourable Mr. TELANG :—According to the Municipal Commissioner in many towns in the United Kingdom " the local authorities have the power by statute of requiring payment for the services of the fire brigade from the owners of properties where fires occur, and that in Liverpool and Manchester the Insurance Companies have, for the convenience of their clients, voluntarily entered into a composition with the local authorities by which in consideration of an annual payment no charge is made for the services of the fire brigade to a property which has been insured. Another way of putting both classes of property on an equal footing would be by levying on the uninsured property a special rate equal to the rate which the insured property pays through the companies."

The Honourable Mr. WEST :—These provisions in England have gradually grown up under exceptional circumstances and are not based upon sound principles. The machinery in mills adds to the value of the property which is assessed at a higher value in consequence. The best plan is to make provision for a tax.

The Honourable the ADVOCATE GENERAL :—At home the rate is added to the poor rate.

The Honourable Mr. TELANG :—Perhaps it would be well to specify the maximum.

The Honourable the ADVOCATE GENERAL :—No, I think you must specify the minimum.

The Honourable Mr. WEST :—No, say from ¼th to ¾ths. It is clear the tax will be a variable one.

The Honourable the ADVOCATE GENERAL :—My object is to secure a larger minimum. I would put the minimum where the Honourable Mr. West has put his maximum.

The Honourable Mr. WEST :—I am afraid if we were to do that it would give rise to a good deal of discontent and a degree of alarm at such a serious addition to the rate-payer's burdens.

The Honourable the ADVOCATE GENERAL :—My own idea is that you will have to increase the present fire brigade to render it efficient.

The Honourable Mr. PHEROZESHAH MEHTA :—It seems to me that 8 per cent. may suffice and it is undesirable that the minimum of 8 per cent. should be raised. If there must be a minimum I would ask that it be as low as possible and I would suggest ⅛th.

The Honourable Mr. WEST :—I was in hopes the proposal would be accepted unaltered.

The Honourable Mr. PHEROZESHAH MEHTA :—I am not prepared to go beyond 8 per cent. for both purposes as a minimum.

The Honourable Mr. WEST :—The best plan then would be to fix 8⅛ for both purposes. Rather than delay the Council I will agree to the Honourable Mr. Mehta's suggestion of ⅛th as a minimum instead of ¼th.

The words to be added to s. 139, clause (c), were then made to read: "*and in addition thereto a tax of not less than one-eighth and not more than three-quarters per centum of their rateable value in order to provide for the expense necessary for fulfilling the duties of the Corporation arising under section 62, clause (j) and ch. XIV*" and agreed upon. The amendment included the striking out of the last three lines of section 363 and the whole of Ch. XIV following section 363.

The amendment proposed at last meeting by the Honourable Mr. FORBES ADAM to section 381 was next discussed. The honourable gentleman reminded the Council that he spoke to the amendment on Saturday, but the consideration of it had been postponed.

The Honourable Mr. NAYLOR :—Your Excellency,—I have made enquiries into this subject and find that the matter has been the subject of contention between the Port Trust and the Municipality for some considerable time past. One of the municipal drains, it appears, runs into the Kassara basin and is alleged to be, and not without some cause, a serious nuisance to the neighbourhood. The pipes do not discharge below low water-mark, and no doubt the consequences at certain stages of the tide are very unpleasant for those engaged in business or living in the neighbourhood. But although this is the state of things as regards the drain, there are other causes independently of the drain which help to account for the nuisance. The mud in the basin and on the foreshore is of such a nature that it would be offensive, even if the drain were removed. There is also a complication as to certain latrines belonging to the P. & O. Company. Thus there are charges and countercharges between the Municipality and the Port Trust. It would not be well in this Bill to introduce any clause which would compel the Municipality to cleanse the basin when they are able to show they are only partially responsible for its unwholesome condition. I may also add that, so far as the Municipality is concerned, there is every intention to remedy this state of things, as soon as possible. But their drainage system cannot be completed in a day. The carrying out of so important and extensive a work is a matter of time. What I would suggest is that the subject be left, without any special provision being inserted in the Bill regarding it. Any person feeling himself aggrieved by any nuisance has already his remedy in the Civil Courts.

The Honourable the ADVOCATE GENERAL :—If we strike this out we leave the adjacent owners to make good the defects of the Municipality. The proviso, I take it, is a safeguard.

The Honourable Mr. FORBES ADAM :—The Honourable Mr. Naylor has pointed out there is something else besides the discharge of the municipal drains which accounts for the nuisance—there is mud of a noisome nature on the Port Trustees' foreshore and in the basin and that the moment it is cleansed it would soon be as foul again as before. That is so; but the drains cause it to be so, and I think a proviso should be inserted for the protection of the Port Trust.

The Honourable Mr. PHEROZESHAH MEHTA :—This proviso goes a little too far.

The Honourable Mr. WEST :—I would propose that we adopt the usual method, for it is becoming usual in this debate—accept a compromise. It is here evident there is joint contribution to the nuisance, and it does not seem to be a case in which either one separately should be wholly responsible. The proper course would be to modify this proviso throwing the liability upon each party proportionately in cases where it can be shown that both parties are responsible.

The Honourable the ADVOCATE GENERAL :—The proviso, as the Honourable Mr. Forbes Adam has submitted it, would do it you add the words "in so far as" after "that" in the first line and strike out "if."

The amendment was agreed upon in the following terms :—

"Provided that, in so far as the unwholesome or filthy conditions of such premises or such nuisance as above mentioned is caused by the discharge from, or by any defect in, the municipal drains or appliances connected therewith, it shall be incumbent on the Commissioner to cleanse such premises."

The Honourable Mr. TELANG :—It will now be necessary to amend section 66.

The Honourable Mr. NAYLOR :—I have no objection to s. 66 being amended so as to make it quite clear that it is applicable both in respect of the performance of a duty and of the exercise of a power. This may be done by putting in the words "or the performance of any duty imposed" after the word "conferred" in line 3, the words "or duty performed" after "exercised" in line 12, and the words "or the performance of such duty" after "power" in line 16.

The Honourable Mr. TELANG'S amendment "that in section 408, lines 1 and 2, the words 'or has reason to know' be omitted," was then discussed.

The Honourable Mr. NAYLOR :—This matter, Your Excellency, was left over in order that the Honourable the Advocate General might satisfy himself whether it was necessary to prove actual knowledge.

The Honourable the ADVOCATE GENERAL :—I do not think it desirable to go beyond actually proved knowledge.

The Honourable Mr. WEST :— It strikes me, Your Excellency, that the clause is not only unobjectionable but absolutely necessary. The Honourable Mr. Telang "knows or has reason to know" from those studies for which he was famous some time ago, that it is a subjective fact—you cannot generally say that a man knows anything but there are indications that he knows it. A man has reason to know that some one is some one else's wife and in the same way a man living in any particular city has reason to know he is near a market where he sees one. How is it possible to prove that he does know ? You cannot absolutely prove it. But you can say he has reason to know it. If we reject the words the honourable gentleman suggests it will lead to a great many frivolous defences. Such an omission will lead to endless contention and litigation, and to avoid this I shall beg the Council to retain the words.

The Honourable the ADVOCATE GENERAL :—They are dangerous to my mind.

The Honourable Mr. WEST :—A person may be sent to gaol if he receives property which he knows or has reason *to believe* has been stolen; that is severer still. I am sorry I have not at hand notes of cases in which points of the kind here concerned have been decided. A man setting up his stall in the vicinity of a market will doubtless tend to the injury of the statutory market. We have had cases in the High Court within recent years; the Poona case was one of them.

The Honourable Mr. TELANG :—In the Poona case they were competing with a municipal market. But the man to punish in these cases is, I think, the owner of the market, not the poor stall-keeper.

The Honourable the ADVOCATE GENERAL.—One case in London went from Civil Court to Civil Court.

The Honourable Mr. WEST:—Yes, the Lyons case, and the defendant was got off because he was proved to have been selling in his own establishment. But you will find everywhere that if a man had reason to know it will be held that he did know The Courts would be bound to hold this.

The Honourable the ADVOCATE GENERAL:—I have in a criminal case heard it held that constructive notice was not sufficient proof of a fact having been brought to a man's knowledge.

The Honourable Mr. WEST:—The question is what will you not have argued in Court? If the words are struck out it will only lead to frivolous excuses.

The Council divided:

Ayes.	*Noes.*
The Honourable the Advocate General.	The Honourable J. B. Richey.
The Honourable Kashinath Trimbak Telang.	The Honourable R. West.
The Honourable F. Forbes Adam.	The Honourable J. R. Naylor.
The Honourable Ráo Bahádur Mahadev Wasudev Barve.	
The Honourable Pherozeshah Mervanji Mehta.	
The Honourable Ráo Bahádur Behechardas Vcharidas.	

So the amendment was carried.

The Honourable Mr. TELANG's proposed amendment that in section 433 the words "the Corporation" be substituted for the words "the Commissioner with the sanction of the Corporation," was withdrawn.

The Honourable the ADVOCATE GENERAL had given notice to move that to section 438 the words "who shall pass such order thereon as they may think fit" be added

The honourable gentleman said:—Your Excellency,—On similar words the Council was against me, and I think I should accept their decision with regard to this section.

The amendment was accordingly withdrawn.

The Honourable Mr. TELANG moved that sub-section (2) of section 461 be omitted.

The honourable gentleman said:—Your Excellency,—I am afraid of the operations of this sub-section and do not like it to remain on the Statute Book. I would prefer that it should be taken off. The punishment provided seems to me too heavy.

The Honourable Mr. WEST:—Can you suggest some other method in which an obstinate or wrong-headed man could be subdued. No man would be so foolish as to refuse to give a little information to secure his liberation from prison.

The Honourable the ADVOCATE GENERAL:—It is not in the present Act.

The Honourable Mr. NAYLOR:—Yes; it is in the present Act.

The Honourable Mr. WEST :—It is no new law. But to meet the views of the honourable gentleman I would suggest that we add, at the end of the sub-section, the words " or the requisite information is otherwise obtained."

The Honourable Mr. TELANG :—I will accept that.

The addition was accordingly made.

The Honourable Mr. TELANG had given notice to move that in section 465, lines 1 and 2, the words " commissioner with the approval of the " be omitted.

The Honourable Mr. NAYLOR :—I have already stated that when this section should be reached, I should be prepared to accept this amendment, the object of which is that the power of framing by-laws shall vest distinctly in the Corporation and not in the Commissioner ; but as the Commissioner is in the way of knowing what matters require to be regulated by by-laws, I propose to make it his duty to lay before the Corporation from time to time any by-law he shall think necessary or desirable for the purposes of this Act. I propose that a new section to this effect shall follow section 467, and I understand that the Honourable Mr. Mehta is prepared to accept this proposal.

The Honourable Mr. PHEROZESHAH MEHTA :—That is so.

The Honourable the ADVOCATE GENERAL :—I would just call your attention to the fact that we shall now have to amend the section so as to bring in section 49 (*g*), for we have allowed by-laws to be made as to the delegation of powers by the Standing Committee to sub-committees : we shall have to insert a clause in section 465 to provide for the reference back to section 49 (*g*).

The Honourable Mr. NAYLOR :—It occurred to me that that would be unnecessary, having regard to the words of clause (*s*) of section 465 : " carrying out generally the provisions and intentions of this Act."

The Honourable the ADVOCATE GENERAL :—But after specifying so many things it would not be well to leave out this. Better add a clause to the delegation of powers by the Standing Committee to sub-committees.

This was agreed to, and the following new clause was inserted in section 465, after clause (*r*), viz :—

" (*r* 1) Regulating the delegation of the powers and duties of the Standing Committee to sub-committees."

(1) The following proposal of the Honourable Mr. NAYLOR was also accepted. In section 466, line 3, substitute " corporation " for " commissioner," and in line 4, omit the words " with the like approval."

(2) After section 467, insert the following new section :—

" 467A. It shall be the duty of the commissioner from time to time to lay before the corporation for their consideration a draft of any by-law which he shall think necessary or desirable for the furtherance of any purpose of this Act."

Commissioner to lay draft by-laws before the corporation for their consideration

The Honourable Mr. TELANG moved that in section 468, line 9, " two months " be substituted for " one month."

The Honourable Mr. NAYLOR :—I have no objection to the principle of this amendment, but I think six weeks would be sufficient.

The Honourable Mr. TELANG :—Very well : six weeks.

This was accepted.

The Honourable Mr. TELANG moved that in section 491, the following new clause be inserted after cl. (*c*), *viz.* :—

"(*cc*) prior to making any such entry, the person proposing to make the same shall, in every case, intimate to the occupier of the premises that he is about to enter thereinto or thereupon."

The honourable gentleman said :—Your Excellency,—The corporation recommend that this new clause be added.

The Honourable Mr. NAYLOR :—Your Excellency,—This proposal reminds me of what was recently told me by a lady who had been staying on the continent of Europe. The morning after taking up her residence she was astonished on awaking to find a *gendarme* in her bed-room, and on enquiring the reason of this unusual intrusion, she was informed by the *gendarme* that he was there in the exercise of his duty to ascertain what her business was, where she had come from, where she was going to, her age, who was her husband, who were her children, and all about her. In this country, the law does not allow such intrusion into the privacy of dwelling-houses, but the story furnishes an illustration of what is done in this respect in other countries. The country in which the incident I have described took place, is not, as the Honourable Mr. Telang may suppose, Russia or Turkey, but that free, enlightened and independent republic, Switzerland. I am far from arguing that the law in India should permit so much intrusion on the privacy of individuals, but section 491 of the Bill following the present Acts, already protects citizens from any undue invasion of their privacy, and I cannot help thinking that the recommendation of the Corporation is prompted by feeling of what I venture to call oversqueamishness. In my own place at Poona I frequently see the irrigation municipal officers about. They come and go whenever they like and certainly never ask permission. I am always glad to see the municipal officers there because they keep my servants in order and prevent them from doing anything which will endanger the sanitary conditions of the place. Looking at the matter in this light, I think it will be seen that the proposal submitted by the Honourable Mr. Telang is inexpedient. I fear that the adoption of his clause would tend to give rise to much obstruction and delay of municipal officers and servants in the discharge of their daily duties, without any commensurate advantage. There would often be a difficulty in finding the occupier, who might be away ; it would not be possible for the officer or servant to wait and to defer the discharge of his duty until he returned.

The Honourable Mr. WEST :—And suppose the occupier were at home, the difficulty would be to find out who the responsible occupier really was. Then supposing he were even in his compound the officers would be kept standing until he chose to be found. They ought to get through a hundred compounds in the course of a morning ; but they would get over the work very slowly if they had this formality to go through. As to intention it appears to me that clause (*c*) provides sufficiently against that. If this were added the effect would be that the superintendent of the *bhangis* would have to wait until the occupier returned, perhaps from Poona if he were there, before he could do his work. For my own part I should prefer him to do his work as quickly and unostentatiously as possible

instead of coming and telling me "I am so-and-so, and my business is to do such-and-such a thing."

The Honourable Mr. TELANG :—I will not press the amendment.

The amendment was accordingly withdrawn.

The Honourable the ADVOCATE GENERAL then moved to include sub-section 2 of section 372 under the sections embraced by section 492 (1). In so doing the honourable gentleman said :—Your Excellency,—This section allows the Commissioner to do certain works in cases when requisitions shall not have been complied with. I have a letter from the Chief Presidency Magistrate in which he refers to the working of this portion of the Act, and on the strength of what he says I think section 372 (2) might be added with advantage.

The Honourable Mr. WEST :—The Honourable Mr. Naylor does not object.

The amendment was agreed to.

The Honourable Mr. NAYLOR moved that the following words be added to section 506—

"on application being made to him for this purpose at any time within one year from the date when such expenses or compensation first became claimable ;"

and that the following sub-section be added to section 13 of Schedule R :—

"If an application of the nature specified in section 506 is made to the Chief Judge of the Small Cause Court in respect of any expenses or compensation which became claimable before this Act comes into force, such application shall be deemed to be in time if it is made within one year from the date of this Act coming into force."

Period of limitation for applications under section 506 in respect of claims which arose before this Act comes into force

The honourable gentleman said :—Your Excellency,—The Commissioner has brought to my notice that applications for payment of compensation are not uncommonly delayed for a considerable time, and are brought forward when, perhaps, evidence of the circumstances on which the claim is based has been lost or mislaid and the officers who were acquainted with the circumstances have forgotten them or are no longer in the employ of the Municipality. It seems desirable to prescribe some period within which persons shall bring forward any claims they may have under this section. A year seems to be a reasonable period.

The Honourable the ADVOCATE GENERAL :—Clearly a limitation is desirable and the suggestion is a fair one.

The Honourable Mr. WEST :—I think so too.

The amendment was accepted.

The Honourable the ADVOCATE GENERAL moved that in section 513 the words "and it is hereby provided that nothing in this Act contained shall interfere with the right of any person who may suffer injury or whose property may be injuriously affected by any act done in the exercise of any power conferred by sections 222, 242, 243, 244 or 371 to recover damages for the same" be added after the word "order."

The honourable gentleman said :—Your Excellency,—This to my mind, from a lawyer's point of view, seems to be one of the most important matters in the Act ; and I do not

see what the Honourable Mr. Naylor can have been doing when he has omitted it. I think he must have overlooked the point. Well, my object is to provide compensation. I am not particularly wedded to the mode by which it is to be obtained, but I think it would be best done through the Small Cause Court, though it may involve in some instances damages which would form one of the biggest cases that could be brought forward in the High Court. The Council will agree with me that the general principle to be observed is that when the Municipality or any one else interfere with property, they should make compensation for any injury which may accrue to the persons whose rights are interfered with. Of course in cities like London or Bombay it is not to be expected that you can get the same light and air as you can in the country, but you are entitled to what you have, and the question is how far the power is to be given to interfere with the rights of private persons. I am inclined to be liberal in the interest of the community, but it must not be at the expense of the individual. The powers which under the provisions of this Act you may give must be carried out so as not to create a nuisance, and if they are not so carried out, the individual who feels aggrieved must have a remedy. But unless that remedy is provided for in the Act he will be unable to procure it under sections 222, 242, 243, 244 and 371; and as the Corporation are given power to carry out certain works, and as these works may result in injury to the individual, the community at large who are to benefit must be made to pay compensation. I remember a case where the carrying out of works by the municipality resulted in such injury to an individual as I here anticipate. It was one in which I was engaged, and honourable members may have an idea of how long ago it is when I say that Mr Chisholm Anstey was my leader on that occasion. It was in respect of a house called Love Grove where the result of constructing a sewage outfall was to render the house uninhabitable. Mr. Justice Green, one of the ablest lawyers who ever sat on the Indian Bench, heard the case; and the result was he found that the nuisance had entirely destroyed the occupation value of the bungalow and the Municipality was not justified in so doing. He issued an injunction which was not to come into force so long as three hundred rupees per month was paid to the owner. Afterwards the sewage was carried further off and the late Sir Maxwell Melvill went into occupation. But after a short residence he intimated to the proprietor that he could not occupy the house any longer, and the Municipality again became liable to pay Rs. 300 per month and they are still paying it to this day; but under the present Act no compensation could have been obtained. Section 513 provides that whatever work is carried out by the Municipality shall be done with the least possible nuisance, but it ought further to provide that if by the carrying out of the work the individual suffer he shall have compensation. As a matter of fact I do not think it was the desire of the Honourable Mr. Naylor to confiscate property in the way in which this clause would do it. But some addition is necessary providing for compensation, and to obtain it I almost think it would be best for applicants to go to the High Court at once. I certainly hope that Mr. Naylor will see his way to meeting me in this matter.

The Honourable Mr NAYLOR:—Your Excellency,—I am sure the Honourable the Advocate General and the other members of this Council will exonerate me from any desire to confiscate property or to insert anything in the Bill which would operate so as to have any such effect. In drafting the provisions of the sections specified in the amendment my object was to use language which should limit the Commissioner and his subordinates to such an extent as was reasonable and practicable. There are certain

necessary duties to be performed by the Commissioner which, the Honourable the Advocate General will admit, cannot be performed without some nuisance being created. It cannot be the wish of anybody to impose upon the Commissioner such conditions as would render it impossible for him to carry out those duties. The object of the words adopted was to ensure that the Commissioner's work should be carried out with the least possible nuisance or annoyance to anyone, but not to expose him to claims for damages if, in the discharge of his statutory duties, he should cause some slight and unavoidable nuisance. This is in accordance with what, I believe, is the established law of England as well as of this country, viz., that if a public officer in the exercise of a public duty creates only the least possible nuisance, he cannot be held liable for damages. If the proposal of the Honourable the Advocate General is accepted, it will have the result of inviting people to claim damages because a dustbin is erected at the corner of the street in which they live.

The Honourable the ADVOCATE GENERAL :—I propose simply to give an actual sufferer damages.

The Honourable Mr. NAYLOR :—Section 371 empowers the Commissioner to provide convenient places, receptacles and depôts for the temporary deposit or final disposal of dust, rubbish, &c.; and if every owner of a house in the neighbourhood of which a dustbin is put up is to have it broadly suggested to him that an action for damages will lie against the Commissioner for setting up that dustbin, the Corporation will soon be overwhelmed with suits for damages and the working of the Act will become impossible. On these grounds, I oppose the proposal of the Honourable the Advocate General. If any act of the Commissioner gives a reasonable claim for damages, there is nothing in the Bill which deprives a claimant of his right to sue for them; but it is very inexpedient to insert anything which would directly induce people to go into Court against the Commissioner.

The Honourable Mr. TELANG :—Your Excellency,—I think the Honourable Mr. Naylor is wrong in his interpretation of the amendment proposed by the Honourable the Advocate General and his argument is therefore not entitled to weight. That amendment does not give a new right of action, but is intended to save alive such a right, if it exists, notwithstanding the provisions of this Bill. No damages ought to be claimable in case of the erection of a dustbin. And probably none will be awarded on the principle *de minimis non curat lex*. But take the case of a receptacle for dead animals. It may be necessary to set up such a receptacle in a particular place, but it is only fair and equitable that the general body of citizens shall pay some compensation to the individuals who suffer in consequence.

The Honourable Mr. WEST :—Your Excellency,—The two honourable members who have supported this amendment have themselves put entirely different constructions upon it, and if that is so, how can it be supposed that a good many wrong-headed citizens will not do so. I understood from the Honourable the Advocate General that it was to be a substantial addition to the legislative enactments of this Bill. The Honourable Mr. Telang says it is not.

The Honourable the ADVOCATE GENERAL :—The Honourable Mr. Telang agrees with me that the effect of the amendment is to prevent the confiscation of rights.

The Honourable Mr. WEST.—I understood the Honourable Mr. Telang to say that the Honourable Mr. Naylor's argument was thrown away and his object was to upset it. But either this does add to the Act or it does not. If it does not, it is needless to have it; if it does, we have to find out what it is intended to do. If it means anything it will be open for people living in a house next which a dustbin has been erected to go into Court against the Municipality. The English law, as I take it, is, as laid down in the case of Sutton and Clark, that a public duty shall be performed with the greatest possible care and the least practicable nuisance. A recent case in England supports this view—the case of one of the fashionable drapers against the Vestry of St. James's. In the reported cases of the English Courts the railway companies are the defendants in many such cases, people come against them with all sorts of claims, but it is always held that so long as they do their work with the least possible nuisance this is all they can be expected to do. Then in providing the Small Causes Court for actions which may arise under other sections the object has been to provide that justice shall be as cheap as possible and as prompt and peremptory. But as has been said, to adopt the Honourable the Advocate General's amendment, the result would be to overwhelm the Municipality Of course the legal profession would benefit by it, but the result would be entirely disadvantageous to the citizens at large and to individual members of the community.

The Honourable Mr. FORBES ADAM:—Your Excellency,—It appears to me from what has fallen from the Honourable the Advocate General and Mr. West that there are two points of great interest affecting this question. I think that though it shall be incumbent upon the Municipality to carry out their work with the least practicable nuisance it should also be open for individuals who suffer injury to claim compensation from the community who reap the advantage.

The Honourable the ADVOCATE GENERAL:—Your Excellency,—I am very much astonished at what has fallen from the Honourable Mr. Naylor and the Honourable Mr. West. The remedy for injury must always be provided in the Act under which power is given to do such work as results in injury. I differ from the Honourable Mr. West as to the case of Vernon against the Vestry of St. James', Westminster It was an injunction sewage case, and a different principle of law was involved from what would arise under such sections as those to which I have referred. There are numerous cases to support my contention in this amendment—that though it may be necessary for a man to have his rights interfered with, he must have compensation for that interference.

The Council divided.

Ayes.	*Noes.*
The Honourable the Advocate General.	The Honourable J. B. Richey.
The Honourable Kashinath Trimbak Telang.	The Honourable R. West.
The Honourable F. Forbes Adam	The Honourable J. R Naylor.
The Honourable Ráo Bahádur Mahadev Wasudev Barve.	
The Honourable Pherozeshah Mervanji Mehta.	
The Honourable Ráo Bahádur Behecharddás Veharidas.	

So the amendment was carried.

The Honourable Mr. NAYLOR :—I would suggest to the Honourable the Advocate General that the first six words of his proviso be struck out and that the proviso be added to section 513 as sub-section (4), beginning with the word "nothing."

This was agreed to.

The Honourable Mr. Mehta proposed that the following words be added to sub-section (2) of section 515, *viz.* "and shall institute and prosecute any suit which the corporation "shall determine to have instituted and prosecuted." This amendment was accepted.

