

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

1878.

VOLUME XVII.

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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 Tuesday the 29th January 1878, at noon.

P R E S E N T :

His Excellency the Honourable Sir RICHARD TEMPLE, Bart., G.C.S.I., Governor of
Bombay, *Presiding.*

His Excellency the Honourable Sir CHARLES STAVELEY, K.C.B.

The Honourable J. GIBBS.

The Honourable L. R. ASHBURNER, C.S.I.

The Honourable the ADVOCATE GENERAL.

The Honourable E. W. RAVENSCHROFT, C.S.I.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK, C.S.I.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable Colonel W. C. ANDERSON.

The Honourable WALTER LANG.

The Honourable DOSABHOY FRAMJI, C.S.I.

Papers presented to the Council. The following papers were presented to the Council :—

1. Letter from Messrs. Hormusji Cursetji, Bomanji Cursetji, and Heerjibhoy Cursetji, administrators to the estate of the late Mr. Cursetji Cowasji, dated 26th November 1877, forwarding for the consideration of the President and Members of the Legislative Council copy of their memorial, dated 3rd November 1877 (with an Appendix), addressed to His Excellency the Governor in Council, on the subject of the General Abkari Bill (No. 3 of 1877).
2. Petition from Mr. Nanabhoy Byramji and others, dated 22nd November 1877, regarding the General Abkari Bill (No. 3 of 1877).

3. Letter from the Secretary to the Chamber of Commerce, dated 18th December 1877, submitting for consideration a representation on the subject of the Town Duties levied by the Municipality of Bombay under the Bombay Municipal Act of 1872.
4. Petition from the Bombay Association, dated 23th December 1877, regarding the General Abkari Bill (No. 3 of 1877).
5. Letter from the Chairman, Municipal Corporation, Bombay, dated 7th December 1877, submitting a resolution passed at the meeting of the Corporation held on the 4th instant, relative to the provision made in the General Abkari Bill (No. 3 of 1877) to repeal Bombay Act IX. of 1867.
6. Petition from the Bombay Association, dated 25th January 1878, submitting representations regarding the Bombay Municipal Act Amendment Bill (No. 6 of 1877).

The Honourable Mr. ASHBURNER moved the first reading of Bill No. 1 of 1878 (A Bill for the licensing of trades and dealings in the Presidency of Bombay). Mr. ASHBURNER said: Your Excellency and the

Mr. Ashburner moves the First Reading of the Bombay License Bill.

honourable members of the Council are aware that during the last 20 years some of the most fertile and populous districts of India have been devastated by famine. The North-West Provinces have been visited by famine twice; and Bengal has been visited twice, on one of which occasions the province of Orissa lost one-fourth of its inhabitants by famine. Rajputana has also had its famine,—in 1869 it lost an estimated number of a quarter of a million of inhabitants; and last year Madras and the southern districts of Bombay were visited by a famine, the severity and extent of which were beyond anything of which we had any previous experience; but owing to the energy with which it was met, the profuse expenditure of capital, the devotion of our public officers, and the charity of the public of England, the mortality was comparatively trifling. Experience has taught us to believe that famines are one of the ordinary incidents of administration to be provided for in India; but as omelettes are not to be obtained without breaking eggs, neither can famines be combated without profuse expenditure of money. How to raise this money in a manner the least oppressive to the people, has been the anxious consideration of Government for the last few months. After mature consideration it has been decided to raise it by re-establishing the taxes on trades which were abolished by Act XIX. of 1844, I think. This tax falls upon a class who, with the exception of a trifle contributed to the Customs and to Salt, actually pay nothing into the public treasury,—nothing for that security of life and property to which, in fact, they owe their prosperity. They are, therefore, very legitimate subjects for taxation. The tax will take the form of a license; but although the traders will be divided into classes according to their trades, there will be none of those inquisitorial proceedings which rendered the Income Tax so unpopular. The only approach to an inquiry will be at the instance of the trader himself, who, if he thinks he is over-assessed, can produce his books as evidence to show that the assessment exceeds 2 per cent. of his net earnings. With this exception there will be no inquiry whatever. The maximum of the tax will be Rs. 200 and the minimum Re. 1, subject to modification in the Select Committee. I may be expected to state

how we propose to expend the money we shall raise by this tax. In reply, I may refer to the able exposition of the policy of the Government of India which appears in Sir Andrew Clarke's speech before the Vice-regal Council, but I may summarise it by saying we propose to spend it in three ways,—in water-ways, in railways, and in road-ways. I apologise for the inadvertent pun. We do not propose to allow gentlemen who have what I may call "water on the brain" to ride their hobbies at our expense, but if they feel confidence in their schemes, we shall be prepared to listen to them and to give them every assistance and support in carrying them out. We, however, with this reservation, propose to push on works of irrigation and navigation wherever they are practicable. Experience has taught us that facilities for communication are all that is necessary to enable us to combat famines successfully. During the late famine it was found that wherever there were communications, that was quite sufficient. The ordinary operations of trade did all else that was necessary; the surplus food of one district was conveyed to the starving population of another with the utmost certainty and precision. With these observations, I beg to move that the Bill, which has been published in the *Government Gazette*, be read a first time.

The Honourable Mr. LANG said—As I intend to vote against the first reading of this Bill, I desire to make a few remarks. Any legislation which has for its object the raising of taxation for the general benefit of the country at the expense of a portion of the community is, I think, unjust. The Statement of Objects and Reasons for the Bill, and the clause in the Bill which sets forth the purposes to which the funds raised by this taxation are to be applied, lay down that the application of such funds is for the mitigation and prevention of future famines. I can imagine no object for which all classes of the community should be more rightly called upon to contribute than this. Sir John Strachey, in his attempt to prove that the burden for the object of this taxation should fall on the industrial classes of India, stated that the general prosperity of these classes in Bengal has been immensely increased by the late famine in Madras. I am not in a position to controvert that statement as regards Bengal, but as regards the Bombay Presidency and, I think, the Central Provinces, I believe a great deal of the benefit which has resulted from the enhanced prices of grain has been reaped by the cultivating or producing class (except, of course, in the famine area)—a class which it is not intended to touch by this new taxation. Almost throughout the great grain-exporting centres during the famine prices were very high, and in many cases they were much higher than in the famine districts, and the trading classes in consequence very frequently suffered severe losses in their ventures. They not only suffered losses in that respect, but they also suffered very considerable losses in consequence of the railways on this side of India being perfectly incapable of carrying their grain to the famine districts, except with a delay of weeks, and often months. I think, therefore, that the great benefits which are stated to have been so marked in Bengal from the late famine have not been realized in this presidency. Sir John Strachey appears to have argued that enhanced prices of food grains must necessarily mean enhanced profits to the trading classes, but I think that those best qualified to judge of these matters will admit that high prices of grain very often lead to heavy losses amongst the trading classes. High prices no doubt enrich the producer and some others, but I object to the conclusion that they must necessarily enrich the trading classes generally. Sir John Strachey also argued that because, in times of famine, very few priests, and schoolmasters, and lawyers, and people with fixed incomes, come on famine works,