The Honourable Mr. TELANG moved that in section 516, lines 10 to 12, the word "council" be substituted for the words "municipal authority whose duty it is to carry out or enforce the same"; and that similar corrections be made throughout the section.

The honourable gentleman said :—Your Excellency,—Under section 65 it is clearly laid down that the municipal government of the city is vested in the Corporation, therefore no communication concerning municipal government, no matter in what department, ought to go from the Governor in Council except to the Corporation. The Municipal Commissioner is the head of the executive and may have to carry out such works as Government may require to be carried out. But communications should be made by Government to the Corporation, and when it is a matter which falls within the functions of the Commissioner, the instructions should be conveyed to him through the Corporation. Although executive functions may be concerned, still the communication should proceed through the Corporation. The section, as it stands, is not consistent with the scheme of the Bill, and it is because of that that my amendment is suggested.

The Honourable Mr. NAYLOR :—Your Excellency,—This is a revival of the same question which was considered the other day—whether the Commissioner in the execution of his special duties has an independent authority, or whether he is subordinate to the Corporation. The Council, by their vote upon that question, have decided that the Commissioner is invested with special powers, and, subject to the limitations prescribed by the Bill, shall be an independent authority. That being the scheme of the Bill as approved by the Council, I take it that it would be wrong for Government to issue an order to the Corporation in a matter which affects the executive functions of the Commissioner, just as it would be wrong for them to issue an order to the Commissioner in a matter affecting the administrative functions of the Corporation. On this ground, I oppose the motion, but in order to meet it half-way and to make the section clear, I would suggest to the Council : (1) That in section 516, sub section (1), the words "by the municipal authority whose duty it is to carry out or enforce the same" in lines 10 and 11, and the words "by the said authority" in line 15, be omitted. (2) That in sub-section 2 of section 516, line 21, the words "the Corporation, and if the Governor in Council shall think fit, or the Commissioner" be substituted for the words "such municipal authority." The effect of these proposals will be that, if the Governor in Council thinks fit, he will serve a notice upon the Commissioner as well as upon the Corporation, whenever he is satisfied that the blame falls partly on the Corporation and partly on the Commissioner. I think that the compromise suggested in this amendment is one that honourable members opposite should not hesitate about accepting.

The Honourable Mr. PHEROZESHAH MEHTA :—Your Excellency,—The remarks which have fallen from the Hon'ble Mr. Naylor will render it impossible, even if we were other-

wise inclined, to accept any compromise in this instance. The decision of the Council on the matter the honourable member has referred to does not determine that the Commissioner was to be regarded as a co-ordinate authority in the municipal government of the city. That decision was distinctly admitted on all hands not to affect or modify in any way the provisions of section 65, which vests in the most unambiguous manner the municipal government of the Corporation. It is true that, by clause 3, the Commissioner is to carry out and execute whatever the Corporation may require to be done. But under section 65, as a whole, the Corporation is undoubtedly the supreme municipal authority, and though I for one am not anxious to call the Commissioner the servant of the Corporation, he is unquestionably their executive officer for the purposes of carrying out their municipal policy. I can find nothing in the Bill to justify his being called a co-ordinate authority. If Government transmit any orders which require executive action, the Corporation is the proper body to receive them and pass them on to their executive officer to do the needful with regard to this, as with all their other, directions.

The Honourable the ADVOCATE GENERAL:—If I thought that the amendment proposed would in any way interfere with the executive control the Commissioner exercises I should not be able to support it. We know the position of the Commissioner by this time, and I do not think we shall be likely to change it. To my mind, notwithstanding the long quotations of the Honourable Mr. Naylor, it seems clear that Mr Tucker, Mr Rogers and the then Acting Advocate General Mr. Mayhew were all at one in considering, as I consider, the Municipal Commissioner as *one* of the executive officers, and I find the Honourable Mr. Tucker describing the powers of the Municipality and *the executive officers*. The Commissioner has independent powers of course; but he is the executive officer of the Corporation, and has always been considered so, and I do not see why he should object to the word *servant*. I have the honour to be an officer of your Excellency's Government; I have no objection to be called their servant. Like the Commissioner I am appointed by another authority and have duties assigned by Statute and independent functions. I have no doubt that the Commissioner is just such an officer. It appears to me there is a principle involved in Mr. Telang's amendment. The position of the Commissioner is settled long ago; why should we go back and disturb it from the grave in which it slumbers? Every power is given to the Corporation to call for such documents as he may have in his possession; and if he were an entirely independent officer, to give such a power as this to the Corporation would simply have been outrageous. I think we should recognise this and accept the Honourable Mr. Telang's amendment, unless it is shown that it will interfere with efficiency of control. I shall support the amendment.

The Honourable Mr. FORBES ADAM:—Your Excellency,—I also wish to support this amendment. I confess that when the Honourable Mr. Naylor used the words "co-ordinate authority" I was puzzled as to how it could be worked out. The Commissioner, he says, is not to rank among the servants. He has got special duties assigned to him, which he performs independently, but the main principle which, to my mind, overshadows the whole Bill is this, that the governing power rests under section 65 in the hands of the Corporation. It is no use mincing matters and evading the real issue. To calling him a servant no one should object. There is a tendency to avoid the direct issue or to discuss the point plainly. If the Commissioner is to carry the details of the policy of the Corporation as set forth in the budget estimates, and according to instructions decided upon

by the Corporation and given to him by them, I cannot see—look at it from whatever point of view you may, you cannot get out of it—he is the servant of the Corporation. I know there is a dislike to refer to the point. I myself think it is better to clear the air at once. Recognise the fact before this Bill passes the third reading, and make the point clear once and for all.

The Honourable Mr. WEST :—Your Excellency,—Whether this amendment is carried or not the position of the Commissioner as servant or non-servant of the Municipality will not be determined by it. The position has already been determined, and I would ask the Council to accept the amendment which the Honourable Mr. Naylor has proposed. It is no use sending an order to any one but the authority or the person concerned. To apply to the Corporation for any information which is in the possession of the Commissioner would be just as absurd as to apply to the Commissioner for any purpose which may fall within the special functions of the Municipality. The compromise which the Honourable Mr. Naylor suggests it would be best to accept. I know from my own experience that there are matters which the Corporation cannot give information on, nor can it be obtained except through the Commissioner. There are many occasions of this sort and I see returns every week submitted by him upon which it would be most inconvenient tc obtain the additional information Government may require, by a roundabout way through the Corporation. The Honourable Mr. Mehta said that the speech of the Honourable Mr. Naylor prevented him from accepting what he was otherwise prepared to accept. I hope that my speech will have the effect of bringing him back to his former position, and that the amendment may be acceptable. It does not involve any question of principle, but is a compromise for the sake of convenience. It would be a very elaborate analysis which would clearly distinguish between co-ordination and the respective positions of the Corporation and the Commissioner ; but it is better, when the main principle has been settled, to accept the section as the Honourable Mr. Naylor proposes to amend it. It will prove convenient to work and will avoid occasions for disputes.

The Honourable Mr. TELANG :—In section 62, the Commissioner is not referred to. The duties there enumerated are stated to be the duties of the Corporation, and it seems to me there is nothing wrong in insisting that with respect to those duties Government should send its communications to the Corporation.

The Honourable Mr. WEST :—In section 65 the executive power is dealt with, and the Corporation need not be sent to in respect to anything relative to the Commissioner. The amendment of the Honourable Mr. Naylor preserves the dignity of the Corporation at the same time it does not lead to a dead-lock.

The Honourable Mr. FORBES ADAM :—Could not the Corporation pass on to the Commissioner anything concerning the executive duties ?

The Honourable Mr. TELANG :—I would have no objection to its being provided that the Corporation should pass on to the Commissioner forthwith any communication it receives from Government about executive work.

The Honourable the ADVOCATE GENERAL :—I think that would meet the matter.

The Honourable Mr. NAYLOR :—It would; but there is but one executive authority, and his position justifies us in providing that he shall be recognised by Government as a separate authority.

The amendment of the Honourable Mr. Naylor was then put to the vote, with the result that it was carried by the casting vote of His Excellency the President.

Ayes.	*Noes.*
The Honourable J. B. Richey.	The Honourable the Advocate General.
The Honourable R. West.	The Honourable Kashinath Trimbak Telang.
The Honourable J. R. Naylor.	The Honourable F. Forbes Adam.
The Honourable Ráo Bahádur Mahadev Wasudev Barve.	The Honourable Pherozeshah Mervanji Mehta.
His Excellency the President.	The Honourable Ráo Bahádur Behechardas Veharidas.

The Honourable Mr. NAYLOR:—The amendment of the Honourable Mr. Telang cannot co-exist with the one which has just been carried and will, I presume, not be put.

The Honourable Mr. WEST:—The amendment of the Honourable Mr. Naylor was on an amendment of Mr. Telang's. By it new words are struck out. That procedure seems right.

The Honourable the ADVOCATE GENERAL:—I do not think that quite applies here.

The Honourable Mr. WEST:—I would submit to Your Excellency that the adoption of the one amendment involves the rejection of the other as inconsistent.

The Honourable Mr. TELANG:—Supposing it had been lost, then the question would have still lain between my amendment and the section in its original form. The vote now taken only decides the question as between the original section and the amendment of the Honourable Mr. Naylor. My amendment has not really been voted upon yet.

The Honourable Mr. WEST:—The rules of the House of Commons would, I think, settle the point as I have said.

The Honourable the ADVOCATE GENERAL:—I think not; the vote was between the amendment and the original form, and now it should be between the other amendment and the original form of words.

The Honourable Mr. PHEROZESHAH MEHTA:—The two amendments have not yet been pitted against each other. It is conceivable that a member may prefer Mr. Naylor's amendment to the section as it stands, and Mr. Telang's to both.

The Honourable Mr. WEST:—The other amendment is merely to negative this and you cannot reject what you have just adopted.

The Honourable Mr. FORBES ADAM:—Would it not have been proper to have put Mr. Telang's amendment first and Mr. Naylor's afterwards.

The Honourable Mr. WEST:—I think the general rules of public assemblies are to the contrary, you put an amendment on an amendment first as the more convenient course.

His Excellency the PRESIDENT:—The words of the Honourable Mr. Telang's amendment are contradictory to the words we have just accepted, and members who have voted for the Honourable Mr. Naylor's amendment could not vote for the Honourable Mr. Telang's. A vote on the latter would therefore be nugatory.

The Honourable the ADVOCATE GENERAL:—The only course that I can see is to bring the matter forward in the third reading. I had an amendment to the same effect to section 516, that in section 516, line 21, the words "such municipal authority" be omitted and the words "the Corporation" inserted in lieu thereof.

Section 517 being reached, the Honourable Mr. Naylor moved that in sub-section (1) of that section, lines 11—16, the following words be substituted for the words "the commissioner" down to the end of the sub-section, *viz.*:

"that the said portion of the said works be repaired, improved or otherwise rendered sound and effective, within a reasonable time to be prescribed in the notice;"

and that for the first two and a half lines of sub-section (2) of section 517, down to and including the words "to do," the following words be substituted, *viz.*:—

"(2) The said notice shall be addressed to the Corporation and to the Commissioner, and it shall be incumbent on the Corporation and on the Commissioner, within the limits of their respective powers, to give effect thereto. If effect be not given thereto."

The honourable gentleman also moved that for the first three lines of sub-section (2) of section 518, the following words be substituted, *viz.*:—

"(2) On receipt of any such requisition, the commissioner shall forthwith forward a copy thereof to the corporation, who shall be bound to take steps, if any be necessary, for enabling the commissioner to comply therewith, without prejudice to other claims on the municipal fund. If within fourteen days from the delivery of the requisition to the commissioner, the same is not complied with."

The honourable gentleman said:—Your Excellency,—I have to offer the same kind of provision in the case of these two sections as the Council have already accepted in the case of the previous section. Section 517 relates specifically to the Vehár Water Works, and as the section is at present worded, if the Governor in Council shall think that any portion of those works is defective, he may give notice, under the signature of a Secretary, requiring the Commissioner to repair or improve the works. The proposal I submit would have the effect of omitting from sub-section (1) of section 517 all reference to the authority to whom the notice from Government is to be addressed; and the amended sub-section (2) will provide that the notice shall be addressed to the Corporation and to the Commissioner—to the Commissioner, because he is the executive authority, and to the Corporation to save their dignity and to let them know what the executive authority is doing. The amendment I propose in section 518 will also save the dignity of the Corporation, as it provides that whenever a requisition is received by the Commissioner, he shall forthwith forward a copy thereof to the Corporation, who shall take such steps as may be necessary for enabling the Commissioner to comply therewith.

The Honourable Mr. PHEROZESHAH MEHTA:—Your Excellency,—I have given notice of my intention to move amendments in section 517 as well as section 518, with the object of having the word "Corporation" substituted for the word "Commissioner" wherever it occurs. With regard to section 517 I am prepared to accept Mr. Naylor's proposal in regard to it in accordance with the suggestion thrown out by the learned Advocate General, as the question of repairs to the Vehár Water Works stands on a somewhat special

footing; but I shall press my amendment with regard to section 518 for the reasons that have been already stated and discussed, and which therefore need not be repeated.

The Honourable the ADVOCATE GENERAL:—There is a difference between the Vehar Water Works and any other works which may be in question. I will accept the amendment to section 517, but not that to section 518 as proposed by the Honourable Mr. Naylor.

The Honourable Mr. TELANG:—It appears that this elaborate circumlocution is an attempt to avoid the assertion that the Commissioner is subordinate to the Council. That being so, I shall decline to accept the amendment. I am not prepared to accept any compromise or any section which goes on the basis that the Commissioner is not subordinate to the Council.

The Honourable Mr. RICHEY:—What section makes him so?

The Honourable Mr. TELANG:—Sections 65 and 66, not to mention others, make it clear that he is subordinate, for he cannot carry on any work unless the Corporation sanctions it and provides the money.

The Honourable Mr. RICHEY:—But there is something above "except as in this Act otherwise provided."

The Honourable Mr. TELANG:—He is subordinate, for he carries out works laid down by the Corporation and no others.

The Honourable Mr. WEST:—May I ask Your Excellency to clear this point a little by saying whether the amendment as proposed by the Honourable Mr. Naylor may be considered as accepted.

The Honourable Mr. MEHTA:—Yes; as to section 517.

The Honourable Mr. WEST:—Then, as to the others, I would ask Your Excellency to let them be considered separately.

The various amendments being put to the meeting those referring to section 517 were accepted. The proposed alteration of sub-section (2) of 518 was rejected, but it was agreed, instead, that, in lines 7 and 8 of sub-section (1) of this section, the words "the corporation shall cause to be paid" be substituted for "the commissioner shall pay."

The Honourable the ADVOCATE GENERAL moved that in section 524, line 3, the words "any municipal authority" be omitted and the words "the Corporation" inserted in lieu thereof, and in line 16 the words "municipal authority" be omitted and the words "the Corporation" be inserted in lieu thereof.

The honourable gentleman said:—Your Excellency,—There is not much use discussing this matter; it concerns the same question as before. I think Government ought to address the Corporation directly.

The Honourable Mr. NAYLOR:—Your Excellency,—In this matter also I have tried to meet the views of the Honourable the Advocate General and of the other gentlemen who think with him. On the suggestion of the Honourable Mr. West, I propose to adopt the language of the clause in the Letters Patent of the High Court, which renders it obligatory on the Honourable Chief Justice and Judges of that Court to comply with requisitions from Government. The Corporation will, perhaps, not object to be placed on the same

footing, in this respect, as the Chief Justice and Judges of the High Court. My amendment is to this effect :—

" The Corporation, the Standing Committee and the Commissioner shall comply with such requisitions as may from time to time be made by the Governor in Council for extracts from proceedings or records or for statistics concerning or connected with the administration of this Act, in such form and manner as the Governor in Council shall deem proper."

Governor in Council may make requisitions for extracts from proceedings, &c.

The Honourable the ADVOCATE GENERAL :—I do not see that this meets the objection.

The Honourable Mr. TELANG :—With regard to the Chief Justice it was said in a well-known document that he is only *primus inter pares*. That phrase is certainly inappropriate as applied to the three authorities mentioned in the proposed section.

The Honourable Mr. FORBES ADAM :—It appears to me the Corporation should be addressed.

The Honourable Mr. NAYLOR :—We want requisitions to go to the authority directly concerned.

The Honourable Mr. WEST :—I do not attach any importance to the words " Standing Committee," and I do not think it would make the section any less effective to take them out. As I said before, the Commissioner has to send in statistics concerning health which I see every week, and if he omitted them at any time it would necessitate considerable delay if Government had to wait until the Corporation at its next meeting might deal with the matter.

The Honourable Mr. PHEROZESHAH MEHTA :—If the Commissioner has been guilty of negligence, the circumstance that Government had sent a communication on the subject could not fail to come to his knowledge, and he would immediately send in the return. The necessity of waiting till the next meeting of the Corporation would always be thus practically obviated.

The Honourable Mr. WEST :—But the information wanted would not brook delay. I do not say the Corporation would be negligent, but in case the information were wanted at once the delay might have a serious effect.

The Honourable Mr. TELANG :—It is said that hard cases make bad law.

The Honourable Mr. WEST :—I specify vital statistics as being nearest to my mind—they are such as I deal with every week, and naturally they are uppermost in my mind. To wait for a month for any information as to these might defeat the purpose of the returns altogether. Generally speaking, Government does not want to send in these requisitions at all.

The Honourable Mr. NAYLOR :—I should be very happy to strike out the words " or Standing Committee" ; but if that will not satisfy honourable gentlemen opposite, I should like to take the opinion of the Council on the section as it stands.

The Honourable Mr. TELANG :—I should not be prepared to accept that.

The Council divided—

Ayes.	*Noes.*
The Honourable J. B. Richey.	The Honourable the Advocate General.
The Honourable R. West.	The Honourable Kashinath Trimbak Telang.
The Honourable J. R. Naylor.	The Honourable F. Forbes Adam.
	The Honourable Ráo Bahádur Mahadev Wasudev Barve.
	The Honourable Pherozeshah Mervanji Mehta.

So the Honourable Mr. Naylor's amendment was lost.

The Honourable Mr. TELANG withdrew his amendment that in section 524, lines 3 and 2, the words "the council" be substituted for the words "any municipal authority" and that similar corrections be made throughout the section; also that in line 8 "section 41" be substituted for "this Act."

The Honourable the ADVOCATE GENERAL'S amendment that in section 524, lines 3 and 2, the words "any municipal authority" be omitted and the words "the Corporation" inserted in lieu thereof, and in line 16 the words "municipal authority" be omitted and the words "the Corporation" be inserted in lieu thereof was then put to the meeting and adopted.

The Honourable the Advocate General then moved that in section 525, line 26, the word *three* be omitted and the word "six" inserted in lieu thereof.

The honourable gentleman said:—Your Excellency,—I have been asked to bring this matter forward by one of the most eminent members of the Bar. It is an extraordinarily short period. One month is taken up by the notice, and several cases of hardship have arisen. I think the time should really be prolonged. By adopting this amendment the law becomes similar to what it is in England.

The Honourable Mr. NAYLOR:—I have no wish to oppose the motion, but the limit of three months has been the law in Bombay for many years, so the amendment was agreed to.

The Honourable Mr. WEST:—There appears to be a supplementary section necessary after 168, otherwise it would give rise to much controversy, and I propose to add a new section.

After section 168, insert the following new section:—

"168-A. If, in respect of any premises, water-tax would be leviable under this Act from the Secretary of State for India in Council or from the Trustees of the Port of Bombay, the Commissioner, in lieu of levying such tax, shall charge for the water supplied to such premises, by measurement, at such rate as shall be prescribed by the Standing Committee in this behalf, not exceeding, in the case of the Secretary of State for India in Council, the minimum rate and, in the case of the said Trustees, the maximum rate at the time being charged under clause (*a*) of section 168 to any other person; and such charge shall be recoverable as provided in sub-section (3) of the said section."

Government and the Port Trust to be charged for water by Government.

The Honourable Mr. FORBES ADAM:—I would point out that the Port Trust's contribution has already been included in the present Budget.

The Honourable Mr. WEST :—At present the Port Trust pays the full rate?

The Honourable Mr. FORBES ADAM :—Yes.

The amendment was agreed to.

The Honourable Mr. WEST :—I have another supplementary sub-section to propose. It is :

(1) Add at the end of sub-section (1) of section 170 :—

" whether the service in respect of which such tax is leviable be performed by halálkhors or by substituted means or appliances."

(2) After sub-section (1) of section 170, insert the following sub-section :—

" (1 A)—In the case of premises in respect of which the halálkhor-tax is payable by the Secretary of State for India in Council or by the Trustees of the Port of Bombay, the Commissioner shall fix the said tax at a special rate approved as aforesaid."

(3) In sub-section (2) of section 170 make the following alterations, *viz* :—

Line 12, after " cost " insert " or probable cost ; "

Line 13, for " municipal agency " substitute " the agency of municipal halálkhors ;"

Lines 15 and 16, omit the last words of the sub-section, beginning with " for which."

It is necessary to make it conform with what has been agreed to already.

The amendment was agreed to.

The Honourable the ADVOCATE GENERAL :—Section 30 will require amending if you are not to invalidate your elections. There is no such person as the chairman of the justices ; some proper person must be fixed upon to give notice. I do not care whether you fix upon the Commissioner or some other person to do it.

The Honourable Mr. WEST :—The Honourable Mr. Naylor proposes to draw up an amendment and is willing to accept your suggestion as to the Commissioner. He has it included in a string of verbal amendments.

The Honourable Mr. NAYLOR :—Your Excellency,—I have already, with as great care as possible, gone through the Bill in the various intervals I have had at my disposal, and have prepared a list of the verbal amendments rendered necessary by the changes and additions adopted by the Council in the course of these debates ; but I do not doubt that further examination will prove that other such amendments have become necessary. There are certain other amendments which have become necessary in consequence of the receipt of a letter from the Government of India relative to the jurisdiction of the Chief Judge of the Small Cause Court in cases arising under this Bill. I think it will be convenient to have these two sets of amendments taken simultaneously at the next sitting ; and I shall be prepared with them on any day to which your Excellency may think fit to adjourn.

His Excellency the PRESIDENT then adjourned the Council to Saturday the 24th March, 1888.

(Signed) J. J. HEATON,
Acting Secretary to the Council of His Excellency the Governor of Bombay for making Laws and Regulations.

Bombay, 19th March, 1888.

Abstract of Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Bombay on Saturday, the 24th March, 1888.

PRESENT:

His Excellency the Right Honourable Lord REAY, LL.D., G C.I.E., Governor of Bombay, *Presiding.*

The Honourable J. B. RICHEY, C.S.I.
The Honourable R. WEST.
The Honourable the ADVOCATE GENERAL.
The Honourable KASHINATH TRIMBAK TELANG, C.I.E.
The Honourable F. FORBES ADAM, C.I.E.
The Honourable J. R. NAYLOR.
The Honourable Ráo Bahádur MAHADEV WASUDEV BARVE, C.I.E.
The Honourable PHEROZESHAH MERVANJI MEHTA, M.A.

The City of Bombay Municipal Bill.

Consideration of the City of Bombay Municipal Bill in detail.

The Honourable Mr. NAYLOR:—Your Excellency, amongst the other alterations in the existing municipal system which the Bill now under our consideration proposes to bring into force, is the transfer of the adjudication of what I may call municipal civil cases from the court of the Chief Presidency Magistrate to the jurisdiction of the Chief Judge of the Small Cause Court. The reason for this change must be very obvious to every member of the Council. The Chief Presidency Magistrate, being an official who is specially trained for the disposal of criminal cases, has no special aptitude for the decision of civil matters, whereas the Chief Judge of the Small Cause Court is a judge with peculiar qualifications for the decision of cases of this nature. In drafting this Bill, I proposed, therefore, with the approval of Government, that the hearing of all such cases should be transferred to the Chief Judge of the Small Cause Court, and the Bill as introduced into this Council provided that the cases should be heard by that authority. But, whilst the Bill has been under consideration by the Select Committee and this Council, correspondence has taken place with the Legislative Department of the Government of India, from which it appears that the Government of India are doubtful as to the power of this Local Council to enact that civil cases arising under this Bill should be heard and disposed of by the Chief Judge of the Small Cause Court. The legal question involved is one of a complicated and highly technical nature, and I need not trouble the Council with it, for it was considered by the Select Committee, and the conclusion at which the committee arrived is stated in our report. We were of opinion that it is highly expedient that our jurisdiction in these cases should be transferred to the Chief Judge of the Small Cause Court and trusted that by correspondence with the Government of India, a way would be found in which the legal difficulties in bringing about such an arrangement might be overcome. This Government have now received a final reply from

the Government of India, to the effect that this Council may be invited to insert in the Bill all such provisions as they deem proper for regulating the jurisdiction of the Chief Judge of the Small Cause Court in cases arising under the Bill, and the Government of India will hereafter take steps for confirming those provisions in such manner as they may consider necessary. The difficulty is briefly this, that, in 1882, the Governor General in Council passed an Act, entitled the Presidency Small Causes Courts Act, which determines the jurisdiction of those courts, and it is thought that the provisions of our Bill may, perhaps, conflict with the provisions of that Act, and if they should so conflict, the passing of such provisions by this Council would be *ultra vires*. But the Government of India have undertaken to see any such difficulties righted, and they have further agreed that they will, in the Bill to be introduced into the Council of the Governor-General, as soon as may be, insert other provisions, (1) for giving the Chief Judge of the Small Cause Court power to refer cases of assessment in which any legal point of difficulty occurs for the opinion of the High Court, and (2) allowing a right of appeal to the latter Court in cases regarding compensation and expenses in which the amount at issue exceeds Rs. 2,000. And I may also add that it is proposed to ask the Government of India to give a right of appeal to the High Court, by the same Act, against decisions of the Chief Presidency Magistrate under section 513, the section which we were considering the other day and to which, on the motion of the Honourable the Advocate-General, an additional sub-section was added. These being the facts regarding the jurisdiction of the Chief Judge of the Small Cause Court, I have now only to ask this Council to adopt the amendments and certain additional sections which I have to propose, and which appear necessary in order to complete what is already contained in the Bill concerning the Judge's power and the exercise of his jurisdiction. It will be convenient if I take up each of the motions as they stand in my name and explain them *seriatim*.