and because the poorer classes of traders and artizans do, therefore these independent classes should be exempted from contributing their fair share towards the alleviation and prevention of such distress in the future, and that the class which is immediately affected by famine, and the class which, according to Sir John Strachey, benefits so largely from famines, should alone bear the burden of this taxation. As I have already stated, there is no doubt that eventually the class which benefits most by famines is the producing class (except in the famine area); but if that class is already heavily taxed, it is no doubt perfectly fair to exempt them from further taxation. At the same time I consider that all other classes of the community, who are subjects of the same Government, and who alike share in the protection and advantages which accrue from that Government, should contribute alike, proportionately, their share to the general tax which it is found necessary to impose on the country. But even accepting the arguments of Sir John Strachey, I should like to know how the following tradesmen, &c., can profit by famines. These are mentioned in the schedule of the Bill introduced by Mr. Ashburner:—Companies registered under the Indian Companies' Act of 1866; owners of cotton screws; persons keeping shops for the sale of European goods; hotel-keepers; wholesale dealers; dealers in precious stones; sugar-refiners; cloth-sellers; metal-vessel sellers; fuel sellers; letters out of conveyances and cattle; contractors; printers and publishers; manufacturers of lack; brokers; bill-brokers; dealers in gold and silver lace; druggists; harness-makers; and dealers in metals not being merely artizans, I say, without any hesitation, that all these occupations and trades, instead of profiting by a famine, lose immensely by it. The only people mentioned in the schedule, then, even according to the argument of Sir John Strachey, who *can* profit by famines, are bankers, professional money-lenders, commission agents, pawn-brokers, and money-changers. Are these people alone to be taxed for the benefit of the country? Even although a dealer in grain may profit by a famine, there is no reason why a dealer in precious stones should profit by a famine also. The argument used on this point appears to me to be very much this,—that, supposing England was involved in a war, and a number of contractors made a vast sum of money out of Government in consequence of taking up war contracts, Government should, therefore, afterwards say to them, “It is necessary for us to raise extra taxation for the increase of our army, and as you have made large profits out of your war contracts it is our intention to tax, not only you, but every one in the country who calls himself a contractor.” If there is any one industry in Bombay which is at present in great straits, it is that of the cotton presses. They are already taxed for the Cotton Frauds Department and for the Boiler Inspection Department, and a great many of the companies are at present considering how they can best dispose of their property, even at a ruinous loss, and so close their works. And yet these cotton presses are amongst the objects specially singled out for this new taxation, while the professional classes of the country, who, we all know, enjoy the largest incomes and the greatest prosperity, are entirely exempted. On these grounds, therefore, and on the ground that the Bill is opposed to all equitable principles of taxation, I shall oppose the first reading. On the other hand, I shall be very happy to support any measure that may be introduced, whereby all classes of the community alike may be taxed for the objects of this Bill, admitting, as we all must, that the raising of funds for the mitigation and prevention of famines is a necessity.

The Honourable Mr. MANDLIK—I think that persons coming under Class III. in the schedule of this Bill are already so heavily taxed by the last Salt Act, that I think, espe-

cially during the next two or three years, it would be very inadvisable to tax them further for any purposes whatever. With regard to the remaining classes, I agree generally with what the Honourable Mr. Lang has said, and it is unnecessary for me, after his speech, to explain my views further.

The Honourable Mr. ROGAY—As the introduction of this License Tax Bill into the local Council invites criticism on the financial policy of the Government of India, I will, with your Excellency's permission, offer a few remarks on the general policy of the Government of India, as well as on the question of advisability of passing this special legislative enactment in this presidency. Sir John Strachey, in his speech, stated that it would have been very light work for him if retrenchment were possible in the civil administration of the country, and he challenged any one to show any branch of the service where retrenchments were possible without detracting from the efficiency of the service. To frame a regular reply to this challenge a great deal of information would be necessary, which is not readily obtainable; but I think a general reply will be quite enough to show that retrenchment and reduction can be made if it is the policy of the Government to do it, that is to say, by not creating new offices further than is absolutely necessary. Honourable members are aware that we had two Revenue Commissioners in the Presidency of Bombay, and a third one has been appointed. If economy had been the policy of Government, they would not have been justified in creating in such a financial year a third Revenue Commissionership, which means £5,000 a year additional expenditure from the revenues of India. I hope Government will lose no opportunity of retrenching and remodelling in all their departments with a view to bringing about a financial equilibrium. To bring about a financial equilibrium we must resort, in the first place, to additional taxation. It is the duty of every Government to reduce its public expenditure, and when it finds that it cannot in this way meet the difficulty before it, in that case alone it is justified in resorting to additional taxation. This year being of an exceptional character, I would not object to pay my quota towards famine expenditure. I think that every one of us ought to be thankful to the English nation in general, who contributed so generously to the relief of our poor countrymen, and to the Anglo-Indians who, as trustees of this vast Empire, tried their best to mitigate the sufferings of the people. The License Tax proposed to be levied by this Bill touches the pockets of certain classes of persons, but leaves Government servants and some others who enjoy equal protection and prosperity under the rule of our Gracious Sovereign without their pockets being touched at all. The principle of such a tax should be that every subject of Her Majesty in India should contribute to the support of the relief measures taken by Government and to meet the financial difficulty brought about by the periodical visitations of famine in India. A License Tax in that case on the same principle as that of 1867 would be a far better kind of tax than the one now proposed. That touched the pockets of all classes without subjecting them to inquisitorial proceedings as was the case with the Income Tax. This License Tax now proposed would affect the third class of traders, &c., named in the schedule very injuriously. Taking the average income of persons of this class as Rs. 100, they will be called on to pay Rs. 5, or 5 per cent. of their income, which is more than the last Income Tax amounted to. The application of the License Tax to people, especially poor classes of people, who are already contributing their quota to the famine expenditure by paying a higher salt tax, will make it a double impost. I should be happy to see a tax on incomes above a certain amount introduced throughout India. To call on people to pay their share by way of an income tax would

be the most equitable form of taxation, with all its disadvantages. It is necessary in certain cases of national calamity to submit to such disadvantages. The Local Governments, by Sir John Strachey's policy, are to be entrusted with powers for reduction of expenditure as well as for the collection of revenue, and for providing means for protecting the people against famine. Sir John Strachey says :—

“When I endeavoured to explain to the Council nine months ago the measures taken by the Government at the beginning of the present financial year, I pointed out that the essential principles underlying the whole of the changes of system then made were these: we asserted the necessity of enforcing, so far as this was practicable, the responsibility of every great province of the Empire for meeting its own local wants; we gave to the Local Governments largely increased powers; we gave them, for the first time, a direct interest in the development of the revenues; and we gave them, at the same time, strong incentives to economy. And among the responsibilities thus transferred to the Local Government, we included one, perhaps the greatest and the most important of all, that of providing the means of protecting the people of their own provinces against famine, and of meeting, to the full extent of what was possible, the cost of relief when famine actually occurred. To this policy we firmly adhere. It has received the cordial approval of Her Majesty's Government in its main outlines, and through its extension and development it is that we propose to apply the measures we now contemplate.”

That being so, and the responsibilities of the Local Governments being increased by the Government of India, I think there ought to be some provision by which the surplus which will be available from the imposition of this License Tax, or any other tax which may be imposed, may be devoted to the purposes mentioned. As our responsibilities are increased, we ought to have sufficient funds to enable us to meet those responsibilities. But section 22 of the Bill says :—“The amount so credited shall be applied, in such manner as the Governor General in Council thinks fit, for the purpose of defraying expenditure incurred or to be incurred for the relief and prevention of famine in any of the territories administered by the said Government, or, if the Governor General in Council so directs, in any other part of British India.” I now come to the question of the exemption of Government servants. No one can deny that the Government servants suffer on account of the high prices which rule in times of famine, but other classes of persons suffer proportionately, and I do not see any reason for exempting officials when the poorest classes of people are called upon to contribute to famine expenditure. I am opposed to this Bill as it stands, because it does not bring all classes under its operation, and it will press more harshly on the poor than on the rich.

On the motion being put to the vote, it was carried by 7 to 3, the order of voting being :—

Ayes.