In section 21, line 11, it is sought to substitute "twenty" for "ten." This relates to appeals to be made against decisions of the Municipal Commissioner regarding the entry or non-entry of names in the municipal election roll. The section, as it stands,

"510C. Whenever any application, appeal or reference made to the Chief Judge of the Small Cause Court under this Act is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the said Chief Judge to the parties by whom the same have been respectively paid."

Repayment of half-fees on settlement before hearing.

The Honourable Mr. NAYLOR said:—These sections have for their object to require that for applications, appeals, and references made to the Chief Judge of the Small Cause Court under this Bill, fees shall be payable upon a scale to be fixed from time to time by the Governor in Council; those fees not exceeding, in cases which are capable of valuation, the fees paid in cases of like valuation arising under the ordinary jurisdiction of the Small Cause Court. The sections are based upon similar sections in the Presidency Small Cause Courts Act. Some of the members of this Council are familiar with the Small Cause Courts Act and in the practice of the Small Cause Court, and they will require no further explanation of these proposed new sections.

The additions were agreed to.

The Honourable Mr. NAYLOR then moved the addition of the following new section:—"510-D. The Chief Judge of the Small Cause Court may:

(*a*) delegate, either generally or specially, to any other Judge of the said Court, power to receive applications, appeals and references under this Act, and to discharge any other duty in connection with such applications, appeals and references, except the hearing and adjudication thereof;

Power to the Chief Judge of the Small Cause Court to delegate certain powers and to make rules.

(*b*) if, for any reason, it shall be necessary so to do in order to secure the disposal of any application made to him under section 21 within the limited period prescribed in the said section, delegate to any other Judge of the said Court the hearing and adjudication of the said application;

provides that the Chief Judge of the Small Cause Court shall hear and determine such appeals within ten days after their receipt. The present Chief Judge of the Small Cause Court has pointed out that this is too short a time, as perhaps on some occasions many applications might be made simultaneously. It is, therefore, thought desirable that as much time as possible should be allowed. The Municipal Commissioner has to hear applications for alterations in the list, under sub-section (12) of section 20, on some one of the first ten days of November, and under sub-section (22) of the same section 20, he may adjourn the hearing of any such application from time to time, but only so that no adjourned hearing be held after the tenth day of November. So the Commissioner's work in respect of the preparation of the election roll must be completed by the 10th of November. By section 22, sub-section (1), it is provided that the municipal election roll shall be completed and come into operation on the 1st of December, and this allows an interval of only twenty-one days after the 10th November before the roll comes into operation. Section 21 allows a person who wishes to make an appeal 5 days in which to do so, and the Chief Judge by the same section has only ten days in which to hear and decide such appeals. That takes away 15 days out of the twenty-one. The remaining six days were considered sufficient for the printing of the roll. But as it is now deemed advisable to give the Chief Judge of the Small Cause Court longer time, the date on which the roll will come into operation may, it is thought, be postponed until the 10th December. By this arrangement we are able to give the Chief Judge of the Small Cause Court 20 days for hearing and deciding appeals, instead of only 10.

The amendment was accepted.

In section 22 (line 10) for the "first" of November, the "tenth" was substituted, to bring the section into conformity with section 21.

The Honourable Mr. NAYLOR then proposed that at the end of sub-section (1) of section 510, the following words be added: "and in all matters relating to any such inquiry or proceeding the said Chief Judge shall be guided generally by the provisions of the said Act in like cases, so far as the same are applicable." The honourable gentleman in proposing this amendment, said the sub-section gives the Chief Judge of the Small Cause Court the same powers to summon and enforce the attendance of witnesses and to compel the production of documents in cases arising out of this Bill, as he has under the Presidency Small Cause Courts Act in cases which come before the Small Cause Court. The object of the addition is merely to provide still further in the same direction, by saying that in all matters relating to any such inquiry or proceeding he shall be guided by the provisions of the Presidency Small Cause Courts Act in like cases.

The amendment was carried.

The Honourable Mr. NAYLOR then moved that the following new sections be inserted after section 510 of the Bill :—

"510A. (1) The Governor in Council may, from time to time, by notification in the *Bombay Government Gazette*, prescribe what fee, if any, shall be paid :

Fees in proceedings before the Chief Judge of the Small Cause Court.

(*a*) on any application, appeal or reference, made under this Act to the Chief Judge of the Small Cause Court; and

(*b*), previous to the issue, in any inquiry or proceeding of the said Chief Judge under this Act of any summons or other process.

Provided that the fees, if any, prescribed under clause (*a*) shall not, in cases in which the value of the claim or subject-matter is capable of being estimated in money, exceed the fees at the time being levied, under the provisions of the Presidency Small Cause Court Act, 1882, in cases in which the value of the claim or subject-matter is of like amount.

(2) The Governor in Council may from time to time by a like notification determine by what person any fee prescribed under clause (*a*) shall be payable.

(3) No application, appeal or reference shall be received by the said Chief Judge until the fee, if any, prescribed therefor under clause (*a*) has been paid.

"510B. The Chief Judge of the Small Cause Court may, whenever he thinks fit, receive an application, appeal or reference made under this Act by or on behalf of a poor person, and may issue process on behalf of any such person, without payment or on a part payment of the fees prescribed under section 510A.

Exemption of poor persons from fees.

(*c*) from time to time, with the approval of Government, make rules, not inconsistent with this Act, providing for any matter connected with the exercise of the jurisdiction conferred upon him by this Act, which is not herein specifically provided for."

The honourable gentleman said :—The addition of this section is for a somewhat different purpose. It has three clauses, (*a*), (*b*), and (*c*), with respect to each of which I may make some explanation. The reason for (*a*) is that the work of the Small Cause Court is, as is generally well known, very heavy, and the Chief Judge of the Court is naturally generally engaged upon the more important and intricate cases arising in that Court. Ministerial work is not usually discharged by the Chief Judge himself, and it does not seem advisable to impose it upon him even in cases which may come before him under this Bill. The object is to relieve him of the necessity of receiving in person the appeals and references which may be made to him under this Bill and of discharging other similar ministerial duties with regard to them. In the case of clause (*b*), the object is that if, for any reason, the Chief Judge is himself unable to dispose of all the appeals against the Commissioner's orders under section 21 within the limited period of twenty days, he may delegate their adjudication and hearing to other judges of the Court, in order that there may be no delay in getting them disposed of; and clause (*c*) contains a general proviso, enabling the Chief Judge, with the approval of Government, to provide for miscellaneous matters, for which he may find no specific provision in this Bill, by rules.

The Honourable Mr. TELANG :—As to (*a*) in section 510D, is it necessary to confine the power of delegation to any other judge of the Court? We know the work of the

Small Cause Court now is very heavy, and I understand that there is a very considerable amount of arrears, and that unless Government give some aid to the staff, this additional work will be very difficult for the judges to keep pace with. Will it not be well to allow the Chief Judge to receive applications through the Chief Clerk of the Small Cause Court.

The Honourable the ADVOCATE-GENERAL :—All applications are received by the judges, and it appears it is not the practice to have applications made through the Chief Clerk.

The Honourable Mr. WEST :—We settled the wording of these clauses with the assistance of the Chief Judge, though he, of course, objects to the additional work being forced upon him. But then he may be able to show a good case in favour of an increase of staff, and if the work proves heavy, as I think it will, the same work under a proper system of fees will furnish a fund. There are interlocutary applications which it would not be well to give to a clerk. They want some judicial faculty to deal with them properly.

The Honourable Mr. TELANG :—If the matter has been settled in consultation with the Chief Judge, I do not wish to say anything more.

The amendment was then carried.

The Honourable Mr. NAYLOR then moved :—In schedule R, section 13, sub-section (2), lines 5 and 6, for "after the passing of this Act" to substitute "on or after the first day of November, 1888." The honourable gentleman said :—The object of this change is this. It was pointed out by the Chief Judge of the Small Cause Court that schedule R imposed upon him the duty of hearing applications, appeals and references from the very day on which this Bill will become law. But the day when it will become law is uncertain. It depends upon the date when the assent of the Governor-General is received and the day when that assent will be published. But as a certain amount of machinery must of necessity be got ready before he can begin to exercise his new jurisdiction, the Chief Judge has suggested that it would be more convenient to himself and to all concerned that this jurisdiction should commence from a fixed date, and for this reason we propose now to provide that it shall commence from the 1st November, 1888.

The amendment was agreed to.

The Honourable Mr. NAYLOR then moved that in schedule R, section 13, the following new sub-section be inserted between sub-sections (2) and (3), *viz* :—"(2-A). Any such legal proceeding as aforesaid which is commenced before the said date, and any legal proceeding commenced after the date when this Act comes into force, but before the first day of November, 1888, which under the provisions of this Act should be instituted before the Chief Judge of the Small Cause Court, shall be instituted before the Chief Presidency Magistrate and be heard and determined by the said Magistrate; and the decision of the said Magistrate in every such proceedings shall have the same validity, as if this Act had not been passed, or as if such decision had been made by the Chief Judge of the Small Cause Court, as the case may be."

The honourable gentleman said :—The object of this amendment is that the Chief Presidency Magistrate shall continue to try any cases arising under the existing Act, and also cases which may arise under this Bill if it should become law at an earlier date than

that on which the jurisdiction of the Chief Judge of the Small Cause Court is to commence.

The amendment was accepted.

The Honourable Mr. NAYLOR then moved that in the new sub-section (3) of section 13 of schedule R recently approved by the Council, after the word "Chief" to insert "Presidency Magistrate or to the Chief." This, he explained, was only a verbal amendment to make the sub-section (3) which the Council had already approved tally with the sub-section (2 A) just now passed.

The amendment was adopted.

The Honourable Mr. WEST :—Your Excellency,—In proposing the amendments I have now to recommend, I feel I owe somewhat of an apology to the Council for bringing these matters forward at so late a date, but the truth is that section 41 was in somewhat vague language. It was only on repeated inspection of it that I came to the conclusion that, although it contained implicitly the provisions requisite for carrying on the educational duties of the Corporation, it did not provide sufficiently in detail for the performance of those functions. The framing was so obscure that it might give rise to disputes. I have endeavoured, therefore, to draw up explicitly what was contained implicitly in the section as it stood.

The honourable member then proceeded to read the sections which he proposed should be substituted for section 41 of the Bill.

"41. It shall be the duty of the Corporation and of the Government each to appoint four members of a Joint Schools' Committee of eight members for the purpose of giving effect to the provisions as to primary education hereinafter enacted and to such other measures and arrangements in furtherance of education as to the Corporation shall seem desirable.

"41 A. (*a*) The first appointments to the said Committee shall be made within one month from the date on which this Act comes into operation. The members then or thereafter duly appointed may perform all the functions legally pertaining to the committee notwithstanding any default or delay or defect in the appointment of any member.

"(*b*) At the end of each of the first three years after this Act shall come into operation, one of the members of the Joint Schools' Committee appointed by Government and one appointed by the Corporation shall retire by ballot. Thereafter the two senior members shall retire at the end of each calendar year and two shall be appointed or re-appointed by Government or by the Corporation after the manner of the appointments first made."

The honourable gentleman explained: In (*b*) I contemplate, as the honourable Mr. Telang knows the existence of a School Board, a larger and more dignified board than under this Act which, as I hope, will some day exist to supervise the general educational work of the entire presidency, but just as honourable members would prefer, I will use the term "Board" or leave the word "committee" in this section of the Act.

[Reads.]

"(*c*) The Joint Schools' Committee shall by election from amongst its own members appoint one member to be Chairman for the current term of his office or for any shorter period. The Chairman so appointed shall preside and, in his absence, the senior member

according to date of first appointment, shall preside at meetings of the committee. He shall have a vote and, in case of equal division, a casting vote.

"(*d*) The Corporation shall provide for the Joint Schools' Committee a competent secretary and such clerks and messengers as shall be necessary. It shall also supply the committee with accommodation, stationery and the other material requisites for the due discharge of its duties on the requisition of the Chairman, signified by him, by any member of the committee, or by the secretary."

Here I would observe in (*c*) that the Chairman will not occupy the position for life. His time will expire as that of other members. In (*d*) I refer to such requisites, as lamps or candles, which may be necessary for evening sittings and to other necessaries of that sort.

[Reads.]

"(*e*) The Joint Schools' Committee shall administer the School Fund hereinafter defined and prescribed, and shall provide thereout for the accommodation and maintenance of schools which at any time vest wholly or partly in the Corporation and for otherwise aiding education in accordance with the bye-laws duly made and with the rules made or approved by Government in this behalf.

"(*f*) An order signed by the Chairman shall be sufficient warrant for the disbursement, by any person holding the School Fund or any part thereof, of any sum thereout in accordance with such order.

"(*g*) The Joint Schools' Committee shall appoint and remove masters, teachers and other persons employed in the schools maintained out of the School Fund, and shall direct and control the instruction given in such schools and the terms and conditions of such instruction, and annex to the aid given to other schools or places of instruction such terms as shall seem expedient, subject always to the bye-laws duly made and to the rules made or approved by Government on this behalf.

"(*h*) The Joint Schools' Committee may by a bye-law duly made be invested with the powers and duties of any authority constituted under this Act in so far as shall be necessary or expedient in order to the fulfilment of the functions imposed on such committee as contemplated in sections 41, 41A, 41B, and 62 (*p*) of this Act and to the extent to which such committee is invested as aforesaid, the powers and duties of the said authority shall be in abeyance save as so vested and exercised accordingly."

These are rules, Your Excellency, which appear desirable whatever may be the Corporation's special and legally prescribed educational functions. They provide the machinery by which the educational duties which are imposed upon the Corporation may be carried out and upon which the Government grants-in-aid are made. These rules are important and I trust they will be accepted.

The Honourable the ADVOCATE-GENERAL :—As to the Chairman, it strikes me that it will be well to specify where two or more persons are elected on the same date which under (*c*) shall be Chairman.

The Honourable Mr. WEST :—That point escaped me. The man whose name appears first on the list in the *Government Gazette* will take precedence. We can add that.

The Honourable Mr. TELANG :—I would like to ask whether it is not intended to confine the duties of the committee to primary education.

The Honourable Mr. WEST :—Certain duties are imperative on the Corporation, but it occurred to me that perhaps the Corporation awaking to the necessity for secondary education or technical education might desire to take it in hand, and, if so, here would be the committee ready.

The Honourable Mr. TELANG :—Would it not be better to provide a separate committee for that? The committee which will deal with the imperative duties of the Corporation would not necessarily be qualified to deal with secondary education or technical education.

The Honourable Mr. WEST :—Then shall we leave it as the Corporation shall deem desirable?

The Honourable Mr. PHEROZESHAH METHA :—Supposing Government should not hold the same view as the Corporation, how would it work?

The Honourable Mr. WEST :—It would work in this way. If the Corporation want any aid from Government, there would be negotiations, and so the matter would be adjusted as by a higgling of the market between the Government and the Corporation. Would the honourable members desire a separate clause allowing the Corporation to assent to the addition to the duties of the same committee, or would they prefer a separate committee? Perhaps the Honourable the Advocate-General will help us to frame it. Will that suit you?

The Honourable the ADVOCATE-GENERAL, the Honourable Mr. TELANG, and the Honourable Mr. PHEROZESHAH MEHTA :—Yes.

The Honourable Mr. WEST :—Then we will cast that into shape.

Further consideration of the subject was then postponed.

In the meantime the Honourable Mr. WEST proposed 41(B) as follows :—

> "The Corporation, either singly or in concurrence with the Government, may appoint a hospital committee with such constitution, powers and duties with respect to hospitals and institutions for the benefit of the aged, sick and infirm, vesting wholly or partly in the Corporation and supported or aided out of its funds as may be defined and provided by bye-laws, or by any agreement made with Government in this behalf."

The honourable gentleman said :—This section rests upon a somewhat different basis from 41A. The Act does not impose the same obligation upon the Corporation with regard to hospitals as it does to schools. But it seems not altogether unlikely that the Corporation will be the owner for charitable purposes of one or more of the hospitals, so that considerable elasticity of expression was thought desirable, but whenever the Corporation has to deal with hospitals, it will be necessary to have some committee, because the whole Corporation would be practically unwieldy for such a purpose and indeed incompetent—a great portion of them not having any acquaintance with the working of hospitals.

The amendment was accepted without discussion.

The Honourable Mr. NAYLOR :—Your Excellency,—I propose to submit now some verbal and other small amendments which have become necessary owing to the various amendments which have been accepted by the Council.

Section 2, clauses (*c*) and (*d*), to be restored as before they were amended by the Select Committee.—Agreed.

Section 2, clause (*e*), omit words in italics in lines 47 to end.—Agreed.

Section 3, clause (*b*), line 1, omit "municipal."—Agreed.

Section 3, clause (*bb*), in the new definition of "Councillor" omit the word "municipal," and the words "otherwise legally," and, at the end of the clause, add "under this Act."—Agreed.

Section 3, clause (*v*), line 153, omit "municipal."—Agreed.

Section 30, line 8, for "Chairman of the Justices" substitute "Commissioner."—Agreed.

Section 37, line 134, omit "clear."

The Honourable Mr. NAYLOR :—This is proposed for the sake of uniformity. After some discussion it was decided by the Council to provide for urgency meetings being called at three days' notice. Words were inserted in clause (*j*) for this purpose and "three days" are specified. In clause (*l*) of the same section "three clear days" are spoken of. It will be better to have the same words in both places.

The Honourable the ADVOCATE-GENERAL :—It would be better to say "clear" in both cases. Three clear days are always held to be necessary.

The Honourable Mr. WEST :—Yes, perhaps that would be better.

The Honourable the ADVOCATE-GENERAL :—The High Court has often decided this.

The Honourable Mr. NAYLOR :—Then we will put "clear days" in both cases.

This was agreed to.

The honourable gentleman then proposed, in section 37, line 139, for "being not less than fifteen," substitute "such three-fourths being not less than fifteen in number," which was agreed to. And in section 49, line 56, after "under" insert "clause (*r* 1) of," remarking that this was rendered necessary by the adoption of the Honourable the Advocate-General's new clause (*r* 1) in section 465. This was agreed to, as also were the following :—

Section 60. For lines 3 *et seq.* to the end of sub-section (1), substitute the following :—

"(*a*) to the Commissioner by the Governor in Council, with the assent of the Standing Committee;

"(*b*) to a Deputy Commissioner, by the Corporation."

Section 60, sub-section (2), line 17; after "Council" insert "or the Corporation, respectively."

Section 60, sub-section (3), line 26; after "Council" insert "or the Corporation," and in line 41, after "Government" insert "or the Corporation respectively."

Section 67, line 69, omit "section 314, sub-section (2)."

Section 88, line 6, omit "municipal."

Section 89, line 11, omit "municipal."

Section 115, clause (*h*), for the first words down to and including "committee,' substitute "costs incurred by the commissioner."

Section 116, lines 12 to 19, omit the words "and in the case" down to the end of the section.

The honourable gentleman said an amendment was also desirable in the additional words adopted by the Council at the end of clause (*c*) of section 139. His object was to make it clear that the new tax on property for the maintenance of the fire-brigade is to be levied as a part of the general tax and not as a separate tax. He therefore proposed that the added words should run as follows: "together with not less than one-eighth and not more than three-quarters per centum of their rateable value added thereto in order, &c. (*as before*)."

This was agreed to.

The Honourable Mr. Naylor then said:—In section 240 I would ask the Council to restore the same words as there were before the Select Committee amended it.

This was agreed to.

The Honourable Mr. NAYLOR then moved that in section 294, line 1, for "and 91", "91 and 92" be substituted, if he was right in believing that section 92 had not been specified in the amendment of this section adopted by the Council the other day.

It appeared however that s. 92 had been specified, so the amendment was unnecessary.

The honourable gentleman said that had been understood when the Honourable the Advocate General's amendment on section 296 (2) was considered by the Council, that some alteration of the wording of this sub-section might be perhaps agreed upon between that gentleman and himself. He had been waiting to see whether any alteration would be suggested by the Honourable the Advocate-General, but that gentleman was, he believed, now satisfied that no alteration need be made.

The Honourable the ADVOCATE-GENERAL assented.

The Honourable Mr. NAYLOR proposed to add a proviso to section 297, as under:—"Provided that when the land or building is vested in the Secretary of State or in any Corporation constituted by an Act of Parliament or by an Act of the Governor General in Council or of the Governor in Council, possession shall not be taken as aforesaid without the previous sanction of Government."

The honourable gentleman said:—Your Excellency, this is something more than a verbal amendment. The object is to prevent any clashing of authority or of interests between the Municipality and any other large body, such as the Port Trust or a Railway Company, holding land in the city of Bombay. Section 297 enables the Commissioner, whenever there is a piece of land within the regular line of a public street which is not occupied by a building, although it may be enclosed, to take possession of it and throw it into the road and afterwards to give compensation. The process, in fact, amounts to taking a set-back where there is no building. The object of the proviso is that this power shall not be used by the Commissioner in cases where large public bodies and Government themselves are concerned, without the sanction of Government. In the case of Railway Companies, I may explain that land has to be provided for the purposes of their railways by Government, and if land be taken from the companies in one direction for the improvement of the city, they may call upon Government to provide them with land at the public expense for their purposes in some other direction. Disputes may also arise under the section between such companies or between the Port Trust and the Municipality for which

there should be some arbiter. It is better, therefore, to leave the decision in the hands of Government, whether in such cases the claim of the Commissioner shall be allowed or not.

The Honourable the ADVOCATE-GENERAL:—I am not sure that some of the Railway Companies were not constituted by Royal Charter.

The Honourable Mr. WEST:—The provisions of the section contemplate mostly such bodies as represent great public interests, such as the Port Trust, Railway Companies, and those which were constituted by Act of legislature, but we may add the words "or by Royal Charter." Some such provision as is proposed is necessary, for otherwise, as the amendment contemplates, it may lead to public inconvenience. For instance, suppose the Commissioner sees a piece of land near a Railway station which he thinks will improve his road—an indispensable siding runs on to it but he takes it. Then the Company comes in and claims a piece of land on the other side where some houses stand, and the result is Government has to buy the houses so that the Company may get its piece of land.

The Honourable Mr. FORBES ADAM:—I think this is a wise provision.

The Honourable Mr. WEST:—The Honourable Mr. Naylor does not object to introduce the words "Royal Charter."

This was agreed upon, and the sub-section, as amended, reads: "Provided that when the land or building is vested in the Secretary of State, or in any corporation constituted by Royal Charter, or by an Act of Parliament or of the Governor-General in Council or of the Governor in Council, possession shall not be taken as aforesaid, without the previous sanction of Government."

The following verbal amendments were then adopted on the proposal of the Honourable Mr. NAYLOR:—

Section 350, line 12, for "whether" substitute "that."

Section 351, line 15, after "work" insert:—

"or if the person who has erected or executed such building or work is not at the time of the notice the owner thereof, then the owner of such building or work."

Section 474, line 23, omit "314, sub-section (1)", and in line 24 for "sub-sections (2) and" substitute "sub-section."

Schedule R, section 1, line 1, omit the word "municipal"; and in line 7, for the words "a vacancy in the Municipal Corporation" substitute "it."

Schedule R, section 3, line 2, omit "municipal."

Schedule R, section 5, line 2, for "Standing Committee" substitute "Town Council."

Schedule R, section 8, line 1, omit "municipal."

Schedule R, section 9, line 1, omit "municipal."

Schedule R, section 11, lines 7—9, omit the last words of the section, commencing with "and a contribution"

The Honourable Mr. WEST then submitted the following amended section to be substituted for section 41:—

"41. It shall be the duty of the Corporation and of the Government each to appoint four members of a Joint Schools' Committee of eight members for the purpose of giving

effect to the provisions as to primary education hereinafter enacted, and as shall be assigned to such committee.

"41 A. (*a*) The first appointments to the said committee shall be made within one month from the date on which this Act comes into operation. The members then or thereafter duly appointed may perform all the functions legally pertaining to the committee notwithstanding any default or delay or defect in the appointment of any member.

" (*b*) At the end of each of the first three years after this Act shall come into operation, one of the members of the Joint Schools' Committee appointed by Government, and one appointed by the Corporation, shall retire by ballot. Thereafter the two senior members shall retire at the end of each calendar year, and two shall be appointed or re-appointed by Government, or by the Corporation, whereof each shall appoint to the place vacated by any member previously appointed by itself, whether such vacancy has arisen as aforesaid or by death or resignation of the member. The names of all persons appointed shall be published by the Municipal Secretary in the *Government Gazette.*

" (*c*) The Joint Schools' Committee shall by election from amongst its own members appoint one member to be Chairman for the current term of his office or for any shorter period. The Chairman so appointed shall preside, and, in his absence, the senior member, according to date of first appointment, or in case of equality of date the member whose name appears first in the list published in the *Government Gazette*, shall preside at meetings of the committee. He shall have a vote and, in case of equal division, a casting vote.