His Excellency Sir CHARLES STAVELEY.
The Honourable Mr. GIBBS.
The Honourable Mr. ASHBURNER.
The Honourable the ADVOCATE GENERAL.
The Honourable Mr. RAVENSCROFT.
The Honourable Colonel ANDERSON.
The Honourable Mr. DOSABHOY FRAMJI.

Noes.

The Honourable Mr. MANDLIK.
The Honourable Mr. ROGAY.
The Honourable Mr. LANG.

The Bill was accordingly read a first time, and, on the motion of the Honourable Mr. Ashburner, a Select Committee, consisting of the Honourable Mr. Gibbs, the Honourable Mr. Lang, the Honourable Mr. Ravenscroft, the Honourable Mr. Dosabhoj Framji, and the Mover, was appointed to consider the Bill, with instructions to report by Friday the 1st February.

His Excellency the PRESIDENT then adjourned the Council till Friday the 8th February.

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

JOHN NUGENT,
Under-Secretary to Government,

Embay Castle, 29th January 1878.

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 Friday the 8th February 1878, at noon.

P R E S E N T :

His Excellency the Honourable SIR RICHARD TEMPLE, Bart., G.C.S.I., Governor of Bombay, *Presiding.*

The Honourable J. GIBBS.

The Honourable L. R. ASHBURNER, C.S.I.

The Honourable the ADVOCATE-GENERAL.

The Honourable E. W. RAVENSCROFT, C.S.I.

The Honourable NAGODA MAHOMED ALI ROGAY.

The Honourable Colonel W. C. ANDERSON.

The Honourable WALTER LANG.

The Honourable DOSABHOY FRAMJI, C.S.I.

The following papers were presented to the Council:—

1. Report of the Select Committee on the "Bill for the Licensing of Trades and Dealings in the Presidency of Bombay."

Papers presented to the Council.
2. Letter from the Secretary to the Government of India, Legislative Department, No. 171, dated 1st February 1878, returns, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of "The City of Bombay Abkari Bill." Forwards at the same time the observations of the Government of India on certain provisions in the Bill.
3. Petition, dated 5th February 1878, from Messrs. Sorabji Byramji, Bhimjibhoj Byramji, and Dinshaw Byramji, owner of the village of Chendowli, in Taluka Salsette, Zilla Tanna, regarding the General Abkari Bill (No. 3 of 1878).
4. Petition from Mr. Ardaseer Framji Moos, receiver to the estate of the late *Framji Cowasji*, dated 17th February 1878, praying for a modification of Section 63 of the General Abkari Bill (No. 3 of 1877).

The Honourable Mr. ASHBURNER moved that Bill No. 1 of 1878 (A Bill for the Licensing of Trades, Dealings, and Industries in the Presidency of Bombay,) be read a second time, and said he intended to move subsequently that the standing orders be suspended and the Bill be read a third time and passed. He might perhaps apologise for this somewhat rapid proceeding, but the fact was that it was now the middle of February and they had to put the machinery of the Bill into working order before the 1st of April. It was absolutely necessary, in view of the financial situation, that the Bill should be passed without a moment's delay.

Mr Ashburner moves the second reading of the Bombay License Bill.

The Honourable Mr. ROGAY:—Before the motion is put I should like to know when the Bill will come into operation—whether it will count from the 1st January or from the 1st April.

The Honourable Mr. ASHBURNER:—It will be calculated on the year now current, which ends with the month of March.

The Honourable Mr. ROGAY:—That being the case, would it not be better to postpone the consideration of the Bill in accordance with the memorial that has been sent to Government by several influential members of the community? I beg to move that the consideration of the Bill be adjourned for a fortnight or a month. I believe a public meeting is to be held immediately. If the object of the Bill had been to collect taxes from the month of January, it would be necessary to pass it with all due haste, but as the official year does not commence before April, we have plenty of time before us.