" (*d*) The Corporation shall provide for the Joint Schools' Committee a competent Secretary and such clerks and messengers as shall be necessary. It shall also supply the committee with accommodation, stationery and the other material requisites for the due discharge of its duties on the requisition of the Chairman, signified by him, by any member of the committee, or by the Secretary.

" (*e*) The Joint Schools' Committee shall administer the School Fund hereinafter defined and prescribed, and shall provide thereout for the accommodation and maintenance of primary schools which, at any time, vest wholly or partly in the Corporation and for otherwise aiding primary education in accordance with the bye-laws duly made and with the rules made or approved by Government in this behalf.

" (*f*) An order signed by the Chairman shall be sufficient warrant for the disbursement, by any person holding the School Fund or any part thereof, of any sum thereout in accordance with such order.

" (*g*) The Joint Schools' Committee shall appoint and remove masters, teachers and other persons employed in the primary schools maintained out of the School Fund, and shall direct and control the instruction given in such schools and the terms and conditions of such instruction, and annex to the aid given to other primary schools such terms as shall seem expedient, subject always to the bye-laws duly made and to the rules made or approved by Government in this behalf.

" (*h*) The Joint Schools' Committee may, by a bye-law duly made, be invested with the powers and duties of any authority constituted under this Act in so far as shall be necessary or expedient in order to the fulfilment of the functions imposed on such commit-

tee as contemplated in sections 41, 41A, 41B, and 62 (*p*) of this Act, and to the extent to which such committee is invested as aforesaid, the powers and duties of the said authority shall be in abeyance save as so vested and exercised accordingly.'

And the following new section:

"41B. The Corporation may, for the purpose of giving effect to measures and arrangements in furtherance of secondary education or any branch of technical or other instruction, appoint or join in appointing a committee as aforesaid as may be determined by any bye-law, and such committee shall have in relation to the branch of education and the institutions for which it is appointed the like powers and duties as are herein assigned to the Joint Schools' Committee save as the same may be varied by any bye-law."

These were accepted.

The Honourable Mr. PHEROZESHAH MEHTA drew attention to schedule M and its reference to the spinning and weaving of cotton. He said:—I think this is an innovation which may affect an important industry most disadvantageously.

The Hononourable Mr. NAYLOR:—I will consult with the Municipal Commissioner on the subject, and it can be decided at the next meeting.

The Honourable Mr. NAYLOR intimated that he had not yet had time to revise the whole Bill with reference to the several changes made in it by the Council, and that he might, therefore, have to propose one or two more minor amendments at the next meeting.

His Excellency the PRESIDENT then adjourned the Council till Wednesday, the 28th instant, for the third reading of the Bill.

By order of His Excellency the Right Honourable the Governor in Council,

J. J. HEATON,
Acting Secretary to the Council of His Excellency the Governor of Bombay for making Laws and Regulations only

Bombay, 24th March 1888.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Bombay on Wednesday, the 28th day of March, 1888.

PRESENT:

His Excellency the Right Honourable Lord REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding.*

The Honourable J. B. RICHEY, C.S.I.

The Honourable R. WEST.

The Honourable the ADVOCATE GENERAL.

The Honourable KA'SHINA'TH TRIMBAK TELANG, C.I.E.

The Honourable F. FORBES ADAM, C.I.E.

The Honourable J. R. NAYLOR.

The Honourable Ráo Bahádur MA'HADEV WA'SUDEV BARVE, C.I.E.

The Honourable PHEROZSHA'H MERVA'NJI MEHTA, M.A.

The Honourable Ráo Bahádur BEHECHARDA'S VEHA'RIDA'S.

The City of Bombay Municipal Bill.

Consideration of the City of Bombay Municipal Bill in detail.

The Honourable Mr. NAYLOR:—I have a few further amendments, Your Excellency, to propose; they are set forth in the paper which has been circulated to honourable members. The first is in section 30, clause (*a*). The Honourable the Advocate General has suggested that it would be desirable to provide in this section specially for the appointment of a chairman whenever Justices meet for the purpose of an election. I propose, therefore, to add to clause (*a*) of section 30 the following words:—

"and which shall be presided over by such one of the Justices present as may be chosen by the meeting to be chairman for the occasion."

This was agreed to.

The Honourable Mr. NAYLOR:—Then in the last lines of section 30, clause (*f*), there is at present a provision that voting papers shall be kept for three months by the clerk of the Justices; but the clerk of the Justices, like the Chairman of the Justices, has ceased to have any legal existence, and I propose to replace this provision by imposing the duty of preserving the voting papers upon the chairman of the meeting.

The Honourable the ADVOCATE GENERAL:—Your Excellency, in regard to that, I believe I accepted the Honourable Mr. Naylor's suggestion; but I think the Chairman is not a very good person to undertake the custody of the papers. It may happen that he may not have any convenient place to keep them in. The Municipal Secretary would be the best person to take them.

The Honourable Mr. WEST:—It seems to me he would be the proper person.

The Honourable Mr. NAYLOR:—If that proposal be accepted, then after the word "shall" in line 39, instead of the word "unless," insert "be delivered by the chairman of the meeting to the Municipal Secretary, by whom, unless they are"; and in lines 41 and 42, for "be kept by the clerk of the Justices" substitute "they shall be kept."

These alterations were agreed to.

The Honourable Mr. NAYLOR :—Then in line 46 of clause (*g*) of section 30, between "councillors" and "elected" the words "to be" seem to have been dropped out by mistake; they should be re-inserted.

This was agreed to.

The Honourable Mr. NAYLOR :—In the next place, in section 41A the Honourable Mr. West has suggested a slight amendment in line 8. Instead of "as aforesaid," "in the manner described under the last preceding section, or" should be inserted.

The Honourable Mr. WEST :—The other words were no longer appropriate.

This amendment was agreed to.

The Honourable Mr. NAYLOR next moved in section 122, line 24, to omit the word "other" saying: the word "other" should have been struck out by the Select Committee; but it has inadvertently remained.

This was agreed to.

The Honourable Mr. TELANG :—Your Excellency,—Before we pass on to the next amendment, I would like to mention section 65B with reference to the production of papers in which it has been suggested that there is just a possibility, under the section as it stands, of things coming to a deadlock. There might be a difficulty in the event of the Chairman of the Standing Committee and the President of the Corporation being one and the same person. It is not a very likely occurrence. It has never occurred in the past but once and I hope it never will occur in the future.

The Honourable Mr. WEST :—I should think that the two incidents here foreshadowed will never come together or that the possibility of their doing so may be represented by a fraction of some millions to one.

The Honourable the ADVOCATE GENERAL :—But it is always the impossible that occurs.

The Honourable Mr. WEST :—Then we had better provide that the senior member of the Standing Committee shall take his place in case the Chairman is also President of the Corporation.

The Honourable Mr. FORBES ADAM :—Or elect two members of the Corporation.

The Honourable Mr. WEST :—But the two would represent the views of the majority and would outvote the one presiding official, who, it is expected, will be at the time a calm and more impartial member of the committee. The object was to have for the specific enquiry two comparatively calm and unbiassed men.

The Honourable the ADVOCATE GENERAL :—You might give the Chairman a casting vote. It is not a likely occurrence.

The Honourable Mr. WEST :—I would suggest that one scrutator be elected by the Corporation and one by the Standing Committee to supplement the Chairman.

The Honourable Mr. MEHTA :—It is not very likely that the circumstances will ever arise.

The Honourable Mr. WEST :—I hope it will not during the next two or three centuries.

The Honourable Mr. NAYLOR :—I would suggest that the possible difficulty be met by

inserting, in line 50, after the word "committee," the following words, *viz.* "or if the president of the corporation is also chairman of the Standing Committee with the said president and one member of their own body elected by the Standing Committee."

This amendment was agreed to.

The Honourable Mr. NAYLOR:—In the first line of clause (*f*) of section 155, it is necessary to insert after "168," "or 168A", that being the number of a new section similar to section 168, which the Council have passed.

This was agreed to.

The Honourable Mr. NAYLOR:—Then in section 432 there is another slip. In line 3, the word "aforesaid" is unnecessary. I propose that it be expunged.

This was agreed to.

The Honourable Mr. NAYLOR:—In section 439, it is necessary to introduce the words which have been introduced in other sections—after "by" in the last line, insert "or under the supervision of"—such surveyor.

This was agreed to.

The Honourable Mr. NAYLOR:—In section 465, the by-laws' section, it seems desirable, in order to supply the necessary complement to the schools' committees' sections inserted on the motion of the Honourable Mr. West, at the last meeting, to introduce two new clauses. I propose, therefore, to add after clause (*r* 1) the following two new clauses:—

"(*r* 2) assigning the functions of the joint schools' committee under sub-section (10) of section 41, regulating the exercise by the said committee of its functions so assigned and of the functions assigned to it under sub-section (9) of the said section, and regulating the administration by the said committee of the school-fund under sub-section (7) of the said section;

"(*r* 3) determining the constitution, powers and duties of any committee which the corporation may appoint under section 41A or 41B."

The insertion of these clauses was agreed to, without comment.

The Honourable Mr. NAYLOR:—The last proposal I have to make is with reference to the remarks which fell from the Honourable Mr. Mehta at the close of last sitting. I was not at the time prepared to state exactly what views were entertained with regard to the licensing of the spinning and weaving of cotton. I have made inquiries and I find that the impression I then had is confirmed, namely, that it was never contemplated that the spinning and weaving of cotton should be subject to license. The license is only intended for dangerous or offensive trades. I would propose, therefore, that the following be substituted for the foot-note to schedule M, *viz.*:—

"Spinning and weaving of cotton and storing of pressed bales of that article are excepted."

But since I have entered this room, I have had some conversation upon this matter with the Honourable Mr. Forbes Adam and he thinks that the exception should be extended to silk and jute. I, myself, am not acquainted with the subject, but on the suggestion of the Honourable Forbes Adam, I would make the exception read:

"spinning and weaving of cotton, silk and jute and the storing of pressed bales of those articles are excepted."

The Honourable the ADVOCATE-GENERAL:—Your mills will have to be licensed just the same. The cleansing of cotton is a dangerous process against which you will want protection.

The Honourable Mr. WEST:—It is considered part of the process just as slubbing and twisting are.

The Honourable the ADVOCATE-GENERAL:—Would it not be well to take out silk, cotton and jute altogether?

The Honourable Mr. NAYLOR:—No, for loose cotton is highly inflammable and may cause serious danger.

The Honourable Mr. MEHTA:—In all mills a great amount of loose cotton is required to be on the premises.

The Honourable Mr. WEST:—In a spinning mill it is loose until the manufactured article takes its place.

The Honourable Mr. FORBES ADAM:—What the Honourable Mr. Mehta says is absolutely true.

The Honourable Mr. NAYLOR:—I think the storing should be under license; the portion of the mill premises used for this purpose should be licensed.

The Honourable the ADVOCATE GENERAL:—I do not think so. I don't think it has ever been found to be necessary in the large English towns.

The Honourable Mr. FORBES ADAM:—I would object to that. When the insurance agents go to inspect a place before undertaking the insurance they take great care that the premises in which inflammable goods are to be stored shall be fully safe. Would you not also include wool?

The Honourable Mr. WEST:—License or no license, if your manufacture of wool becomes a nuisance you can put down the nuisance. There are plenty of honourable gentlemen whose services are available for the purpose.

The Honourable the ADVOCATE GENERAL:—I would not put in anything which is not for the prot ection of the inhabitants themselves.

The Honourable Mr. NAYLOR:—Perhaps the best form of amendment will be to add an additional sub-section to section 398, leaving the footnote to schedule M, with regard to pressed bales, as it stands. The sub-section might be that "Nothing in this section shall apply to mills for the spinning and weaving of cotton, silk or jute."

The Honourable Mr. WEST:—The difficulty would remain where mills manufacture mixed goods. This should be avoided.

The Honourable Mr. MEHTA pointed out that "drugs" were included in the schedule and asked if it was meant that dispensaries should have to take out licenses. He was of opinion that "drugs" should be struck out from the list.

The Honourable the ADVOCATE GENERAL:—Then as to drugs; would it not be better to alter the word to chemicals. As it is it might be open to an unreasonable interpretation.

The Honourable Mr. WEST:—Of course, it may be held to cover the making up of prescriptions which would be carrying the verbal interpretation to an absurd length.

The Honourable Mr. TELANG:—What is the object of making any provision here as regards drugs?

The Honourable Mr. WEST :—In some towns in England the manufacture of chemicals such as vitriol and so forth are the cause of great nuisance; but here the term used is only drugs. The manufacture of such chemicals should not be allowed here or in any populous city.

The Honourable the ADVOCATE GENERAL :—It would be well to take out "drugs" and insert "chemical preparations." That would cover it.

The Honourable Mr. NAYLOR :—I do not object to take out "drugs."

The word "drugs" was accordingly removed from Schedule M, and the amendment to section 398, as proposed by the Honourable Mr. Naylor, was accepted without further discussion.

His Excellency the PRESIDENT :—We have now reached the third reading.

Before the third reading was moved the Honourable Mr. FORBES ADAM said :—Your Excellency,—After the full discussion which has taken place during the debate on the amendments it may perhaps be thought superfluous that anything should now be said. I cannot, however, refrain from taking advantage of this opportunity to observe that much as I hope that the Bill now about to be read a third time may be found in practice to work smoothly and satisfactorily, I harbour and entertain grave misgivings. I regret that Your Excellency's Council has not seen its way to give such consistency and all-pervadingness to the great central principle of the Bill, the principle that the Corporation is the governing body,—that no possibility of question, uncertainty or clashing could hereafter arise. The idea of co-ordinate authority seems to me to be fraught with chance of friction and irritation. It is an attempt to reconcile what is irreconcilable. It possesses the elements of unsettlement and feud. I firmly believe the Bill might throughout all its sections have emphasised and accentuated its central principle without running the slightest danger of fettering or interfering unduly with the Commissioner in carrying out the details of the executive work of the Municipality. I am also sorry that the Council has not decided to leave the appointment of the Chief Accountant in the hands of the Corporation. I considered the Corporation had a right to expect this check and safeguard against irregularities in accounts. I admit that the provision of frequent audits is an improvement, but as a matter of sound business principle and in the interests of good Municipal Government I cannot but regret the Council did not accept the view regarding the appointment taken by the Corporation. I would only wish to add that the Honourable Mr. Naylor deserves great credit for the manner in which he has performed his difficult and labourious task, the order and arrangement of the Bill, to my inexperienced eye, seem to be very excellent indeed.

The Honourable Mr. NAYLOR then moved the third reading of the Bill :—In so doing, the honourable gentleman said: Your Excellency,—After the very complete manner in which both the principles and also many important details of the Bill have been discussed by the Council, there remains little for me to add, in proposing the third reading. In some of the amendments which have been carried in Council, I have been unable to concur. But the Bill as it has been adopted and now stands amended by the Council is a measure which provides very amply for all the wants—present and future—of the municipal administration of this city, is specially tender towards the rights and feelings of the people and, I believe, is readily intelligible, as well to the ordinary reader as to those who will have to administer it. Such constitutional changes as the Bill will introduce are in the

direction of placing the control of affairs more completely in the hands of the Corporation and of the Standing Committee. But whilst the Commissioner will have to submit his proposals for the sanction or approval of one or other of those bodies much more frequently than it has hitherto been incumbent upon him to do, he will still have control and supervision of the entire executive department of the municipality and be responsible for its work. This system of division of duties and powers has been working in this city for many years with marked success. It is not, perhaps, such a system as would be proposed now-a-days if we had to inaugurate a municipal institution, and had no previous experience to fall back upon. But its justification is that it suits the conditions of Bombay and that no other plan of municipal administration, which promised to be efficient, has found favour with the representatives of the people, upon whom it would be worse than useless for the Legislature to force a law which, being unsuitable to them, they would not effectually carry out. I think, therefore, that the Council have wisely determined to adhere, in the main, to the existing form of municipal government; and looking to the past and to the careful definition of the respective powers and duties of the authorities which this Bill contains, we have every reason to hope and believe that the new law will operate successfully and satisfactorily. As this is the last occasion on which I shall speak on the subject of this Bill, I should like to embrace the opportunity of thanking the honourable members of this Council—and especially my colleagues in the Select Committee—for the great consideration which has been shown me, whenever I have endeavoured to explain or to justify various portions of this necessarily complex measure, although I have, I fear, often sorely taxed their patience. I now beg to move that Bill No. 4 of 1887, to consolidate and amend the law for the municipal government of the city of Bombay, be read a third time.

The Honourable Mr. TELANG:—Your Excellency,—When the important measure before the Council was read a first time I ventured to express my opinions and feelings with reference to it without reserve and in a way which was generally understood as it certainly was intended to convey a somewhat severe criticism upon the Bill. At the same time I expressed my confidence and my hope that in its later stages the Bill would be so improved as to become acceptable to those whose municipal government it was to regulate, and that both the Corporation and the public of Bombay would find that in the end the Bill was no longer as objectionable as in the form in which it was originally introduced. I am very happy to be able to say that the later history of this measure has fully justified in my judgment the confidence and hope I then expressed. In its progress through the Select Committee it was, in my opinion, very considerably improved, and I think it has been still further improved in the course of the detailed consideration before the full Council. On the occasion of the second reading I was so satisfied with the improvements made in the Bill and I felt so much confidence that the momentum of the Council, so to speak, was in the direction of further amendment, that I was content to give a silent vote. But now we have reached the final stage, I may express my belief that upon the whole, and notwithstanding certain defects and shortcomings and notwithstanding deviations in some sections from the principle which has been accepted in other sections—and notwithstanding also individual provisions which I would still see amended, I am content to accept this Bill as for the present a sufficient measure of advance in local self-government, for I am a believer in the general wisdom of the maxim that we ought to hasten slowly. There are still one or two points of some importance on which

I hope a great advance will be made when the municipal government of Bombay has again to be considered by the authorities. I am not a believer in finality in these matters. Like Oliver Twist we must always be asking for more, and I hope Government will always be ready to give us more. Looking at the specific sections in the Bill, with reference to which I made some special remarks on the first reading, I find that nearly every one of them has been rendered less objectionable either by the action of the Select Committee or the Council itself and the change in every case has been in the direction which I desired to go. On that occasion I endeavoured to deal with all the more important features of the Bill. I dare say, some points were omitted, but most of those which struck me as being really important I alluded to. I do not know whether the Honourable Mr. Naylor will concur in my views as to their improvement. Perhaps not; but in my opinion the alterations are for the better; and now the measure is much more satisfactory to myself and much more in accordance with those principles which I should like to see developed more fully in the municipal government of Bombay as years go on. There is one other observation which I am particularly anxious to make. There has been a considerable feeling in reference to this Bill outside the Council, as is only natural and as I think also desirable. A great deal of enthusiasm is felt and considerable interest taken in the deliberations of this Council, but there has been some slight misunderstanding in reference to the Bill as it affects the position of the Municipal Commissioner. This is due probably to the view which the Honourable Mr. Naylor takes of it—though I am not prepared to coincide with him,—that the Municipal Commissioner is not the servant of the Municipality. But, in my opinion, he clearly is the subordinate of the Corporation, and that is the proper position for him to occupy. I am not in the least anxious that the Corporation should have anything to do with purely executive matters, and as regards the opinion of the Honourable Mr. Mehta and myself upon that point I hardly think the Honourable Mr. Naylor fully appreciated it when he delivered what the Honourable the Advocate General called a second reading speech, and went elaborately into the respective functions of the Corporation and the Commissioner to prove that those of the latter ought to be purely executive. I am almost inclined to think that the Honourable Mr. Naylor, having thrown overboard the scheme of Executive Committees, still seems inclined to cast a longing, lingering look behind, whereas we, who have always objected to that scheme, have no desire to go back to it in any form whatever. Mr. Pherozshâh and myself are most anxious that there should not be any interference with the executive functions of the Commissioner. We only want that it should be subject to the general control of the Municipal Corporation, and that is substantially provided for in the present Bill. I am not prepared to admit that under the sections of the Bill as we have passed them the Commissioner is what is called a co-ordinate authority. I do not think he is. That is not a correct description of his position under the Bill. I understand he is a subordinate in every respect, except as regards the details of executive work, in which he is untrammelled and not to be interfered with. That is his position, and that is what it ought to be. In sections 517 and 518 there is a certain amount of deviation from this and a slight inconsistency in a certain sense, but I am prepared to waive that small point, as I consider, looking at the Bill as a whole, that the Commissioner's position is defined in the way it should be. There are certain respects in which this Bill is preferable to the law under which we at present live, which, as I remarked at the first reading, is full of anomalies, laxities of phraseology and conflicts of jurisdictions. In lieu of that we shall now have a methodised

and symmetrically framed law that will not starve out local self-government as the Bill as originally introduced would have done. I am therefore prepared to accept it. There is only one further observation I should like to make. The Commissioner, as I have said before, has great power under the Bill as it now stands, though he has much smaller power now than was proposed in the Bill as originally framed. Under the Bill, as it now stands, legislative power, financial power, the power to sanction large contracts and works, to call for the production of papers, to increase the pay of the Commissioner are vested in the Corporation, and that shows precisely what is the Commissioner's position and that of the Corporation under the scheme. He is the municipal executive officer, and I accept him as such. I would here take the opportunity of referring briefly to a question which has been raised outside the Council as to whether it is not desirable that the Commissioner should be " improved " out of the Municipal constitution altogether. Believing as I do, that now he is under proper checks and safeguards, I am opposed to any such scheme. If it is adopted, we shall, I presume, have to resort to Executive Committees to which I have always objected. If we get rid of the Municipal Commissioner we shall either have another officer under perhaps another name with the same functions, or we shall have what will be equivalent to municipal anarchy. We shall not have one governing spirit ruling the whole of the Municipal Administration, and I am not prepared to look upon this with complacency. I am in favour of the preservation of the Municipal Commissioner, though I can quite see that the time may come when we shall take a further step in the direction of local self-government, and the Municipal Corporation will have to ask the Council of that day to concede the power to the Corporation to appoint its own Municipal Commissioner. I am not prepared to ask for that yet. The Corporation does not want that power at present, but I can quite see that here a further step may hereafter be taken. It must not be in the direction of abolishing him, but of vesting in the Corporation the power of appointing him. I can quite understand, that in the hands of certain Commissioners the powers here given to them might lead to some friction. I can quite see the possibility of such friction, but if the Corporation and the Commissioner behave as they have behaved in the past, such occasions may be minimised. And I am prepared at present to accept this chance of friction rather than abolish the Commissioner altogether, for the result would be that the executive work of the Municipality would thereby be paralysed. Considering, therefore, that the various defects I have pointed out have been cured or removed, I am prepared to hold that the Bill, as it stands, is now one worthy of acceptance, for the present, as a solution of the question of municipal reform. But I will not pledge myself to finality in this matter. Occasions may arise on which changes may be required. In a complex measure of this kind which touches many interests in many different quarters and in many different ways possibly the course of actual administration may disclose various defects and difficulties which will have to be remedied by legislative enactments. But we cannot provide for that now. In conclusion I should like to express my agreement with what the Honourable Mr. Forbes Adam has said of the part taken by the Honourable Mr. Naylor in respect to this Bill. I have worked with him in the Select Committee, and have since had his assistance also in putting into shape the amendments which I have had to propose to this Council. He was good enough to put into regular form what I had merely thrown out as suggestions, and I have had the greatest assistance from him in that respect. He has shown in the course of the whole debate a familiarity with the

Municipal matters of the city, which on some points I must admit was greater than my own. And, therefore, I desire to express my concurrence with what the Honourable Mr. Forbes Adam has said in reference to Mr. Naylor's labours in connexion with this important measure.

The Honourable Mr. MEHTA :—Your Excellency,—I shall vote cordially for the passing of this Bill into law. I entirely concur in all that has been said by my honourable friend, Mr. Telang, as to the character of the Bill as a whole. The detailed discussion in Council, in which the desire of your Excellency and the members of your Excellency's Government has been so conspicuous to give the most patient and careful consideration to suggestions and proposals from all quarters, has left me but one disappointment of any severity with regard to any important matter. But it is well to remember that no practical legislation in a matter of such complexity can ever be perfect, from a special or individual point of view. It is to the general result we must look to guide us in giving or withholding our acceptance. Looking at it this way, I cannot but regard this Bill as being substantially in conformity with the views and opinions of the Corporation as representing the city, contained in the various representations sent by them to Government since 1883. It is drawn on sound practical principles—sound in theory and tested by long experience. It has carefully steered clear of two pitfalls. On the one hand, it has avoided the blunder of making the Commissioner anything more than the executive officer of the supreme administrative body—the Corporation. On the other, it has not succumbed to the temptation of abolishing the Commissioner in favour of Executive Committees or Councils or of changing the mode of his appointment. The Corporation have always viewed with great alarm the prospect of either course being adopted; they have always firmly resisted all endeavours to seduce them to give their approval to either. I should like to add one word more before this Bill is finally launched on its new career. I believe it is an eminently workable and practical measure. But it will be in the future as in the past. The prospect of its success will not lie simply in its own excellence. Whether it be perfect, or whether it be faulty in some respects, its success will in a great measure depend upon its being worked in that combined spirit of enlightened zeal and public spirit, and of sound practical common sense, which has distinguished the conduct of municipal affairs in this city for the last 15 years. Worked in that spirit, as I feel confident it will be, this Bill is well calculated to add fresh laurels to the municipal fame of this city.

The Honourable Mr. WEST :—Your Excellency,—I suppose there are very few occasions on which a Bill of such complexity and involving the balancing of so many principles, which at the first seemed more or less opposed, has been passed through a Legislative Council with such general approval of its provisions as this has, and I trust that in the course of a few months more the Bill, which the Honourable Mr. Mehta has said is sound in principle and conforms to experience, will come into beneficial operation. It has not been based upon mere theory. It has been drawn by careful induction from experience. Facts and tendencies have been accepted as guides of policy. This gives the best prospect of future efficiency and success, for in the life of a Municipality even more than in the life of an individual, the past affords much that the present may profit by.

> "There is a history in all men's lives,
> Figuring the nature of the times deceas'd;
> The which observ'd, a man may prophesy,
> With a near aim, of the main chance of things."

And past experience affords grounds for fair judgment as to the chances of what is to come. This is the proper basis approved by many centuries of English political and civic life, upon which, when the time for a reform has come, we may put the legislation of a great city or country right. This principle having been adopted, I cannot feel any grave misgivings as to the working power of this Bill, so I do not share the feelings expressed by the Honourable Mr. Forbes Adam as to the necessity for accentuating more strongly the subordination of the Commissioner to the Corporation as the governing body of the Municipality. What after all will determine their relative positions will not be any abstract principle, nor any general phrase, which tries to give the summary result of more specific enactments. It will be the precise provisions of the several sections of the Act, and when you come to any one of these sections and can say that there and in relation to the function contemplated, the Commissioner is put in a false position relative to the Corporation, and that the work of the Corporation as representing the City to be served alike by the Corporation and by the Commissioner will not be well done, then I shall say here is necessarily a bad principle. You cannot get a bad rule out of a sound principle, there must be a mistake somewhere. But I take it that these sections as they stand have been very deliberately and carefully framed, to avoid a temptation and difficulty which have presented themselves in nearly every civilised constitution. Everywhere there has been found a tendency of the deliberative body to encroach upon the Executive. Such a tendency one may observe in the constitutional history of America, and of Switzerland, and the same tendency has manifested itself under the Republican constitution of France. I think the principles embodied in this Act have proved themselves, by general as well as local history, sound and just, and as to the Commissioner being placed in a position which will prevent him from carrying out the ideas and policy of the Corporation, as he ought, I think it is hardly possible to find that in any sense he is put into such a position. He is given independent power within his own strictly limited circle of activity; but he cannot in any way thwart the general policy or desires of the Corporation. If he should attempt anything of the kind the remedy is in the hands of the Corporation. They have the control of him in two ways—he is controlled by the hope of reward and the fear of punishment from them, and these are supposed to be the two strongest motives to human action. They can also stop his proceedings by refusing to grant his budget—that is his position with regard to the Corporation. The Corporation has to do with the general conceptions, with the higher regulative work, whilst the administrative, commonly called executive, work is placed directly in the hands of the Commissioner. The regulative part is that which determines the legislative and general policy in all things which affect the civic life of a place. To the Corporation is assigned the Government—that is the word which has been used by great political thinkers from Plato to Lord Bacon for the supreme, vital and regulative force in a community, and when it is used in this sense I do not think any higher or more comprehensive word can be conceived to describe the function assigned to the Corporation. But then as history shows there is a tendency in all deliberative bodies to carry themselves beyond their deliberative and controlling functions into the details of executive action, and it was thought undesirable that this temptation should be here placed before the Corporation. I believe it has been wisely enacted that the Commissioner—having this executive power and having for his own purposes and within the sphere distinctly assigned to him the management and preparation of his own accounts—he individually should be re-

sponsible for them equally as he is for the other parts of his business. He is the responsible —"authority" is the word used, but "officer" would imply it sufficiently, as indicating one clothed with an "officium" and a discretion. Being the authority responsible for the accounts he ought, in the opinion of Government, to have there as all through the heirarchy of officers beneath him, the control and governing hand, and the process by which the Commissioner should be kept in check would be by an audit from outside the executive system of which he is the head. These appear to be the only points in the Bill as it stands, which have called forth any serious censure on the part of the honourable members opposite. Certain aspirations have been expressed by the Honourable Mr. Telang, and I am sure he will give me credit for joining with him in the desire for still further advance when the way is safe and clear. I am willing even to make an experiment and to go beyond the line of absolute safety when strong reasons and strong opinion invite us to it; but it seems his aspirations are not shared by the honourable member who sits next to him, and until perfect agreement exists between members of the civic body themselves it is not to be expected that Government will be induced to grant them. The difference of opinion on this matter would be calculated to make one say of the Honourable Mr. Telang's desire that on a general vote the balance of the community would be against him. For the Government at any rate, which ought to see clearly where it is going, it is better to be just in the rear of public opinion rather than just in advance of it. I think the provisions of the measure as they now stand must satisfy the reasonable and fair aspirations of the citizens of Bombay. I should have been in horror of a Bill which delegated everything to sub-committees, and no one has ever ventured to say that the Corporation as a body could carry out the executive work of the city itself. The abolition of the Commissioner would necessarily lead to one or other of these results. The experience of past years shows that you must have an executive functionary or body apart from the deliberative body, to carry out its wishes. I trust the Act will be carried out in its intended spirit by all parties concerned, and I will add that I hope every citizen will play with regard to this Act that part of a good citizen of which we read in our Latin Grammar—*Vir bonus est quis? Qui leges jaraque servat.*

His Excellency the PRESIDENT:—I may perhaps be permitted to state the interpretation I put on the Bill before it is read a third time. The Bill gives full recognition to the authority of the Corporation in whom the Municipal government is vested. The Corporation exercises among other powers that of passing by-laws and of determining what revenue should be raised, and what expenditure may be incurred, and such general control of the executive as is the natural result of that power. No money can be spent, or a future liability incurred, without the sanction of the Corporation. No transfers can take place without the knowledge of the Corporation. The Corporation will find in the Bill what are its obligatory and its discretionary duties. The Standing Committee will bring the controlling power of the Corporation to bear more directly on the executive without preventing or unduly hampering energetic action, and it will also intervene, as the delegate of the Corporation, between the Commissioner and the public in the many matters of executive detail, in which private interests are likely to be considerably affected. Through this committee the Corporation will exercise the special control which cannot be exercised by large deliberative assemblies. Subject to the general and the special check of the Corporation and of the Standing Committee, the Commis-

sioner will have to conduct the executive operations without any minute interference which would only do harm. The Bill having clearly defined the duties of the Municipal authorities, it is simply an academic question how far the Bill is in accordance with the various theories which obtain on the subject. It would not be correct to say that there are three co-ordinate authorities, because it is obvious that the Corporation has legislative powers, and powers of imposing taxation and of sanctioning expenditure which the others have not. Neither is it correct to speak of the Municipal Commissioner as *only* the servant of the Corporation, though he must carry out its commands, designs and desires in the sphere prescribed by law because those are not his *only* duties, and the law imposes on him *other* statutory duties to be performed on his own responsibility. The Commissioner is a servant of the public, in the same way that I am a servant of the public. For instance, in framing a by-law, the Commissioner will execute the will of the superior legislature; in carrying out a by-law adopted or amended by the Corporation, he will act under instructions of the subordinate legislature after they have exercised their statutory function. To the ratepayers the relative superiority of these organic functions is of no importance whatever. To them it matters whether the by-laws are clear, and whether they are framed by a person who has thorough administrative experience and knowledge of their wants. By-laws framed and passed in this way will satisfy Mill's conditions of good Government, "secure, as far as they can be made compatible, the great advantage of the conduct of affairs by skilled persons, bred to it as an intellectual profession, along with that of a general control vested in, and seriously exercised by, bodies representative of the entire people." The functions of a representative assembly, such as the Corporation, are superintendence and check; administrative work, on the other hand, can only be done by those who have been trained to it. Unless "the line of separation is recognized" between general and special superintendence and administrative work, as Mill points out, the ratepayers, for whose benefit both the Corporation and the Commissioner are called into existence, will not have their interests properly looked after. The appointment by Government of the Municipal Commissioner does not affect his character as a *Municipal* authority. He does not thereby become, if he was not before, or continue to be, a servant of Government. His position will be substantially the same as that of officials who are lent by Government to Native States. He will not receive any instructions from Government except in the cases as provided by this Bill, and Government will have to pay a scrupulous regard to his independence. Any other interpretation of this Bill would be erroneous. Incidentally I may bring to notice that in the past Government have very seldom given any orders to the Municipal Commissioner: twice in 1878, once in 1880, once in 1881, once in 1882, twice in 1884, in which year he was also twice asked for information. The interference of Government with the affairs of the Corporation is limited to the occasions and to the manner in which it can be exercised under the Bill. There is not the slightest inclination on the part of Government to overstep these limits. The Municipal Commissioner does not represent or commit Government by anything he says or does. He must—in order to serve the ratepayers satisfactorily—have the discretion, the qualified freedom of action which the exercise of executive authority implies. Government gave effect on that point to what they understood to be the wishes of the Corporation as expressed in their letters of 10th October 1884 and of 8th March 1886. The Commissioner appointed by Government was retained at the express desire of the Corporation, and the Honourable Mr. Pherozeshâh

Mehta, who speaks with authority on the subject, has in the sitting of March 17th accentuated the necessity of retaining this officer, as he has done again to-day, as also the Honourable Mr. Telang, and neither favours the delegation of executive powers to committees. In the opinion of those who are best qualified by long experience of municipal affairs to determine how work could be most efficiently performed, it was unwise to make a change in this direction, and assimilate our Municipality to mofussil municipalities. The Bill is not the Bill which was originally intended by Government. The Bill does not give the power which Government intended to confer on the Standing Committee, of undertaking executive functions, and of delegating such functions to working committees, each of which was to consist of such a limited number of members as would ensure methodical and continuous transaction of business in a prompt and practical manner. Government were quite prepared to entrust executive details to these working committees, having the co-operation of a full-time official. The designation of this official, his position with regard to these committees, were points open to discussion and modification, but the principle itself—delegation of executive authority to working committees—was rejected by the Corporation, and Government therefore abandoned it. They never at any time approached the subject matter of the Bill with any foregone conclusions, and wishing only to create a machinery which would work with a minimum of friction, they authorised the framers of the first Bill to withdraw it and to substitute for it a measure based, as regards the main features of the constitution, on the lines which the Corporation had indicated would be acceptable to them. Government has mainly had in view to give by this Bill to the ratepayers the greatest security against extravagance and a wasteful administration. To the mode of election of the representatives of the ratepayers' interests no exception has been taken. The Bill recognises that these representatives are responsible for the good government of the city. A number of duties are imposed on them, which it would be impossible for them in their corporate capacity to fulfil in detail. They are obviously a deliberative assembly, and the result of their deliberations will naturally assume the shape of by-laws, resolutions or instructions, the execution of which must be left to another authority. Their constitution prohibits the performance of administrative duties which no representative assembly in any country has ever dreamt of undertaking. They, like all other legislative assemblies, influence, control, and direct the administration by giving or withholding funds for certain purposes, but they are not and cannot be administrative bodies. The same act of the Legislature which creates them must, therefore, create other authorities for the purpose of carrying out the duties which the legislative and superintending body cannot execute. These authorities are the Standing Committee and the Commissioner. Their duties are of a different kind and of a different nature. A clear separation of functions is intended, and it is by definitely recognizing this that effect will best be given to the law and the spirit of the law, and friction avoided between these various authorities. The Commissioner will have to exert himself in keeping expenditure down. The invariable tendency of specific departments, and those who represent them, is to press for increased expenditure. The Commissioner will, by his intimate acquaintance with administrative details, be able to resist this tendency. His resistance can only be successful if he has full control of the spending departments and if he has the support of the Standing Committee and of the Corporation. When the Corporation and their late Chairman asked for a trained administrator, I suppose they had

in view the necessity of central control in this respect, and of undivided responsibility for the utmost contraction of expenditure. A weak administrator will not have the courage to face the unpopularity of retrenchment, but a strong administrator will have no scruple in protecting public interests by dealing firmly with all attempts to expand the outlay of Municipal revenue. I do not think the ratepayers will have any reason to complain if a strong Commissioner is constantly on the alert scrutinizing minutely every demand on the Municipal purse. The Council will see that I have laid great stress on securing economy by attention to minor executive details. For this reason frame your estimates as carefully as you like, have a perfectly rigid system of audit as we have created by this Bill, unless the administrative agency has the knowledge and the will to enforce strict economy, the ratepayer will have to pay for unnecessary waste. The great difficulty in all branches of the administration is to secure administrators with a sensitive economic conscience. I need not point out that you also get your work done better. Supervision of expenditure in detail leads to supervision of work in detail. Wasteful work is scamped work. The great and main reason of the success of German administration in all departments, Civil and Military, is the constant application of skilled supervision to financial and administrative detail. *De minimis non curat praetor* is absolutely incorrect in administrative matters. If the ratepayers want an economic administration, they must insist on obtaining a Commissioner who will set the example to all branches of the Municipal administration to make the most of the available resources by making them go a long way. Nothing is more difficult than to prevent the varied growth of small items of expenditure and to deal with the plausible pretexts to which a weak administrator will not turn a deaf ear. The Commissioner has of course other functions, but I lay the greatest stress on his being what I should call the eye of the ratepayers. I am aware that there is another picture: a Commissioner less addicted to administrative duties and setting up as a local orator, detaining the Corporation by irrelevant speeches and rehearsing some of the oratorical efforts which earned him a reputation at the Oxford Union. I can well conceive the terror with which the community beheld the possibility of seventy-two speeches from such an individual with his pockets filled with secret correspondence which he refused to produce. Whoever contemplated such a future, certainly it was not Government. I need hardly say that the alarm felt on that score, due to the employment of words which possibly were open to the construction put upon them, but which were intended to convey a different meaning, never had any foundation in fact. Efficient administration saving the ratepayers' money means constant hard work *in camera*, and it is for that object that Government lend the Municipality the services of a highly trained and competent officer, not necessarily a Covenanted Civilian. Government certainly do not lend him for the purpose of developing his debating and oratorical powers, if he has any. If he attends the debates of the Corporation and of the Standing Committee it will be to throw light on the details of the administration of which naturally his duties give him a full command. The Corporation, the Standing Committee, and the Commissioner are not authorities created by this Act to engage in a perpetual conflict, but to co-operate in getting the work done for the ratepayers whose property they are administering. The Bill does not proceed on theoretical and abstract lines, but on practical necessities, and it is an attempt to secure the highest degree of efficiency of administration guided and controlled by popular representation. I believe that the revised machinery created by this Bill will be found adapted to the enlarged functions which it has to perform. If our successors introduce an executive of committees with or without a re-

sponsible head of the executive, they will try the experiment which has been rejected, but it is quite possible that the principle of undivided responsibility may gain ground and be welcomed even by the ratepayers of the larger mofussil municipalities, and that the Hon'ble Mr. Mehta will, if the misfortune should befall him of having to deal with another Bill of this dimension, still adhere to his first love. The Bill will, I believe, after the great attention which has been given to this subject by the Select Committee, the Council, and in this respect more especially by the Honourable Mr. Telang, give to the individual householder the amount of protection which he needs from unnecessary interference developing into a hardship. It also gives those powers which are required for the convenience of the public. The Bill does not satisfy the Honourable the Advocate-General. Government never expected it would, even if it had been drafted by those expert at home whose merits our learned colleague invariably proclaims; but I confess that to a Philistine like myself it is much more intelligible than the records of the English Statute Book which the legal sybils alone can interpret. It would I think be ungracious not to recognize the amount of research and labour which has been bestowed on its technical parts by Mr. Ollivant and by my honourable friend the mover, whose courtesy, knowledge and conciliatory disposition, both his colleagues on the Select Committee and in this Council have had reason to admire throughout. To the Select Committee our best thanks are due, more especially to the Acting Advocate-General, whose views—though diametrically opposed to those of our learned colleague whose place he was temporarily filling—were, I am informed, laid before that Committee with great talent and to whom several improvements are due. I shall have no hesitation in sending this Bill to Professor Gneist, the greatest living authority on local government legislation, and I am sure that the members of various legislative bodies will envy us the business-like way in which we have dealt with this comprehensive measure. I appointed the Honourable Mr. Mehta on this Council so that we might have the benefit of his intimate knowledge of Municipal affairs in the Select Committee and in our debates. The honourable member has taken a considerable share in facilitating the passage and the improvement of this Bill, which, I believe, meets his views, which, I take it, are representative of those of the community, though I may be permitted to add that his views were characterized by that independence of judgment which marks a representative as distinct from a delegate. I do not think that it is required on my part to give any evidence of my wish to further local self-government. I may perhaps remind the Council of our action with reference to the Poona Municipality, and we certainly never for one moment thought that in this city there are not as abundant elements to secure good Municipal representation as in Poona. But I would further point to the fact that we have in this Bill made the Corporation largely responsible for the control of primary education. It would be unpardonable if Government handed over this great trust to a body in which they had a limited confidence. The Corporation has very grave responsibilities, but of those perhaps the most formidable is the organization of a system of primary education which will satisfy the wants of all sections of the community, and which will tend to the advantage of future generations in this city. The success of local self-government is tested in most countries by the character of their primary schools, and a strong emulation exists between their great towns. We invite the Corporation to join in this contest. It is a forward step. It gives to this bill the character of a progressive measure. We are confident that it will be attended with beneficial results. Another forward step has, to my regret, not been taken. Schedule X.—the town duties on grain, flour, ghee, timber and firewood—

survives ; it constitutes a blot which I hope the next amending Bill will remove. The local administration of Bombay has hitherto been conducted in a way which has excited the admiration of impartial and expert critics who judge by results. To make sweeping changes in an organization which had produced these results would have been unstatesmanlike. A systematic measure of amendment and consolidation was the need of the hour. In maintaining a high standard of primary education, of sanitation, which in Bombay owes so much to Deputy Surgeon-General Hewlett, in improving the system of communications and of lighting, in preserving open spaces, in the care of the sick, in giving increased facilities to trade by the reduction of town duties, the Corporation will find a noble field for its initiative and its energies. That it can rely on the cordial support of Government whenever it may require it I need not add. Government has always taken and will always take a lively interest in the development of self-government in this city and in everything which can increase its unrivalled beauty for which nature has done so much and in all the Corporation's efforts to enhance the welfare of its singularly privileged inhabitants.

Bill read a third time and passed.

The Bill was then read a third time and passed.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Right Honourable the Governor in Council,

J. J. HEATON,

Acting Secretary to the Council of His Excellency the Governor of Bombay for making Laws and Regulations.

Bombay Castle, 28th March 1888.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Poona on Saturday the 15th of September, 1888, at 3-15 P.M.

PRESENT:

His Excellency the Right Honourable Lord REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding.*

Lieut.-General His Royal Highness the DUKE OF CONNAUGHT, K.G., K.T., K.P., G.C.I.E., G.C.S.I., G.C.M.G., C.B., A.D.C.

The Honourable J. B. RICHEY, C.S.I.

The Honourable J. R. NAYLOR.

The Honourable the ADVOCATE GENERAL.

The Honourable KASHINATH TRIMBAK TELANG, C.I.E.

The Honourable F. FORBES ADAM, C.I.E.

The Honourable Ráo Bahádur MAHADEV WASUDEV BARVE, C.I.E.

The Honourable PHEROZESHAH MERVANJI MEHTA, M.A.

The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS.

Papers presented to the Council. The following papers were presented to the Council :—

1. 'Letter from the Secretary to the Government of India, Legislative Department, No. 680, dated 11th April, 1888, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to declare and amend the law relating to Toda Girás allowances.

2. Letter from the Secretary to the Government of India, Legislative Department, No. 682, dated 11th April, 1888, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to further amend the Bombay Local Boards Act, 1884, and the Bombay District Municipal Act Amendment Act, 1884.

3. Memorandum from Mr. Pandurang Ramchandra Desai, Pleader, District Court, Thána, dated 17th April, 1888, regarding the Salt Bill No. 2 of 1888.

4. Letter from the Secretary to the Government of India, Legislative Department, No. 860, dated 23rd May, 1888, stating the reasons which induced His Excellency the Viceroy and Governor General to withhold his assent from the Adén Port Trust Bill.

5. Letter from the Secretary to the Government of India, Legislative Department, No. 947, dated 6th June, 1888, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend the Sind Village Officers' Act, 1881.

6. Petition from Mahamad Jafar valad Gulam Husan Tingikar and others, owners of Salt Works of Uran, dated 12th July, 1888, regarding the Salt Bill.

7. Petition from Hari Janardhan Dewa and others, owners of Salt Works of Pen, dated 26th July, 1888, regarding the Salt Bill.

8. Petition from Jacinto Jão Baretto and others, owners of Salt Works at Mátunga in the Island of Bombay, dated 31st July, 1888, regarding the Salt Bill No. 2 of 1888.

9. Petition from Budhaji Dharmaji and others, owners of Salt Works at Belápur in the Panvel Táluka, dated 9th August, 1888, regarding the Salt Bill.

10. Petition from Kabla Bapu Shet and others, owners of Salt Works in the Ghodbandar Táluka, dated 10th August, 1888, regarding the Salt Bill.

11. Report of the Select Committee on the Bill to provide for the Revenue Administration of Estates held by certain superior landholders in the Districts of Ahmedabad, Kaira, Broach and the Panch Maháls, and to limit the further operation of Bombay Act VI of 1862.

12. Letter from the Secretary to the Government of India, Legislative Department, No. 1601, dated 8th September, 1888, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the City of Bombay Municipal Bill.

The Gujarát Talukdárs' Bill.

Mr. Richey moves the second reading of Bill No. 6 of 1885.

The Honourable Mr. RICHEY in moving the second reading of Bill No. 6 of 1885, a Bill to provide for the revenue administration of estates held by certain superior landholders in the districts of Ahmedabad, Kaira, Broach and the Panch Maháls, and to limit the further operation of Bombay Act VI of 1862, said:—Your Excellency,—The objects of this Bill were fully elucidated by the Honourable mover of the first reading when he pointed out that the objections which had been raised to the provisions of the Bill were based on a misconception. The Bill was designed in the interests of the tálukdárs, their tenants, and the tax-payers generally. This fact was so fully set forth in the Statement of Objects and Reasons and the speech of the Honourable Mover, that I need not detain the Council very long with any remarks upon that point. The Bill was submitted to the Select Committee a very long time ago, and it has gone through very careful consideration, and the result has been several more or less important changes in the direction of improvement, and some points to which more or less sentimental objection had been taken have been modified, and, as it now stands, the provisions of the Bill, we think, are well calculated to meet the objects for which it was originally drafted. Part I of the Bill is merely preliminary and deals only with definitions. Part II provides for the introduction of a survey and the formation of a settlement register. In all parts of India where land tenure exists it is the custom to prepare a settlement register on behalf of Government and to record sub-tenures. But in the case of tálukdárs we do not propose to record in detail, as was proposed in the original draft of the Bill, the various items of the original tenancies, we merely propose to record such special features of the sub-tenure as are likely to be useful to the tálukdár for his own administration and to prevent disputes as to shares and incumbrances, and to enable Government to make equitable assessments. That part of the Bill as it stands has already been anticipated by the survey made under an order of 1862; but there is still a large portion of the tálukdári estates requiring survey, and without such an Act as is here proposed, it would be impossible to supply such data as would enable the Revenue officers to make an assessment which would be equitable and satisfactory. Part III is new, and its provisions only find a very limited

expression in the present law. There is a provision of the law by which the tálukdárs can move the Collector and get a partition; but it is hampered by conditions and inadequate, and does not prevent disputes which are perpetually arising and which prove an endless source of injury to the public, the tenants, and the tálukdárs themselves. They have continual disputes which lead to disintegration of their estates, and it is essential that some remedy should be provided which shall do away with the perpetual intrigue and disorders, and the financial ruin which follows recourse to the Civil Courts. A portion of Part III of the Bill deals with the method of procedure in these cases. In an ordinary case of an undivided estate at present the procedure for the collection of rent is this: The rental being taken in kind, an appraisement of the crop, to ascertain the share due for rent is necessary. The appraisement is made by the sharers interested or their representatives, if a sharer, owing to his being kept out of his due share, has a dispute with the others, he will raise difficulties at the time of appraisement; as the crop cannot be harvested until the appraisement is made, difficulties and delays in settling the appraisement will cause loss in harvesting it to the tenants and tálukdárs alike. I have known many great hardships to arise from this cause and would urge that every legitimate means should be adopted by Government to remove the causes of these disputes, and to facilitate their settlement. The best means are at hand in the office of the Tálukdári Settlement Officer which is familiar to those interested and accessible, and through this agency partitions under the provisions of this Bill could be effected readily, cheaply and equitably. Part IV relates to revenue administration. One of the chief difficulties arising from the working of the existing law is that we have not got a satisfactory assessment of many areas in Gujarát. The Government demand is now not settled field by field, but roughly on the whole area, and thus it cannot be shown that each acre is contributing its quota. We want to fix its proper contribution upon each portion in detail, and this is one of the most valuable provisions of Part IV of the Bill. There are other clauses in it, some of which have challenged objection, one of them especially (Section 26) which authorises the interference of the Governor in Council in certain cases: "If owing to disputes among the sharers in any tálukdári estate, or for other cause, the Governor in Council shall deem that there is reason to apprehend danger to the peace of the country or injury to the well-being of the inferior holders, he may direct the Collector to cause such estate to be attached and taken under the management of himself or any agent whom he appoints for this purpose." Now we have in the Civil Procedure Code provision for action by the magistrate to prevent disputes where the peace is threatened, and under an old regulation Government can interfere, but for political rather than in social causes. These provisions of the law do not meet the requirements of the cases which we have now to deal with in which the interests of the public and of the tálukdárs' tenants are involved. For instance, a step usually taken by a powerful and unscrupulous sharer who wishes to encroach on his co-sharers is to intimidate the ryots who may be willing to take up waste land in the interest of a co-sharer and to prevent its being cultivated. If the portion lies waste the interests of the public as well as of the tenants suffer. Such mischief may now be prevented. Cases have come before my notice where riots, and even murders have resulted from disputes as to whether such and such a field shall be cultivated. Even in my own camp I have had a man set upon in consequence of a strongly-worded claim presented by him for his fair share, and Sir James Peile reported to Government, when he was Tálukdári Settlement Officer, that he had feared that murder might be

committed in his camp. It must be remembered that the village police and executive in outlying tálukdári villages is inefficient and weak, and a lawless section of the community are able to commit offences and tyrannize over the more peaceable. I may mention an instance in the Viramgám District where the Kolis, who are the tálukdárs' retainers, answering Sir W. Scott's description of the Highlanders who formed MacGregor's tail, systematically kept in awe the Kunbi population by constantly burning their crops or their stacks. In this case Government, at my instance, imposed a punitive post of police upon the Koli section with the very best results. But when the Collector had power to take hold of an estate for the common benefit of all interested in it, prosperity would be the result. The Tálukdári Settlement Officer has furnished me with a list of twenty-six petitions from sharers and others asking for his interference, and in this respect the new Act would be very welcome indeed. In Part V there is one other section—the limitation of the incumbrances on a tálukdár's estates to the tálukdár's own life-time—requiring notice. The rules here are similar to those which apply in Native States. When, in the old days, we used to take agreements from tálukdárs, there was a clause to the effect that they should not sell or encumber their estates. The new provisions are justified by the fact that in many cases the incumbrances and alienations are practically illegal, and the principal reason why we have sought to regulate these is to prevent the people becoming impoverished, discontented and dangerous. Other sections of the Bill are mainly directed to remove the tálukdári estates from certain sections of the Land Revenue Code which are not applicable to them. But before closing my remarks I would ask the Council's attention to a memorandum which was given to me last night from the Thákor Sáheb of Limbdi, who represents a small section of the tálukdárs who are in Káthiáwár. The Thákor of Limbdi is the only one of any importance, and he has taken the lead in the expression of what are felt to be their objections to the Bill. I have very carefully gone through the memorandum, but I find nothing in it which has not already been dealt with by the Select Committee. Still it may be well perhaps to notice briefly some of the points which arise in it. The first point of importance is the statement "that the principle of assessment has always been different from what obtains elsewhere. The amount of the *jama* is always fixed *not* on the value of the land belonging to the tálukdár, but upon the rents actually received by him with the customary deduction in respect of *barkhali*, *vanta* and *chakariat* lands; again, the *jama* so levied has nothing to do with the survey rates, though for instituting a comparison they are often brought in aid to gauge the value of the estates, so as to bring the *jama* of each to one and the same proportion of the value." I do not understand how any distinction can be made between the land revenue paid by tálukdárs and any other similar demand from other classes, nor can it be admitted for a moment that the land held by the tálukdár himself or his dependants should be exempted. The whole must be fairly assessed and the revenue levied on the whole of it. As to revenue survey, it is stated "that the first survey in Gujarát, which was in 1824, was not extended to tálukdári estates." That survey was not a revenue survey and we are not concerned with it. "The second survey, which was in 1856-57, was expressly confined to Government villages only; and, *as a fact, tálukdári estates were not surveyed at this time either.*" That is quite true and nothing led to greater hardship than this. The assessments being made without any data of the actual capacity of each estate were often excessive and most burdensome, and I have found the tálukdárs glad to have a proper survey.