The Honourable Mr. ASHBURNER:—I am compelled to oppose the honourable member's proposition. On account of the extreme pressure of financial affairs, as I have just said, there are only about six weeks between the present time and the 1st of April, and it is a very serious matter undertaking to introduce a large measure of this kind over the immense tract of country we have to deal with. I therefore submit that it is absolutely necessary that the Bill should be passed without a moment's delay.

The Honourable Mr. LANG failed to see any good reason why the consideration of the Bill should not be postponed for a short time, because if it were passed eventually, the money could still be collected and the Government would not suffer.

The Honourable Mr. DOSABHOY FRAMJI:—As the Bill now stands it will be necessary to prepare a list of the tax-payers throughout the City of Bombay before the 1st of April, and if the Act is not passed at once it will not be possible to bring it into operation by that time. There are 40,000 tax-payers in the city of Bombay, and the preparation of the list will be a work of great labour and considerable time. *

The Honourable Mr. LANG:—The preparation of the list might be proceeded with without the Bill being finally passed, could it not?

The Honourable Mr. ROGAY said he had no objection to the Bill being read a second time and its further consideration postponed.

His Excellency the President then put the motion that the consideration of the Bill be postponed for a fortnight, which was lost, only Mr. Rogay and Mr. Lang voting for it.

The Honourable Mr. ASHBURNER's motion that the Bill be read a second time was next put and carried.

The Bill was accordingly read a second time. The Bill was next considered in detail, when the Honourable Mr. ASHBURNER moved that the following words be added to Section X, viz., "and in the event of his failing so to do will be liable to the penalty prescribed in Section XV." Mr. Ashburner said the object of this amendment is merely to specify the penalty that would be incurred by any person who failed to apply for a license. He would be fined three times the fee that he would otherwise have been liable to pay.

The Bill read a second time, and considered in detail.

The Honourable Mr. ROGAY said he did not understand the object of this amendment. It appeared to him that it would be to the interest of the man to take out a license without the fear of a penalty.

The amendment was put to the vote and adopted.

The Honourable Mr. ASHBURNER moved that the Bill be now read a third time and passed.

The Honourable Mr. ROGAY:—I oppose it.

On the motion being put to the vote it was carried. The order of voting was:—

Ayes.

The Honourable Mr. GIBBS.

The Honourable Mr. ASHBURNER.

The Honourable the ADVOCATE-GENERAL.

The Honourable Mr. RAVENSCROFT.

The Honourable Colonel ANDERSON.

The Honourable Mr. DOSABHOY FRAMJI.

Noes.

The Honourable Mr. ROGAY.

The Honourable Mr. LANG.

The Bill read a third time and passed. The Bill was accordingly read a third time and passed.

The Honourable Mr. ASHBURNER:—I have next to propose certain amendments of the General Presidency Abkari Bill (No. 3 of 1877). I beg to move that Section XI. be amended as follows:—that in lines 7 and 8, the words “any liquor or intoxicating drug” be substituted for “toddy or of any spirituous liquor”; that in line 13 the words “any liquor or intoxicating drug” be substituted for “toddy or any spirituous liquor”; and that the following paragraph be added to the section—“provided further that it shall be lawful for the Governor-General in Council or for the Governor of Bombay in Council to exempt any liquor or intoxicating drug from any duty to which the same may be liable under either of the said sections, or under any of the other provisions of this Act.” Mr. Ashburner said the first two amendments were unimportant, but would bring the wording of the section into harmony with the rest of the Bill. The object of the proposed addition to the section was to avoid a conflict between this Abkari Bill and the Customs Act.

The Presidency Abkari Bill further considered in detail.

The above amendments were adopted.

The Honourable Mr. ROGAY said he had to propose an amendment to Section 15, of which he had not time to give notice. It was an amendment which his honourable and learned friend Mr. Mandlik had wished to move; and as Mr. Mandlik was not able to be present, he would ask His Excellency's permission to move it. The amendment was that line 4 of that section—“no toddy shall be drawn from any tree,” be omitted. Mr. Rogay quoted a passage from the “Wealth of Nations” to show that in England the excise laws applied only to liquor offered for sale, and not to liquor distilled for the private use of the distiller. He thought a man had a right to draw toddy from his own tree for his own consumption without being taxed.