Then the memorandum goes on to show "as to the Land Revenue Code, that tálukdári estates have always been held exempt from its operation is sufficiently exemplified by the fact that not one instance can be shown of any of the provisions of that Act having been enforced in such estates. There has been no case, for example, of any forfeiture and sale for arrears of revenue under sections 56 and 57, or of alluvial lands being sold by the Collector under sections 63 and 64, or of any building-sites being fixed under section 126, or of any arrest or attachment under Section 150, &c." As to the forfeiture for arrears of revenue under sections 56 and 57 the memorandum is wrong. There has been one in my time; it was sold at the instance of the High Court, but the purchaser was not able to collect his rents; the resident tálukdárs made it too hot for him; he could not pay his land revenue, the estate was forfeited and then restored on certain conditions to the tálukdárs. That the statement is incorrect my experience furnishes a cogent example in this particular case. It is also submitted that "there is no necessity for any legislation on the subject. The possible classes of cases in which tálukdárs may happen to be concerned are four; cases in which questions may arise (1) between them and the Government; (2) between them and their *bháyad;* (3) between them and their tenantry; and (4) between them and their creditors. The relations between tálukdárs and Government are already so well settled and understood that no special enactment is necessary to define those relations; nor do the other classes of cases involving questions between the tálukdárs, their *bháyads,* their tenantry and their creditors call for any special enactment. Cases of disputes about shares (even amongst the *bháyads inter se*) involving parties in a ruinous litigation are not of frequent occurrence; and in respect of cases that may occasionally arise, the ordinary law of the land can quite adequately deal with them." It would not be at all right to leave the tálukdárs outside the law as is here proposed, and it is necessary to define the revenue law applicable to them and their political status. We must take care that they are not wronged either by their own imprudence or by our laws. There have been numerous cases of disputes about shares, and there is an enormous mass of evidence to show how they have involved ruinous litigation, and it is our duty to provide against the possibility of such instances occurring. Then the memorandum asserts that "the legislation now proposed makes no distinction between tálukas forming the domain of a gádi and other petty tálukas on the one hand or between tálukdárs and kasbátis, mevásis and náiks on the other, but places them all on a footing of equality." There is no occasion for it. You cannot make exceptions in the general law; if we make exceptions for one class, we shall have to go even further than this. Then it is stated that it extends to estates belonging to the Chiefs of Káthiáwár, in some of which the *jama* being fixed by the permanent settlement, there is no occasion for a revenue survey. That may be so: I don't think there is, but occasion may arise. Then it is stated that the legislation "applies to estates in which the rule of primogeniture obtains and in which therefore there is no occasion for a partition." Of course it does, and of course there will in these cases be no occasion for partition. Then the memorandum sets forth that "the proposed legislation reverses the general rule deducible from past history as to the fixity of the *jama* payable by a tálukdár." There is no historical or legal basis for assuming fixity. There are one or two exceptions in which the assessment is not liable to increase or reduction. As regards the revenue liability of tálukdárs, the Bill merely repeats the provision of the Act of 1862; in practice the Government demand has been limited to a maximum of 70 per cent. of the

assessment, but it often is as low as 50 per cent. I have examined each of the objections and am convinced that no hardships can accrue from any of the provisions of the Bill. It is objected that the tenants, though admittedly tenants-at-will, are to be *primâ facie* presumed as permanent tenants under section 83, if they have been in possession of their holdings for a long time; all public roads, lanes, rivers, lakes, tanks, &c., in his táluka are *primâ facie* under section 37 the property of Government until he establishes his title thereto, and so on. All these clauses are sections of the Land Revenue Code in which existing custom and right were carefully guarded. In Select Committee all the provisions were fully discussed and very carefully examined, and the Honourable Mr. Telang devoted particular attention to the application of each section of the Land Revenue Code. I would merely repeat that the objections here are based entirely upon misconception and are not such as can influence the Council in the consideration of the Bill. I now move, Your Excellency, that the Bill be read a second time.

The Honourable Mr. TELANG :—Your Excellency,—If I may be allowed I would like to say a few words before the matter is put to the Council. I suggested in the Select Committee that the Bill, instead of saying such and such sections of the Land Revenue Code are inapplicable to tálukdárs, should take a different line and should prescribe the particular sections which are applicable. I made that suggestion, because when I read the Land Revenue Code with special reference to tálukdárs, I thought the code was not as a whole an appropriate enactment for them, and was not intended, in fact, to be applicable to them. However as my colleagues did not think that course was advisable, I went through the sections of the code and made suggestions, some of which were accepted, and some negatived. As regards some of these sections I was not satisfied with the view of the majority of the Select Committee, and on some of them I find my views practically repeated in this memorandum. It is perhaps hardly possible at this time to so amend the Bill as will bring it more in accordance with the views expressed in the memorandum. So I will only say that I hope the tálukdárs will hereafter find as little cause to know the contents of Land Revenue Code as they have found hitherto. Only I am not prepared to agree in the view as to the objections of these gentlemen being unreasonable or unfounded. I think there is always fair occasion for alarm in these cases. I feel it would be useless at this stage of the Bill to bring forward the views I take upon the subject. I don't want to say much upon any other portion of the Bill at the present stage. As to one or two matters I have given notice of amendment. It will, however, be more proper that I should refer to them when I bring forward the amendments. I should, however, like to say a word with regard to section 15 which provides that "the procedure to be observed by the Tálukdári Settlement Officer or other officer aforesaid in any such inquiry shall be that laid down by the Code of Civil Procedure, 1882, for the trial of original suits." I suggested in the Select Committee that this provision should be altered, and that whenever questions of title arose the Tálukdári Settlement Officer should be bound to refer the investigation to the regular tribunals. The Tálukdári Settlement Officer is not necessarily an officer trained to judicial investigations, and although section 16, by providing for an appeal from him to the District Court, may be supposed to do all that is necessary in the matter to secure justice, I am not quite satisfied on that point, as although an appeal may be provided for, a good deal often must turn on the manner in which a case is tried in the Court of first instance. My suggestion, however, did not find favour with the majority of the Select

Committee, and upon this, and also on one or two other points, I have somewhat reluctantly and doubtingly yielded to the views of the majority. Upon the points, however, to which my proposed amendments refer, and on which I feel somewhat more strongly, I shall ask the Council to change the text of the Bill as settled by the Select Committee.

Bill read a second time and considered in detail.

The Bill was then read a second time and the Council proceeded to consider it in detail.

The Honourable Mr. RICHEY moved that the following words be added to section 8 (1):—

"and every Registered Tálukdár shall be entitled to receive one copy of the Register, free of any charge, except the cost of copying."

The motion was agreed to.

The Honourable Mr. TELANG moved the following amendment:—

"Section 16. Add (3).—A second appeal shall lie from the decision of the District Court to the High Court in accordance with the provisions of the Code of Civil Procedure, 1882."

He said: Your Excellency,—Having looked into this matter I am inclined to think that under the law as it stands an appeal to the High Court will lie, but I think it desirable to have such a clause as I now propose distinctly inserted in order that the people interested may know that such an appeal exists.

The Honourable Mr. RICHEY:—If the power exists, as I think it does, it seems to me unnecessary to make any specific provision. If it does not, this Council cannot interfere with the jurisdiction of the High Court, and it would be, therefore, *ultra vires*.

The Honourable Mr. NAYLOR:—Your Excellency,—Section 42 of the Act under which this Council is constituted says that it "shall not have the power of making any laws or regulations which shall in any way affect any of the provisions of this Act or of any other Act of Parliament in force." The High Court owes its existence to an Act of Parliament, and it follows that the local Councils of Bengal and Bombay have not the power of affecting in any way the jurisdiction of that Court. This Council cannot, therefore, limit the jurisdiction of the High Court, and it has hitherto been generally thought that it cannot add to it. It is, perhaps, a question whether adding to the jurisdictions of the High Court affects the statute under which that Court is constituted, but the opinion which has always been acted upon with respect to the framing of Bills for this Council is that no attempt should be made either to add to or subtract from the jurisdiction of the High Court. All legislation affecting that Court is undertaken by the Governor General in Council. I think, therefore, that it would be unwise to attempt to add to section 16 of the Bill before us the words set forth in the motion, and for my own part I think that the Honourable Mr. Telang's proposal with regard to the section is unnecessary. The object of section 16 is to provide a cheaper means of obtaining decisions on questions in dispute between tálukdári co-sharers than is provided by the ordinary Civil Procedure Code. The object of empowering the Tálukdári Settlement Officer to deal with such questions in the first instance is to secure this cheap and simple procedure and the District Court has ample power given to it to cure any defects in the decisions of the Tálukdári Settlement Officer. My honourable colleage Mr. Richey and I myself and Sir James Peile also were convinced that this provision would be acceptable to the

tálukdárs themselves and would save them from the great expense which the ordinary procedure necessarily involves. One further remark I would make, and that is, that even if no appeal lies from the District Court's decisions, there is no reason why the High Court should not, under section 622 of the Civil Procedure Code, set right any illegality or material irregularity in that Court's proceedings. It seems to me, therefore, that no case has been made out for adding the words proposed by the Honourable Mr. Telang and even if it were desirable to add them, that this Council should not attempt to add to the powers of the High Court.

The Honourable the ADVOCATE-GENERAL:—Your Excellency,—As to the power of this Council to give the right of appeal to the High Court, it is quite clear we cannot directly interfere with or take away from the jurisdiction of the High Court. But there is a qualification; for though we cannot so interfere directly, we can do so indirectly, and thus affect the jurisdiction of the High Court. This Council can increase or diminish the jurisdiction of the District Courts. It seems to me that the Honourable Mr. Telang's purpose is met without expressly giving the right of appeal to the High Court. I think there is clearly under the section as drawn an appeal from the District Court on a point of law, and nothing more is necessary.

The Honourable Mr. TELANG:—Yes, I think so too, as I have said already; and rather than take the risk of doing what may be *ultra vires* of this Council, I ask Your Excellency's leave to withdraw the amendment.

The amendment was accordingly withdrawn.

The Honourable Mr. RICHEY proposed the following amendment:—

"In section 24, sub-sections (2) and (3), insert the word *mortgagee* after the word 'any' in line 15, after 'such' in line 18, and after 'co-sharer' in line 21."

He said:—Your Excellency,—By this section we are able to assess area and to show exactly what each holder of land in a táluka ought to pay as his *quotum*. The first person to pay is the tálukdár himself; if he fails, then his co-sharers who pay their respective quota, or any person holding a similar portion of land. We go direct to the inferior holders, but we did not specify the mortgagee who stands as the registered tálukdár himself and it is right to go to him before going to his tenants, and so we propose to specify him.

The Honourable the ADVOCATE-GENERAL:—Does not the honourable gentleman contemplate the *mortgagee in possession*? Otherwise the mortgagee may be residing in Bombay or elsewhere, and have no connection with the land.

The Honourable Mr. RICHEY:—It does not matter where he resides so long as he receives the rents.

The Honourable Mr. NAYLOR:—Whether the mortgagee is in possession or not he is liable.

The Honourable the ADVOCATE-GENERAL:—Surely not, unless he is in receipt of the rents.

The Honourable Mr. TELANG:—No, and he ought not to be made liable.

The Honourable Mr. RICHEY:—We want to get at the man who receives the rents.

The Honourable the ADVOCATE-GENERAL:—Then it is advisable to specify the *mortgagee in possession*.

The Honourable Mr. NAYLOR :—The words "in possession" will cover the case of a man who has virtual possession as well as that of one who has physical possession, and I think the honourable member in charge of the Bill may accept them.

The Honourable Mr. RICHEY :—Then if the Council will allow me I will add the words "in possession" after the word *mortgagee.*

This was agreed to, and the amendment as thus qualified was adopted.

The Honourable Mr. TELANG moved the following amendment :—

"Section 26, instead of (2) insert the following :—(2). When any estate is so attached and taken under management it shall be lawful for the tálukdár to apply to the District Court by petition for the restoration of the management of such estate to him. And the District Court shall, after hearing evidence, make an order for such restoration, unless it is satisfied that there is reason to apprehend danger to the peace of the country or injury to the well-being of the inferior holders in the event of such restoration being ordered."

He said :—Your Excellency,—This is one of the sections about which I have said in signing the report of the Select Committee that I would take objection in Council, not being able to reconcile myself to the views of Sir James Peile and the Honourable Mr. Richey. As the first portion of the section deals with matters that may endanger the peace of the country and must therefore be dealt with by the Executive Government on its own responsibility, I am content to leave that part alone. But the latter part of the section provides that—

"When any estate is so attached and taken under management, the management thereof shall not be restored to the tálukdár until it is shown, to the satisfaction of the Governor in Council, that no reason for any such apprehension as aforesaid any longer exists."

The clause as it stands would have no real effect whatever, for the tálukdár would never be in a position to claim restitution under it. We know that when such charges are made against him as are contemplated in this provision, it will be a great undertaking for him to convince the Governor in Council that any such "reasonable apprehension" no longer exists. I believe the clause I propose will meet the just requirements of the case. Under that clause the matter will be discussed in open Court and the procedure strictly in accordance with the usual course. It does not seem to me right that the authority which orders the sequestration as a measure of executive administration should also judicially decide as to the restoration. Besides I think the onus of proof should be thrown upon the former authority and the land should be restored unless that authority can show reason why it should not. I cannot concur in the view, that because the sequestration will be ordered by so high an authority as the Governor in Council, therefore when it comes to be judicially investigated, the landowner should have the burden thrown on him of showing that his rights of property have been improperly interfered with.

The Honourable Mr. RICHEY :—Your Excellency,—I do not altogether share the Honourable Mr. Telang's apprehensions upon this point as to possible injustice or hardship. The onus of proof being thrown upon Government or its officer, no officer would ever be particularly anxious to put his powers into operation. But the District author-

ities and the power of appeal from them are known to the very meanest in the country, so that it is not possible to suppose any hardship would escape coming to the knowledge of Government. At the same time I feel the necessity of giving a man an easy course of judicial procedure and it seems perhaps ungracious not to specify it and I have, therefore, drafted a clause which I will ask the Council to adopt. It is to add to section 26 (2) and to let it read :—

> "When any estate is so attached and taken under management, the sharers or any one or more of the sharers therein may at any time apply to the District Magistrate to restore the management thereof; and if the applicants shall prove to the satisfaction of the District Magistrate that no reason for any such apprehension as aforesaid any longer exists, the District Magistrate may order restoration of the management to be made to the tálukdár."

This, I think, will meet his view.

The Honourable Mr. TELANG :—I was thinking whether the District Magistrate would not be the original authority from whom this matter would come before Government. Would it not then be an appeal from himself to himself?

The Honourable Mr. NAYLOR :—No; the Collector would merely be the Post Office through whom it would pass. The recommendation to attach would really be that of the Tálukdári Settlement Officer.

The Honourable Mr. MEHTA :—It scarcely seems the right course.

The Honourable the ADVOCATE-GENERAL :—The only difficulty about the Honourable Mr. Telang's amendment is the chance of creating a conflict between the executive and the judicial authorities; for after the District Court had restored the management to the tálukdár, the executive power might at once deprive him of it again. I am not in favour of this, and prefer the Honourable Mr. Richey's amendment to that of the Honourable Mr. Telang.

The Honourable Mr. MEHTA :—Leave it open as to whether the registered tálukdár gets a copy of the reasons on application.

The Honourable Mr. TELANG :—There is much force in the reasons of the Honourable the Advocate-General. I will accept the Honourable Mr. Richey's amendment.

The Honourable Mr. Richey's amendment was accepted with these alterations in section 26 (1), *viz.* :—after the word "purpose" in section 26 (1) add the words *and on the application of any registered tálukdár or co-sharer the Collector shall furnish him with a copy of the reasons on which the orders of Government were passed.*

The Honourable Mr. RICHEY then moved to add the following proviso to section 27A :—

> "(2) Provided that no such application shall be entertained in respect of an undivided share of a tálukdári estate nor, except with the consent of all the co-sharers, in respect of an estate which is held by co-sharers."

He said :—Your Excellency,—Section 27A was inserted to enable the Settlement Officer to take up the management of an estate at a tálukdár's request and occasions frequently arise in which they make such requests. The consequence of the Tálukdári Settlement Officer taking over management of an indebted estate is that money can be borrowed

at 5 or 6 per cent. instead of 12 per cent. which the tálukdár has to pay; this reduction of interest admits of the creation of a sinking fund. It enables the tálukdárs to pay their debts and so the procedure is very acceptable. The provision is similar to that in the Court of Wards Act of the North-West Provinces. The addition to the section now proposed was drafted in order to prevent complication by the assumption of management of an undivided share by the Tálukdári Settlement Officer. As a sharer can now speedily and cheaply get partition, it is better that this should precede management by the Tálukdári Settlement Officer.

The amendment was accepted.

The Honourable Mr. TELANG moved the following amendment:—

"Section 32 (*e*).—For the last 11 lines beginning with "and provided also" to "this section," substitute the following words:—and provided also that when the estate ceases to be under the management of Government officers, the possession and enjoyment thereof shall revert to the tálukdar, subject only to such agreements as shall have been made in conformity with the provisions of section 28 of the Gujarát Tálukdárs' Act."

He said:—Your Excellency,—The result of this section as it stands would be that during the period of temporary management the old tenants-at-will may be converted into holders with occupancy-right as against the tálukdárs, and this is neither desirable nor just. Under section 28 the provision is this, that no agreement entered into by a Government officer managing an estate under section 26 in respect of any land in such estate shall be for a period exceeding five years from the date thereof and that no such agreement by a Government officer managing an estate under section 27 shall have effect beyond the end of the revenue year in which such officer's management determines, unless the same is ratified by the co-sharer to whose share the said land is finally allotted when the partition of the estate is completed. That seems to me to be quite sufficient. The words as they stand in the Bill before us seem to cover a somewhat larger field than will be included in the words I have suggested, and I think we ought to limit it in the mode I have suggested.

The Honourable Mr. RICHEY:—By section 28 (2) the powers of an officer managing a tálukdár's estate are limited, when the management is due to partition, to giving leases to expire with his management; when the management is due to disputes and is under section 26, he can give leases for five years. The section to which the Honourable Mr. Telang's amendment relates, deals with management on account of arrears of revenue as provided in the Land Revenue Code. Under that law the Collector, managing an estate on account of default of revenue payment, can sell occupancy-rights without any limitation of tenancy. This law applies to the estates of inámdárs, and I cannot see why tálukdárs should be put under a different law. I have very little sympathy, considering how moderate our demands are, with the tálukdár who does not meet them. If an estate has got into such a condition that the Government demand cannot be raised, it is most expedient that the greatest security possible should be offered to cultivators in order to restore the estate, and it is surely more to the advantage of the defaulter that occupancy of his lands should be sold than that the Collector should exercise the power of selling the tálukdár's rights as he might do. I congratulate my honourable friend Mr. Telang upon his scrupulous regard for the rights of property; it is gratifying to see that they are still respected here, though in other countries just now they are being threatened,

still we need not carry our scruples too far. As the object of attachment is to clear off debt to Government, it must be remembered that a lease for five years may be valueless if an unscrupulous, tyrannical or rapacious landlord is liable to return to possession.

The Honourable Mr. NAYLOR :—Your Excellency,—I would like to make a few observations upon this point. The Honourable Mr. Telang's proposal is that the last provision of section 111 of the Land Revenue Code, as it is proposed by section 32 of the present Bill to amend it, shall run "and provided also that when the estate ceases to be under the management of Government officers, the possession and enjoyment thereof shall revert to the tálukdár, subject only to such agreements as shall have been made in conformity with the provisions of section 28 of the Gujarát Tálukdárs' Act." If we turn to section 28 of the Bill we find in sub-section (2) two kinds of agreements spoken of, *viz.* agreements which the officer managing an estate under section 26 is empowered to enter into and agreements which an officer managing an estate under section 27 is empowered to enter into. The first class of agreements are to be for a period not exceeding five years from the date thereof, and an agreement of the second class must be such that it shall not have effect after the end of the revenue year in which the officer's management determines, "unless the same is ratified by the co-sharer to whose share the said land is finally allotted when the partition of the estate is completed." The question then arises which class of agreements does the honourable gentleman's motion refer to? Does he mean that in no case in which an estate is under the management of Government officers shall any agreement for a lease or for the management of land be for a term in excess of five years from the date thereof, or that every such agreement shall terminate at the end of the revenue year in which the Government officer's management ceases? The two things are perfectly distinct, and if the honourable member's amendment is to be carried in any form, I would suggest that this ambiguity about it should be cleared away. But I also deprecate the passing of the amendment at all. Section 111 of the Land Revenue Code is a section taken, when that code was passed, from the previous Bombay Survey Act (Bo. Act I of 1865), section 34, and the law which that section contains has been the law of this presidency for at least the last twenty-three years. The purport of the section is that if an alienated village or estate comes under the temporary management of a Government officer it shall be lawful for that officer to sell the occupancy-right of lands by auction and to conduct the revenue management thereof under the same rules which apply to unalienated lands. It enables the Collector, when an inámdár's estate comes under his temporary management, to introduce into it a survey settlement, and to conduct the revenue administration of the estate upon principles precisely similar to those which prevail in Government villages; and by section 217 of the Land Revenue Code it is enacted that when a survey settlement has been introduced under the provisions of any law for the time being in force into any alienated village, holders of land in that village enjoy the same benefits as holders of land in surveyed Government villages. This is the general law of this presidency, *viz.* that if owing to any default of payment of land revenue on the part of the holder of an alienated village, that village comes under the management temporarily of Government officers, the Collector steps in and manages the village precisely as if it were a Government village, taking the Government revenue and keeping the balance of the realizations for the benefit of the inámdár. If the inámdár makes application within the proper time for restitution of the village he may have it back, but he takes it subject to the survey rules. The question is whether this general law should be applied to tálukdárs or not, and I think that it should, for they have no good claim to exemption

from any of the general provisions of the Land Revenue Code. The only object of amending section 111 and placing it in the form in which it is given in section 32 of the Bill is to take from it the terms which are inapplicable to tálukdárs. It will be observed that section 32 (1) provides that section 217 of the Bombay Land Revenue Code shall not apply to tálukdári estates, but as regards such estates the purpose of that section will be effected by the last proviso to the amended section 111 of that code, contained in section 32 (2) (*e*) of the Bill. This proviso, which is the one which the Honourable Mr. Telang seeks by his motion to amend, is, therefore, merely an incorporation of the general law of the presidency, and it should be allowed to stand. The Bill is more liberal to tálukdárs than is the Revenue Code to inámdárs; for section 111 of the code applies to the estates of the latter, whatever be the course of their coming under the temporary management of Government officers. But section 28 of the Bill exempts tálukdárs from the ordinary consequences of management by Government officers in certain cases. There is an express provision in sub-section (2) of that section that if the management is taken up temporarily by Government officers owing to the existence of disputes between co-sharers under circumstances which may lead to a possible danger to the peace of the country or to injury to the well-being of the inferior holders, the power of the manager shall be limited to granting agreements for five years. And we have in the same sub-section a further saving provision for the benefit of tálukdárs that any agreement a managing officer enters into during his management of an estate which is under attachment pending the completion of a partition shall not extend beyond the end of the revenue year in which such officer's management determines. Then there is the third case provided for in section 27 A of the Bill. By that section the Tálukdári Settlement Officer is empowered to take up the management of a tálukdár's estate at the request of the tálukdár himself. In this third case the management will be by agreement of the tálukdár only, and it is obvious that it will be open to the tálukdár to stipulate, if he thinks fit, that section 111 of the Land Revenue Code shall not be held to apply to the management. Thus three cases of management of tálukdárs' villages are exempt from the provisions of section 111 of the Land Revenue Code. The only other case in which it is likely that Government officers will have to manage a tálukdár's estate is if the tálukdár should make default in payment of the land revenue due by him. In that case I think the Council will concur with me that it is not desirable that tálukdárs should be exempt from what I have shown to be the ordinary law of this presidency.

The Honourable the ADVOCATE-GENERAL:—I would suggest as a means of meeting the difficulty that we add to section 28 (2) words which shall include all agreements, say "provided that no sale of occupancy-rights or agreement entered into, &c."

The Honourable Mr. TELANG's amendment was withdrawn in favour of the following alteration in section 28 which was accepted, *viz.* the insertion of the words *sale of occupancy-rights or* after the word "no" in line 10 and after "such" in line 15.

The further consideration in detail of the Bill was postponed till the next meeting.

His Excellency the President then adjourned the Council.

By order of His Excellency the Right Honourable the Governor in Council,

J. J. HEATON,

Secretary to the Council of His Excellency
the Governor of Bombay for making Laws and Regulations.

Poona, 15th September 1888.

B 76—56

Abstract of the Proceedings of the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Poona on Saturday the 6th day of October, 1888, at 12 o'clock, noon.

PRESENT:

His Excellency the Right Honourable Lord REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding.*

Lieut.-General His Royal Highness the DUKE OF CONNAUGHT, K.G., K.T., K.P., G.C.I E., G C.S.I., G C.M.G., C.B, A.D.C.

The Honourable J. B. RICHEY, C.S.I.

The Honourable J. R. NAYLOR.

The Honourable F. FORBES ADAM, C.I.E.

The Honourable Ráo Báhadur BEHECHARDAS VEHARIDAS.

The Honourable RAHIMTULA MAHAMED SAYANI, M.A., LL B.

Papers presented to the Council.

The following papers were presented to the Council :—

1. Petition from Bálábhai Dámodhar and others, owners of salt works in the Island of Karinjah, dated 10th October 1888, submitting objections to some of the sections of the Salt Bill.
2. Memorandum of objections to the Gujarát Tálukdárs Bill from the Thákor Sáheb of Limbdi, without date.

The Gujarát Tálukdárs Bill.

Consideration in detail of the Bill resumed.

The Honourable Mr. RICHEY said:—Your Excellency, since the consideration of the Bill at the last meeting of the Council a further memorial or rather memorandum has come to hand from the Thakor Sáheb of Limbdi urging some objections with which we have already dealt and one or two points which were not considered at the last meeting of this Council. It is not necessary to detain the Council with the reading of this memorandum, for all the most important considerations in it have been already dealt with either in the speech of the honourable mover of the Bill, or in my remarks at the last meeting, or in the report of the Select Committee. But as the Thákor Sáheb has reiterated some of his objections, apparently carried away by some erroneous impression, I may perhaps take up a little time in noting one or two of them. In the third paragraph he objects to the repeal of the provisions of the Act of 1862 which affect the proprietary rights of Tálukdárs. But he is here under a misapprehension, as the provisions are not repealed. Paragraph 6 asks that the provisions should be re-enacted, which is quite unnecessary. He renews the objection as to the application of the Land Revenue Code which, as the Council is aware, is already applicable. In paragraph 7 he urges that the operation of the Act should be limited in the interests of himself and three or four other Chiefs of Káthiáwár. Then he says: "This will exclude from operation estates like those belonging to the State of Limbdi and other States of Káthiáwád which are impartible by reason of the rule of primogeniture obtaining, and in respect of which the *jama*

payable is either *fixed* by the Permanent Settlement of 1807, or variable in consequence of no objections being raised by the Chiefs when some insignificant increase was made in the amount. In estates like these there is no occasion for a Revenue Survey or for a Settlement Register or for partition." The contents of this Bill were before the public for six weeks and we received no petition from any one but the Thákor Sáheb of Limbdi and three or four other Chiefs who have small interests, and he asks us to make an exemption to exclude him and these others from the operation of this Act, but his memorial does not afford any basis for exemption. There are larger estates than these in Broach which are entirely primogeniture estates and they have not asked for any exclusion from the Act. The Thákor Sáheb asks that the provisions of the Act be not made applicable to estates in respect of which the *jama* is fixed. But besides his there are other estates with fixed *jama*, and we cannot make this a test. We should exclude a considerable number of estates with fixed *jamas*. With regard to Bill section 5*e*, the Thákor Sáheb asks that it shall be altogether expunged. He says: "It relates to matters between the tálukdár on the one hand and people having a kind of interest in his estate on the other; these have nothing to do with the Revenue Administration of the táluka, by which is understood the regulation of the relations of the tálukdár with Government in matters of revenue." As I have said, no greater hardship could be done to the tálukdárs than by the refusal of Government to record any alienation. The Thákor Sáheb does not recognise the fact that this Bill is prepared, as it is, both in the interests of the tálukdár and the public. The paragraphs of the memorandum which follow have already been dealt with and can hardly be said to call for further explanation. The Thákor Sáheb suggests some maximum limit as to the assessment of tálukdári estates, but as I have already explained we do not exact the full demand for the tálukdár's estate and there are habitually abatements of from 30 to 50 per cent. Then the Thákor Sáheb says of the Bill, section 29, that it "introduces a change in the present system of police establishments in tálukdári villages; in some of them, those, for instance, belonging to the Limbdi State where the only police officer provided for by the State at its own expense is the *Mukhi* and no one else, the change would be very marked, and contrary to the implied understanding of Government with the tálukdárs. Ordinárily the expenses of the police should be borne by the ruling power direct; and accordingly the tálukdárs of Ahmedabad, when they enjoyed such power, used to pay the expenses." There is a misapprehension—there is no change contemplated in the practice as regards police establishments. In the original Bill it was proposed to make the tálukdár responsible for all village establishments, but in Select Committee it was held that this would be going too far. The present provision was accordingly adopted. In old times beside some military responsibilities full liability for the Police of his villages fell upon a tálukdár, and he had to make good any losses by theft that occurred within his estate; now he has to pay a few village officers. But we ask the tálukdárs whom they wish to appoint a patel; their nominee is accepted except where the tálukdár is a criminal, and then we override his nomination. The Thákor Sáheb rather taxes our credulity when he speaks of the Tálukdárs as "ruling powers." They were never "ruling powers." They range from feudal chiefs of some dignity to merely small headmen of two or three villages. So there is no transfer of power from the tálukdár to the British Government. The Thákor Sáheb objects to the limit of time of encumbrances to the tálukdár's own life, but there is nothing further in the memorial which has not already been disposed of, and I think the Council may accept the

conclusion aleady arrived at that no harm will be done to the Thákor Sáheb or any of his brother Chiefs in Káthiáwár.

The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS moved the following amendment, *viz.*:—

"Section 29.—Add (4)—Provided that the said charges shall not exceed the scale prescribed for Government villages of similar size and importance; nor shall such charges in any case exceed the difference between the total survey assessment of the estate and the amount of *jama*."

The honourable gentleman said:—My Lord, this amendment though late, will, I hope, commend itself to your Lordship and to the honourable members of this Council, as necessary to prevent misunderstanding or possible misinterpretation of the object of the Bill. Government can certainly have no wish to burden a tálukdár with police expenses beyond the margin of profit left to him, nor beyond the actual needs of his village. But the provisions of the Bill as they stand at present appear to be somewhat vague and too wide, and it is therefore desirable to clearly define the responsibilities of the tálukdár in this important matter.

The Honourable Mr. RICHEY:—As a rule the police charges will never amount to more than the amount which would be payable in a Government village. But I should desire very strongly to keep the police responsibility entirely separate from revenue responsibility. The revenue liability is one attaching to the land, its incidence is clearly defined and placed beyond all question. The tálukdár's police responsibility is more of a personal nature and refers to the characteristics of his tenure and his previous historic position with regard to the Government. If there were no black sheep one might say—let it be as the honourable member suggests. But as I have already explained, where the tálukdár himself is a doubtful character, it is necessary that the police patel should be strong enough to hold his own in the village. If the tálukdár is actually criminous and we were unable to control his propensities through a strong patel, the alternative would be some interference with the management A case in point is this:—a tálukdár has magisterial powers and uses them to recover very valuable property a portion of which he steals and hides in his village; he arranges with his police patel, who with his chaukidárs assist him to keep possession of it. When the circumstances come to be known, the tálukdár loses his magisterial powers and after that cannot be allowed to nominate a police patel, for that officer would not be able to hold his own against all the influences against him. Such a case came under my notice as Tálukdári Settlement Officer, and I think I put in as patel a pensioned policeman who got Rs. 10 or Rs. 15 per month. No smaller salary would do. Under such circumstances as these we should not be able to put in a proper person if my honourable friend's amendment were carried out. I should be sorry if this were the case, and I think my friend after this explanation will be willing to accept my view of the matter.

The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS:—The Honourable Mr. Richey desires to keep the police responsibility separate from the revenue responsibility, but I must admit that this amendment is based on the view taken by the honourable member who first introduced the Bill. He is right, however, in mentioning the nature of the exceptional cases. These I submit are very rare and may therefore be specially provided for. But I do not think it proper to let such rare cases govern a general provision for a

permanent police establishment I have certainly no objection to make a special provision for those cases if the Honourable Mr. Richey so desires.

The Honourable Mr. RICHEY:—That would be possible, but it would be redundant. We cannot go on the assumption that these powers will be abused. We do not find our magistrates abuse their powers of fixing the emoluments to be paid by vatandárs to the officiating patel. I don't think I remember a case in which such complaint has been made. Some discretion must be left, and it would be a pity to call attention to misconduct by providing for it specially. I submit, Your Excellency, that no case for amendment has been made out.

His Excellency the PRESIDENT (to the Honourable Ráo Bahádur Behechardas):—Does the honourable member press his objection?

The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS:—No, your Excellency, I will withdraw it.

The amendment was accordingly withdrawn.

The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS then moved the following amendment:—Section 32, sub-section (1), substitute "41" for "40" in line 1, add "48" after "44" in line 2, and add "69, 73" after "inclusive" in line 3.

The honourable gentleman said:—My Lord—I venture to submit this amendment also at this stage of the proceedings, because its object is to supply an omission which is due apparently to nothing but oversight and to make certain provisions of the Bill consistent with its avowed principle. All trees in tálukdári estates undoubtedly vest in the Tálukdárs irrespective of any concessions made in the case of occupants of Government lands. Section 40 of the Land Revenue Code has consequently been declared inapplicable to tálukdári estates, and this being so, there is no object in letting Section 41 apply to these estates. Similarly it is not contemplated to interfere with a tálukdár's right to put the lands of his estate to any use he may consider necessary, and with this view Sections 65 and 66 of the Code have been declared inapplicable to those estates. As a necessary corollary, Section 48 should also be declared inapplicable. As regards Section 69 I am respectfully of opinion that it could never have been the intention of Government to reduce the tálukdárs to mere survey occupants in the matter of their rights to mines and minerals. Clause 2 of the section, it is true, protects existing rights, but *primâ facie*, all mines and minerals in tálukdári villages vest in the Tálukdár, and the application of the section to tálukdári estates is consequently totally unnecessary. Section 73 clashes with the principle of the Bill and may also be omitted with advantage.

The Honourable Mr. RICHEY:—Your Excellency, this subject in Select Committee came in for very close criticism from the Honourable Mr. Telang. Section 41 of the Land Revenue Code contains the following,—"The right to all trees, &c., except so far as the same may be the property of individuals or of aggregates of individuals capable of holding property, vests in Government." It must be remembered that tálukdárs, as the name is now applied, are only one section of a class to whom this Bill will apply, it will apply to kusbatis, mehwasis, naiks, and it becomes necessary to take very great care that we do not make away with any rights which now vest in Government. It is true some of them are proprietors of their land, but we do not define *mehwasi*, *kusbati* and *naik*. These terms have never been properly defined. But it is better to err on the safe side if at all, and this

clause can do no harm. Then as to Section 48, no doubt the honourable mover of this amendment considers that tálukdárs should have their village sites exempted from liability to assessment. As Your Excellency is aware, we have not made the land in village sites pay Government assessment; they are already liable, but we have not exercised our powers in this respect, though it would be perfectly legal to do so. If we should exercise these powers there is no reason why tálukdári village sites should not be included in the general assessment; rather the contrary, for tálukdárs receive payment from non-agriculturists for the sites of their houses. If this amendment were passed the general public would have cause to complain. As to Section 69, the remarks I made as to trees apply here, and we are asked to suggest that Government has not a right to minerals in estates held by tenures which may not exclude such right. As to Section 73 there is no reason to exclude tálukdárs from procedure which applies to everybody else. The section is either harmless or, if ever wanted for certain purposes, it is useful. The subject was carefully considered in Select Committee. Therefore, I think on the one side it would be safer and on the other side more convenient to leave these sections as they stand.

The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS withdrew his amendment.

Bill read a third time and passed.

On the motion of the Honourable Mr. RICHEY, the Bill was read a third time and passed.

The Salt Bill.

Mr. Richey moves the first reading of Bill No. 2 of 1888.

The Honourable Mr. RICHEY in proposing the first reading of Bill No. 2 of 1888, a Bill to consolidate and amend the law relating to salt and the salt revenue throughout the Presidency of Bombay, said: Your Excellency, we have at present two laws regulating the sale of salt. Sind comes under the general Act of the Government of India of 1882, whilst a local Act applies to the Presidency proper. About the year 1883 it was found that some difficulty arose with respect to the working of the Act, which is in force in Sind, and it was discussed whether it would not be better simply to extend the provisions of the Bombay Act with such changes as would enable us to suit all the requirements of Sind. The Sadar Court in Sind passed one or two judgments which seemed to go beyond previously accepted views of the law as to the manufacture of salt and the importation of salt in the province. And these points were urged upon the attention of Government and it was found desirable to provide for the wants of Sind in a more direct manner. It was subsequently deemed desirable to make the review of our Salt Act and to take the opportunity at the same time to improve the drafting of some of its provisions before it was made one for the whole presidency, and the result of our deliberations was that the Bill now before the Council was drafted. Really there is very little new in the Bill. The old law of 1873 is practically reproduced. It is more carefully drafted and has some slight additions and modifications which will conduce to make it more practicable and convenient for executive working. But there are two new features to which attention might be called as they are mentioned in the Statement of Objects and Reasons. The salt-earth provisions of the Bill were before the public for six months without producing any representation or petition on the subject. The history of these provisions is a simple one. Act XII of 1882 does not prohibit the excavation of salt-earth but only the manufacture of salt from it, though it does prohibit the excavation of saline deposit

or efflorescence. It was supposed by the Sind Salt Officers that the excavation of salt-earth would be covered by this prohibition and excavation of salt-earth was brought under control. The Sadar Courts have ruled that this was *ultra vires* and had no longer the sanction of the law behind it. Upon this point I may read from the contemporary reports by Mr. Erskine. He quotes the remarks of the Assistant Commissioner for Salt Revenue, who says that "in Northern India the Courts have held that the removal of Kalar earth is an offence and the authorities have, when they found it necessary, been able with the law on their side to check it. Here, however, the Sadar Court had held that it is no offence to remove Kalar earth, and the consequence is abundant removal over a very large portion of Sind. Mixed with a little water and boiled it supplies quite sufficient salt for the use of a household for the day." This sort of thing goes on very extensively in Sind, and it is desirable to provide a reasonable check. People take home the salt-earth, and in an hour or two make salt of it. It is of no use talking about searching the houses, for the officers cannot tell whether they are cooking salt or their dinner. There is no other way except to check excavation. The manufacture of salt from salt-earth merely imitates the natural process by which a large portion of our salt is made. We have two processes—one from sea-water and the other from inland brine pits. These are pits sunk in salt-earth where there is plentiful subsoil water; the water extracts the salt from the soil and becomes brine which when evaporated leaves salt. Our works at Khárághoda are simply due to a considerable body of salt subsoil by the Runn of Kutch. It is strongly impregnated with salt, in fact the earth is sometimes more than half salt and the subsoil water which is there abundant has become brine. You have a very great stretch of salt-earth country bordering on the Runn. In the rains every depression is filled with water, it extracts the salt from the earth and when it evaporates after the rains natural salt is deposited just as salt in the salt-pans. We can control the use of this salt naturally made from salt-earth, what we want to be able to do is to control the artificial imitation of the natural process. This can only be dealt with as the Punjab Courts have dealt with it, by prohibiting excavation. What the people will have to do under the new provision will be to go to the Revenue Officer and get his pass when they want to excavate, to make their threshing floors or for manure or other legitimate uses to which no one will object. In the Konkan salt-earth is used for fish-curing. We don't wish to hinder this industry but rather to encourage it and develope it. I believe the public taste has become so much accustomed to it that they prefer fish cured with salt plus the earth than without it, and in order to provide for this legitimate use of salt-earth a section has been introduced that removal may be permitted without a license from the Collector when it is for purposes of this kind. We should allow people to take salt-earth for fish-curing, for laying threshing floors or for manure, but in order to control abuses we want in Sind a restoration of the powers in exercise up to 1883 and now exercised in the Punjab. Another important change is in the direction of regulation of penalties and the withdrawal of power from departmental officers and transferring them to Magistrates. I need not say anything further to this Council on these points, they speak for themselves. I have the honour to move that the Bill be now read a first time.

Bill read a first time and referred to a Select Committee.

The Bill was then read a first time, and on the motion of the Honourable Mr. Richey was referred to a Select Committee composed of the Honourable Messrs. Naylor, Mehta and Sayani, and the mover.

The Aden Port Trust Bill.

The Honourable Mr. NAYLOR in moving the first reading of Bill No. 3 of 1888, a Bill to vest the Port of Aden in a Trust, said:—Your Excellency, it is two years ago to-day since the late Sir Maxwell Melvill obtained leave to introduce Bill No. 5 of 1886 for the purpose of constituting a Port Trust at Aden. On that day—6th October, 1886—the Bill which he introduced was read a first time and referred to a Select Committee. That Committee, after several meetings and consultations, presented their report to this Council on the 7th April, 1887. After publication and after having been before the public for some time, the Bill was read a second time in this Council on the 16th July, 1887, and also on the same day it was read a third time, and passed. The reasons for constituting a Port Trust at Aden, and the lines upon which the special provisions of the Bill were passed, were fully explained by the late Sir Maxwell Melvill in his two speeches in this Council at the first and second readings of the Bill, and on the last occasion on which he spoke upon it—the 16th July, 1887—he explained that Aden is pre-eminently a fortress, and that shipping and mercantile interests there must be subordinated to military and naval exigencies; and the Bill, as amended by the Select Committee, contained several important provisions, and at the second reading the Hon'ble Sir Maxwell Melvill himself asked the Council to approve certain other provisions, all having for their special object the recognition of the fact that Aden is primarily a fortress, and of the Imperial considerations arising out of that fact. The Bill, as passed by this Council, was forwarded for the assent of the Viceroy. In the letter of May 23, 1888, which has already been communicated to the Council, the Government of India informed this Government that His Excellency the Viceroy had felt compelled to withhold his assent to the Bill principally upon two grounds. The first of these grounds was that military and naval munitions and stores, and vessels landing or shipping the same, should have been exempted from section 40 of the Bill, which enables the Port Trust, with the approval of the Government of Bombay, to fix a scale of tolls and rates on the landing and shipping of goods and the use of wharves, quays, and the like. With regard to this point the Government of India observes that Government having itself provided places for the landing and shipping of stores, it seems to the Governor-General in Council that vessels landing or shipping military or naval stores and munitions and the stores and munitions landed or shipped should be excluded from the operation of section 40. The Government of India has also observed with regard to its second objection, that section 41 vests in the Board the power, with the approval of the Government of Bombay, to remit tolls and rates, but this is a power which in the opinion of the Governor-General in Council should be exercisable by the Government of Bombay alone. It was to remedy these special defects and to meet the wishes of the Government of India that the Bill, which is now in my charge, was drafted. The defects are got over by the insertion in sub-section (3) of section 40 of a new clause, *viz.* 3 (*a*), by which it is proposed to provide that "nothing in sub-section (1) or (2) shall be deemed to authorise the inclusion, in any scale framed or approved thereunder, of any toll, rate or charge in respect of military or naval munitions or stores, or of any vessel landing or shipping any such munitions or stores." And the second point to which objection is taken by the Government of India it is proposed to provide for in the present Bill by vesting in Government alone the power under section 41 to remit any tolls, rates or charges, or portions of

Mr. Naylor moves the first reading of Bill No 3 of 1888.

them, leviable under section 40. But although these are the principal objections taken to the provisions of the previous Bill, there are others which have been pointed out in the letter of the Government of India, and with regard to which it has been suggested that the opportunity should be taken of introducing amendments. The first of these is most important, inasmuch as in the previous Bill section 42 is in conflict with section 143 of the Army Act of 1881. The Army Act, which is an Act of Parliament applicable to the whole empire, provides that all officers and soldiers of Her Majesty on duty or on the march and their horses and luggage shall be exempt from payment of duties or tolls on landing or embarking on or at any pier, quay, wharf or landing place. Section 42 of the Bill, as passed by the Council in 1887, provided that in lieu of a toll under section 40 "a toll shall be payable by Government to the Board on all troops, landing or embarking at Aden, at the rate of one rupee per head." The first part of that section exempted troops from tolls or rates ordinarily leviable by the Board, and the second paragraph of it declared that Government should pay for every soldier landed or embarked, and for each member of a soldier's family, one rupee per head. This is clearly in conflict with the English statute, and the Government of India has asked that the conflict be removed. The only thing to be done seems to be to omit section 42 altogether, and to provide under section 40 (3-*b*), "That nothing in sub-section (1) or (2) shall be deemed to authorise the levy from officers or soldiers of Her Majesty's regular forces, on duty or on the march, of any duties or tolls from which they are exempted by section 143 of the Army Act of 1881." This, I think, meets the objection of the Government of India. Then there are other suggestions. One of these is that in section 6 the senior officer of Royal Engineers, for the time being stationed at Aden, shall be added to the *ex-officio* trustees of the Port. To this there appears to be no objection, and the necessary words have been inserted in section 6 of this Bill. Then with regard to section 14, the Government of India is of opinion that the fee of Rs. 30 per meeting, which it was proposed should be payable to every trustee for attending meetings of the Board, was too considerable a fee for so small a port as Aden, and it has suggested to this Government that the corresponding provision of the Rangoon Act might be followed for Aden. Under that Act the fee for attendance is limited to Rs. 16, and it is provided that if more than one meeting be held in any one month no more than one fee shall be paid. That limits the fee to a gold mohur per month, and the Government of India makes a further suggestion that *ex-officio* trustees shall not be entitled to any fee, but only non-official trustees shall receive it. This Government thinks that these suggestions should be adopted, and section 14 has been amended in accordance with that view. The next point is with regard to section 19 of the previous Bill. The last proviso of that section was to the effect that every officer and servant, if any, maintained by Government on the day when the Act comes into force, shall, if he is entitled to pension or leave allowances as a Government servant, be deemed to be lent to the Board on and from the date notified by the Governor in Council under section 9. The object of this proviso was that on the Act first coming into operation the Board should take over the existing staff, and after having had time to look about it, should determine whether it would retain that staff or dispense with any members of it, and gradually make its own arrangements without being compelled to get rid of all the existing staff and provide its own. This proviso also dealt equitably with the officers of Government whose services would be retained by the Board. As they were to be deemed to be Government officers, whose services were lent to the

Board, the usual rules which apply to Government servants so lent would apply to them. The Government of India did not take exception to this proviso, but it says that it is not fair to impose upon revenues unconnected with the port charges for pensions or leave allowances in respect of these officers, so far as they have been already earned. Those servants of the harbour staff who have been hitherto employed as Government servants will be entitled when retiring from Government service to pensions under the rules applying to Government servants; but some part of those services having been rendered to the port it is just that a portion of these pensions should be paid from harbour revenues, and that the whole amount should not be paid at the charge of the general revenues of the country. The Government of India states its wishes in the following words:—"In the opinion of the Governor-General in Council, no pension now chargeable on the revenues should be chargeable upon those revenues after the constitution of the Trust." The clause which has been introduced to give effect to this wish of the Government of India is proviso (*b*) at the end of section 20—a clause which has been drawn in consultation with the Accountant-General, and it embodies a principle which I think the Council will agree is unexceptionable: "Any pension or leave allowance payable to any officer or servant of Government employed in connection with the Aden harbour prior to the date notified by the Governor in Council under section 9, shall, in so far as the same has been earned during such employment, be a charge on the port fund, and shall be defrayed thereout, on the requisition of Government, by the Board." Then as to section 33, the Government of India desires that specific provision be made for landing and shipping military or naval stores in any part of the harbour which the authorities think fit or desirable. For that purpose provision has been made under section 33 (1-*b*), which runs:—"Notwithstanding anything contained in sections 31 and 32, military or naval munitions or stores may be landed or shipped at any time and at any place within the limits of the port which the Political Resident at Aden may deem convenient." One other alteration has been made in the present Bill, in what was section 49, but is now section 48. It is merely a verbal improvement which I need not do more than just mention. I have stated the only changes of any importance which have been made in the Bill. They do not affect the principle of the Bill vitally, and I trust there will be no objection to the Bill, as now before the Council, being read a first time, and I beg to move that it be so.

The Honourable Mr. FORBES ADAM:—Your Excellency, I have reason to know that the Bill which was passed through this Council last year gave great satisfaction to those people at home, who are largely interested in the shipping of Aden, and to most of the chief residents who are trading at Aden. Owing, however, to the long delay which occurred before the Government of India placed their views before your Excellency in Council, an idea got abroad that it was intended to alter vitally the principle of the Bill, and to make important changes. Repeated representations have been made to me from Aden upon the subject, and I have been urged to do all I could towards getting the Bill finally passed. How strong was the impression that the principle of the Bill was destined to undergo a material change, an instance which came before my notice will show. A gentleman who had previously expressed a warm and strong approval of the measure came to me with a settled look of reproach in his eye and a copy of the new Bill in his hand, said in a voice quivering with emotion, pointing to one of the sections: "Look at that, sir, all your good work of last year is gone." I examined the section word for

word, and found it exactly the same as the last year's Bill, and I think it is well that the public should understand that the Government of India has made no change in the principle of the Bill now before us, and that no alteration has taken place except with respect to the landing of naval and military munitions, and the exemption from toll of soldiers on duty, their baggage and horses. This latter exemption, if I have been rightly informed, is already the practice at Aden, and has been so for a long time, Government having itself provided wharfs for the purpose, and private wharf owners charging nothing when their wharfs happened to be used. I am prepared to support the Bill now before us and the passage through all its stages to-day.

Bill read a first time.

The Bill was then read a first time.

Mr. Naylor moves the second reading of the Bill.

The Honourable Mr. NAYLOR:—Your Excellency, the Bill for constituting a Port Trust at Aden having been before the Council for over two years and the commercial public of Aden being desirous, as the Honourable Mr. Forbes Adam has said, that its provisions should come into force as soon as possible, and the Government of India and the Secretary of State being also anxious to see it in force without delay, I wish to ask the Council to assist me in enabling it to pass through all its stages to-day. I beg to move that the Standing Orders be suspended and the Bill read a second time.

Standing Orders suspended and Bill read a second time.

Standing Orders were accordingly suspended and the Bill was read a second time.

Bill considered in detail.

The Honourable Mr. NAYLOR then said:—Your Excellency, I have three proposals to make for amending the Bill. The first two are not my own; they should be in the hands of the honourable gentleman opposite (the Honourable Mr. Forbes Adam), who was good enough to suggest them, and I have myself given notice of them only because it was doubtful whether the honourable gentleman would be able to be present here to-day. Under section 5, the proposal is that the last word "five" be altered to "six". In the first Bill of 1886 section 5 proposed that the Board should consist of a minimum number of five members, and section 6 proposed that three of these members should be the *ex-officio* members whose names were given in that section. Section 7 provided that the rest should be appointed by Government, and of these such number as should from time to time be fixed shall not be public officers Section 7 of the Bill now before us nominates four members out of the minimum number of five to be *ex-officio* members. Thus only one could be a non-official member. The Honourable Mr. Forbes Adam pointed out that this is a smaller proportion than the public would expect, and suggested that the minimum should be altered to six, leaving the other sections standing as they are. This Government sees no objection to the proposal.

The Honourable Mr. FORBES ADAM:—I think, your Excellency, you could hardly get both the trading and shipping interests represented properly without making this amendment

The amendment was adopted.

The Honourable Mr. NAYLOR then moved the following amendment to section 40

For the last eleven words of section 40 (3) (*a*) substitute the following:

For such time as a vessel is landing or shipping any such munitions or stores, in respect of such vessel."

The honourable gentleman said:—Your Excellency, I have already explained the reason for introducing the new clause (*a*) of section 40 (3). The last eleven words of that clause effect what was desired by the Government of India, but the Honourable Mr. Forbes Adam has pointed out that those words might operate unfairly at times, as in the case of a ship which lands only a few tons of military stores and otherwise carries a cargo of ordinary merchandise. As the only object of the proposed exemption is that ships landing or shipping military or naval munitions or stores shall not have to pay in respect of those military or naval munitions or stores, it seems reasonable that they should only be exempted from the liability to rates during such time as they are actually engaged in landing or shipping those stores. My present proposal therefore is that the last eleven words be eliminated and those I have read substituted.

The amendment was agreed to.

The Honourable Mr. NAYLOR:—Your Excellency, the last amendment I have to propose is but a clerical correction in schedule A. The necessity for it has been pointed out by the Resident at Aden. In column 4 opposite the entry No 7 'Lascars' Lines, for the word 'ditto' the words 'In Post Office Bay' need to be substituted. This is simply a mistake which has crept in unawares, and I think the Council will have no objection to the correction being made.

The amendment was adopted.

Bill read a third time and passed.

On the motion of the Honourable Mr NAYLOR the Bill was then read a third time and passed.

The City of Bombay Municipal Act Amendment Bill.

Mr. Naylor moves the first reading of Bill No. 4 of 1888.

The Honourable Mr. NAYLOR in moving the first reading of Bill No. 4 of 1888—a Bill to amend the City of Bombay Municipal Act, 1888,—said Your Excellency, I feel that some apology is due to the Council for bringing municipal matters again before it, so soon after the many meetings which were devoted to their discussion during the last Session in Bombay. But it is not an uncommon thing that in Bills before local Councils points escape that minute criticism which the higher authorities bestow upon them, and thus amendments are frequently called for before the final assent of the Viceroy can be obtained. The municipal Bill, which was discussed at such length and with so much earnestness in Bombay, has however received the assent of His Excellency the Viceroy, and this fact was communicated to this Council at its last meeting. The Bill became law on the 14th September last. But before that assent was given, the Viceroy desired that this Government should undertake to legislate without delay in order to remove the few important objections which the Government of India entertained to some of the provisions of the Bill. The objections of the Government of India appeared to be such as this Government could without hesitation undertake to remove, and therefore it did agree to alter the few sections of the new Municipal law to which its attention was directed. The Bill which I am about to ask the Council to have read a first time has been introduced for the purpose of meeting the objections of the Government of India. The objections are few in

number and, considering the importance and the length of the Municipal Act, I may say that the amendments which are to be proposed are not of any material importance. The first relates to section 106 of the Municipal Act, which empowers the Corporation from time to time to borrow or re-borrow and take up at interest money from Government or from the public, with the sanction of the Governor in Council. Upon this the Government of India have remarked that "the Governor in Council will be aware of the terms on which the Government of India came to the assistance of the Bombay Municipality in the early days of the indebtedness of the Corporation, and of the restrictions which are imposed on the borrowing powers of similar Corporations in other parts of India. Having regard to the reasons which led to the imposition of these terms and restrictions, the Government of India are of opinion that in section 106 of the Bill the sanction of the Governor-General in Council should be substituted for that of the Governor of Bombay in Council." The effect of the amendment desired by the Government of India is that proposals as to the borrowing and taking up of money at interest will, as hitherto, be disposed of finally, not by this Government, but by the Government of India. That is provided for in section 2 of the Bill. There is a somewhat similar proposal as to section 109 of the Act. Clause (*c*) of that section relates to a matter which has been the subject of recent correspondence between the Government of India, the Government of Bombay and the Corporation. "In the opinion of the Government of India forty years and not sixty should be the maximum period within which a loan should be repaid. The limit of sixty years may stand in the Bill, as such a term may, in exceptional circumstances, be admissible, but the words 'Governor-General of India in Council' should be substituted for the word 'Government.'" Here the Government of India desire that the same power should be vested in them as heretofore to determine for what period they will allow a loan raised by the Corporation to run. For recent loans the Government of India have decided that the period shall not exceed forty years, and they have ruled that it shall be usually fixed at that number of years. It is admitted, however, that under exceptional circumstances as long a period as sixty years may be admissible and the Government of India do not wish to limit the period to forty years in the Act. What they wish is that the determination of the period shall rest with themselves. This is accordingly provided for in section 3 of the present Bill. Section 4 of the Bill relates to section 138 of the Act. It will be within the recollection of the members of this Council that section 138 relating to a special audit of municipal accounts, which may from time to time be directed by the Governor in Council, was introduced while the Bill was under consideration, by the Honourable Sir Raymond West. The question was discussed as to whether auditors should be appointed by the Corporation or by the Government, and it was decided that the auditors should ordinarily be appointed by the Corporation, but that Government might, whenever they thought it desirable, order a special audit, but that the cost of any such special audit should not, without the consent of the Corporation, be chargeable to the Municipal Fund. Upon this matter the Government of India have made the following remarks:—"The audit of municipal accounts has two objects. The first is to assure the municipal authorities themselves that their revenue is being duly brought to account; that the expenditure of their officers and servants is such as has been sanctioned by themselves or by proper order; and that the accounts presented to them contain a true statement of their transactions and affairs. The second object is to assure Government, as the authority which has conferred by legislation upon the municipal authorities certain powers of taxation and

expenditure, that the levy and expenditure of the taxes is such as has been authorised by the Legislature. This second object can only be attained by the employment of auditors independent of the Municipal authorities, and in practice the Government would not ordinarily appoint such auditors unless, upon the representation of persons interested, it has reason to believe that an enquiry ought to be made into the proceedings of the Municipal authorities. But when the Government considers that such an enquiry is necessary, it should, in the opinion of the Governor-General in Council, be entitled to charge the cost of the audit to the Municipal Fund. In this view the proviso to section 138, sub-section (1), appears to the Governor-General in Council to be open to objection" This objection appears to me to be a reasonable one, and this Government has also concurred in it. It is now therefore proposed to enact that the cost shall be chargeable to the Municipal Fund. I must say that this provision seems a very proper one. A special audit is not likely to be of frequent occurrence—probably none will be ordered at all, unless there appears to be something wrong which requires looking into—and when such an audit is directed it will be as much for the satisfaction of the Corporation themselves as of Government. The next important change is that which is effected in section 7 of the Bill The proposal there is to exclude petroleum from the articles upon which the Corporation shall be entitled to levy a town-duty. With regard to this, the reason of the objection taken by the Government of India is "that Schedule H, which includes petroleum, offends against the rule that where a duty is levied for imperial purposes town-duty should not also be taken." When the Bill to amend the Municipal law was first prepared, petroleum was not included in Schedule H at all. It was made liable to a town-duty subsequently by a special Act, which came into force on the 1st October 1886, and from that date a town-duty has been levied upon it by the Corporation. Since that, the Government of India have also thought fit to impose an imperial tax upon petroleum. There is no hardship in asking the Corporation to forego the duty upon that article and in subjecting it to the general rule that upon no article on which an imperial tax is levied shall a local tax be resorted to. The object of section 7 is to give effect to this rule. But in order that the budget arrangements of this year shall not be interfered with, section 1 provides that section 7 shall not come into force until the 1st April 1889, so that until the 31st March 1889 the present arrangements will continue under which a town-duty is levied on petroleum. I may give a few figures, which will, I think, satisfy the Council that in asking approval of section 7 of the Bill, I am not asking the Corporation to give up anything of very great value. The duty, as I have said, was introduced on the 1st of October 1886, and up to the end of 1887-88 it had been in force for eighteen months only. The figures of the year 1887-88 show the remarkable fact that the exports from Bombay of petroleum exceeded the imports into it, so that the town-duty during that year resulted in a loss. The imports were 34,15,000 gallons, and the exports 34,26,000, eleven thousand over and above the imports. The collections were Rs. 1,67,000 and the cost Rs. 1,75,000. The loss to the Corporation on this article was Rs. 3,500. Of course it may be said that the year 1887-88 was an abnormal year, and no doubt it was, because in the half-year between the 1st October 1886 and the 31st March 1887 the net revenue realised was Rs. 73,000. But the fact that in one year the tax on this article may result in a loss shows that the results of the taxation of petroleum are very uncertain indeed, and that the tax is not by any means a good one for municipal purposes. And there is every reason also for saying that it is a tax which the Municipal Corporation can very easily do without. There are

several other articles in Schedule H which are liable to town-duties, and some of those are not at present taxed at the maximum rates. In the last budget the rates on grain were reduced from five annas to two annas per khandi, sugar from seven to six, and ghee from ten annas to six per maund. So there is plenty of margin for the levy of taxes on other articles, and the exclusion of this one article will not make any real difference in the resources of the Municipality. Section 5 of the Bill amends certain sections of the Act in which an expression has been used to the effect that certain State property vests in the Secretary of State for India in Council. This is a minor point, the need for amending which can, perhaps, only be appreciated by lawyers But the Government of India have pointed out that it is incorrect to say that public property vests in the Secretary of State for India in Council. He is the person in whose name conveyances of public property in India have to be made, but that is the result of a special statute. Public property in this country, as in England, vests in Her Majesty, and the Government of India desired that "in the event of legislation being undertaken, the legal advisers of the Governor in Council should be consulted as to the propriety of describing State property as vested in or belonging to the Secretary of State for India in Council," and as to whether it was not desirable to amend the Municipal Act in this sense. This was done, and the Honourable the Advocate-General has advised Government that in his opinion the expression "vesting in the Secretary of State for India in Council," although having the pretence of conciseness, is in reality incorrect, and that it would be better to employ either the accurate expression "vested in Her Majesty" or the loose and popular expression "vested in Government." Having thus a choice between an accurate expression and a loose and popular one, I have thought it wisest to select the accurate one, and it is accordingly proposed to describe State property, in the several sections in which is mentioned, as vested in Her Gracious Majesty. One other section of the Bill, *viz.* section 6, I have inserted, but not at the request of the Government of India, in order to provide for a rather serious omission in sub-section (2) of section 308 of the Municipal Act. That section re-enacts section 196 of the previous Municipal Act of 1872 and whilst sub-section (2) of it makes provision that the Commissioner may require the removal of any structure or fixture set-up in contravention of the Act, no provision is made as to any structure or fixture set-up before the Act came into force. The consequence would be that if the Commissioner served a notice upon a person to remove any offending structure or fixture, he might be met with the reply, "I put it up before the Municipal Act came into force, and therefore under section 308 you cannot compel me to remove it." In order to prevent any such legal quibble I propose to refer to section 196 of the Municipal Act of 1872 in section 308 (2) of the Act as well as to the new Act itself. These are the whole of the proposals of the Bill as it stands, and I beg to move that it now be read a first time.

Bill read a first time.

The Bill was then read a first time.

Mr Naylor moves the second reading of the Bill.

The Honourable Mr. NAYLOR :—Your Excellency,—As this is the last sitting of this Council at this time of the year and the Government of India have asked us to legislate at once and it is desirable that the Act should be passed without delay—especially on account of the amendment I last spoke of, I hope the Council will not object to standing orders being suspended and to the Bill being proceeded with through all its stages to-day.

The Honourable Mr. SAYANI said :—Your Excellency,—Before the standing orders are

suspended and the Council read this Bill a second time, I wish to say that a good deal of discussion took place upon several matters concerned, and I would like to make a remark as to sections 4 and 7. As the Honourable Mr Naylor has stated, these are the two most important points—one dealing with the question of the audit, the other the deprivation of the Corporation of the power to levy a tax upon petroleum. As to the former, a great deal of discussion took place when the matter was before this Council, and it was a sort of a compromise that the Municipality should have its own audits at its own expense, but that if Government desired to have the Municipal accounts audited it should not without the consent of the Corporation charge the expense of such additional audit to the Municipality. But now it is proposed to impose the burden upon the Municipal Funds, and I submit that before that is passed into law it is right that the Municipal Corporation should be allowed to make what representation they may think fit upon the subject. In the same way with respect to section 7, I submit that it is also fair that the Municipal Corporation should have an opportunity of making any representation they may think proper. No doubt, as a matter of fact, there has been a loss on the tax on petroleum. But one year there may be a good deal of profit and the next year a loss That is simply a question affecting the merchants. They may import in one year a great deal more than there is immediate demand for, and a great deal of it may be re-exported. But if an average were taken, I think some profit would be shown, otherwise there would be no necessity for levying a tax for any purpose whatever. The Honourable Mr Naylor said that even with petroleum removed from the schedule there are still several other articles in the same category, on which the Corporation may increase their imposts. But these are articles of a class that the Corporation always feel very reluctant to increase imposts upon, therefore I think the Corporation should have an opportunity of making representations before the Bill passes. No doubt it is introduced into this Council in accordance with the promise to the Viceroy; but I take it there is no necessity to pass it immediately, and without the Corporation having an opportunity of expressing their views.

The Honourable Mr. NAYLOR:—With regard to the removal of petroleum from the schedule of dutiable articles, no doubt it is desirable that the Corporation should have power to spread its net and make it as far-reaching and as easy to fill as possible: and if it were merely a question as to whether one or two articles should be inserted in the schedule, I would have two instead of one But the question is not one of that nature: it is whether an article upon which the Government of India levies a tax—an imperial tax—shall also be subject to local taxation. I think whatever representation might be made by the Corporation on this point, this Council would be inclined to give heed to the desires of the Government of India. Any additional taxation which the Corporation wishes to levy may be distributed over the other articles in Schedule H, without any great injustice to any class of the community. The loss occasioned by the prohibition of a tax on petroleum may easily be recouped by an increase of the duties on other articles. Only last year the tax on grain was reduced from 5 annas to 2, on sugar from 7 annas to 6, and on ghee from 10 annas to 6 annas per maund. Therefore the Council, I think, may safely hold that no necessity has been made out for deferring the further progress of the Bill on this score. As regards the other point, it is one which relates to a principle, and even if the Council were in possession of the views of the Corporation concerning that principle, it would still be a matter which we must decide according to our views of right and wrong. I think therefore that the grounds urged for delay are insufficient. I would add

that the Bill was published on the 22nd September, fourteen days ago, and if the Corporation had desired, they might have made a representation on the subject of it ere now. They have not been without time for this; there has been a meeting of the Corporation in the meantime, but I speak in the presence of the President of the Corporation, who will correct me if I am wrong, I believe no mention was made at that meeting of any desire to have any alteration made in the Bill. One reason of great importance why we should pass the Bill to-day is, as I have already said, the need for the early enactment of the section which refers to section 308 of the Municipal Act, and another is the urgency of the amendment of which I have given notice to-day, which is to provide for the continuance of the rates and taxes which have been sanctioned by the Corporation for the current year. The Solicitors of the Corporation have pointed out the urgent necessity of this amendment, and it is very important there should be no avoidable delay in its passing into law.

The Honourable Mr. FORBES ADAM:—Your Excellency,—I certainly sympathise with the principle that no Bill which is of interest to the public, after being read for a first time, should be further proceeded with without an opportunity being given to those interested of expressing opinions and passing criticisms. And although the fires which once raged so fiercely have now almost burned out and have only strength left to emit an occasional faint and feeble flicker, still the Bill before us does include matters interesting to those watching municipal affairs, and it is not unreasonable that they should wish to be heard. I believe, nevertheless, that nothing can be gained by further delay, and it will be well if to-day we should pass this measure. There are, as the Honourable Mr. Naylor has said, several important reasons why the Bill should become law as speedily as possible. But one or two observations occur to me. As to the clause affecting petroleum which the Honourable Mr. Sayani has called attention to I would like to remark that petroleum might well bear both an imperial and a local tax. On the other hand, the Corporation is perfectly able to provide for sufficient taxation without resorting to petroleum. As to loans the Government of India wish to retain control in their own hands as before. Of course, they have a right to wish that; but recent experience has shown that occasionally in dealing with the loans of the Corporation they have not exhibited that consummate wisdom which has generally been associated in the public mind with the decisions of the finance department at Simla. The Tansa loan furnishes an instance—the first portion runs for sixty, the latter for forty years. The work will last for centuries probably and will eventually bring in a large revenue. But it must be paid off within a comparatively brief period, and you have one and the same loan running for two different terms, which financially is exceedingly undesirable and inconvenient. The Government of India can have no special love or particular predilection for forty years, for they have just sanctioned a Madras loan for fifty years. They should I think lay down some broad principle for the guidance of corporations and others, and not let such matters be entirely at the mercy or the caprice of the head of the department for the time being. My opinion is that the local Government, being more in touch with the nature of the works for which loans are wanted, should have the power to determine the conditions. They would be in a better position to judge. With regard to section 138 and the special audits, I think the Municipality should pay the cost. It was a compromise. I was in favour of the Corporation appointing their own auditors; but that was overruled by a majority of this Council. As it now stands in the bill under discussion, seeing that the power is given to the Government to appoint

special audits, I should like to have had something put in to limit the number of such audits in the life-time of a Corporation. These are points which I consider are of importance, but at the same time having considered the matter very fully and carefully I have come to the conclusion that there is nothing to be gained from delaying the passing of the Bill to-day.

His Excellency the PRESIDENT:—Does the honourable member wish to press his objection?

The Honourable Mr. SAYANI:—I only wished to make the suggestion, your Excellency, but seeing that the majority is against me I will not press it to a division.

His Excellency the PRESIDENT:—The only thing I wish to say is that, I hope, the honourable member will understand that if this Bill was due solely to the initiative of this Government I should be willing to postpone it. I have previously shown that nothing is further from my wish or from the wishes of this Government than to prevent the Corporation from considering carefully measures affecting the interests of Bombay; but we are in rather a curious predicament—the real honourable mover is absent; this Bill is in the position of an orphan; its parents are not here, and having promised to the Government of India to legislate without delay, the honourable member will see that it is absolutely necessary that this Bill, in accordance with that promise, should become law as soon as possible.

Standing orders suspended and Bill read a second time.

Standing orders were then suspended and the Bill was read a second time.

Bill considered in detail.

The Honourable Mr. NAYLOR moved the addition to the Bill of the following section:—

Section 8. For Section 9 of the Schedule R annexed to the said Act, the following section shall be deemed to have been substituted from the date on which that Act came into force, *viz.*:—

"9. (1)—The several rates, taxes, tolls, and duties the rates for levy of which were fixed by the Corporation under the said Acts for the period during which any such budget estimate is in operation shall, subject to the provisions of Section 196, be leviable in respect of the said period, as if the rates for levy thereof had been determined by the Corporation under this Act, nothwithstanding that the said rates, taxes, tolls and duties, or any of them, may have been fixed at rates or on articles at or on which corresponding taxes are not imposable under this Act.

Rates and taxes sanctioned for the current year in which this Act comes into force to continue leviable for that year.

(2)—Sections 144 and 145 shall have operation on and from the first day of April 1889, only; and the sums payable to the Corporation in respect of the period aforesaid by the Secretary of State for India in Council or by the Trustees of the Port of Bombay in lieu of property rates, under the said Acts or under, section 36 of the Bombay Port Trust Act, 1879, respectively, shall be paid as if this Act had not been passed." Bombay VI of 1879.

The honourable gentleman remarked:—I have already alluded to this motion the object of which is the substitution of a new section for section 9 of Schedule R of the Municipal Act. The schedule in question contains sundry provisions which do not form a part

of the permanent enactment. They are temporary provisions for facilitating the transition from the old state of things under the repealed Municipal Acts to the new state of things under the new Act. Section 9 at present is :—

"9. The decision of the corporation under the said Acts as to the rates at which property-taxes and the rates at which and the articles on which town-duties shall be levied during the time for which any such budget-estimate is in operation, shall, subject to the provisions of section 196, have the same validity as if this Act had not been passed."

Sanction of property-taxes and town-duties given before this Act comes into force to continue valid.

The object of amending the section is to substitute for it one which covers all rates and taxes for the current year and also to make provision that the liabilities of the Secretary of State in Council, *i. e.* of the Government and of the Port Trust, shall continue the same up to the 31st March last as if the Act had not been passed. By an oversight which it is difficult to account for, the present section 9 omits to mention the tax on carriages and animals and is otherwise not sufficiently comprehensive. Mr. Leslie Crawford, the Solicitor to the Corporation, has approved the new section ; so also has the Municipal Commissioner, and I think the Council will have no difficulty in accepting it.

The amendment was accepted.

Bill read a third time and passed.

On the motion of the Honourable Mr. NAYLOR the Bill was then read a third time and passed.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Right Honourable the Governor in Council,

J. J. HEATON,

Secretary to the Council of His Excellency the Governor of Bombay for making Laws and Regulations.

Poona, 6th October 1888.