The Honourable Mr. GIBBS:—The practical objection to this is that if the owner will promise to drink all the toddy drawn from a tree there would not be any objection. But as I do not think he could drink it all, and of course what remained would ferment and become spirits, the adoption of this amendment would lead to great inconvenience.

The Honourable the ADVOCATE-GENERAL opposed the amendment as contrary to the whole principle of the Bill.

The Honourable Mr. RAVENSCROFT opposed the amendment because it cut distinctly at the root of the whole Bill. Unless a strict supervision could be kept over every tree that was to be taxed, illicit consumption of toddy and spirituous liquors would be entirely beyond control, and the whole purpose of passing this Bill would be set at naught. Therefore he hoped that the Council would throw out the amendment.

The Honourable Mr. ASHBURNER wished to add nothing to what had already been said by the Honourable Mr. RAVENSCROFT and the ADVOCATE-GENERAL.

The motion was then put to the vote, and was lost.

The Honourable Mr. ASHBURNER proposed that in Section 23, line 5, the words "or if the trees are tapped without license" be inserted after the word "him." The honourable mover said this merely simplified the wording of the section, and made clear what was intended by it.

The amendment was carried.

It was resolved, on the motion of the Honourable Mr. ASHBURNER, that the following be substituted for Section 24, viz.:—"When any duty is recovered under the last preceding section from the owner of the trees, he shall be entitled to assistance in recovering the same from the holder of the license under the provisions of the law for the time being in force relating to the recovery by superior landholders of their dues from their tenants;" and that in Section 28, lines 16 and 18, for the words "liquor other than unfermented toddy or English or foreign wines, beer, and spirits," the following words be substituted—"country liquor other than unfermented toddy."

The Honourable Mr. ASHBURNER also moved that the following sections be added to the Bill, after Section 29, viz. :—

"29A. All or any of the duties leviable under this Act in any local area may, with the sanction of Government, be farmed, subject to such payment and on such other conditions as Government shall prescribe.

"29 B. When any amount is due to any such farmer from such farmer's licensee in respect of a license, or to any farmer of the right of drawing toddy from any person who has drawn toddy from any toddy-producing tree, such farmer may apply to the Collector to recover such amount on his behalf; and the Collector may, in his discretion, recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant:

"Provided that the execution of any process issued by the Collector for the recovery of such amount shall be stayed if the person from whom it is sought to recover the same institutes a suit in the Civil Court to try the demand of the farmer and furnishes security to the satisfaction of the Collector for the payment of the amount which the Court may adjudge to be due from him to such farmer;

"Provided also that nothing contained in this section or done thereunder shall affect the right of any such farmer to recover by suit in the Civil Court or otherwise any amount due to him from any such person as aforesaid.

“29 C. When any person in compliance with any provision of this Act, or with any rule made hereunder, gives any bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, Section 74, and upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.”

Mr. Ashburner said the object of the first additional section was to take advantage of the experience of the local liquor contractors, who, being up to all the tricks of the trade, would be able to counteract the manœuvres of the smugglers. The second additional section would tend to prevent litigation and to enable the farmer to recover by summary process what he would otherwise have to recover through a Civil Court. The third additional section which he had proposed required no remark.

The Honourable the ADVOCATE-GENERAL called attention to the fact that the proposed Section 29 C, as framed, might conflict with the Indian Contract Act, which was an Act of the Government of India. He did not think there was any necessity to refer to that Act at all in this section.

The Honourable Mr. ASHBURNER:—Do I understand you to say that there would be conflict?

The Honourable the ADVOCATE-GENERAL:—There might be, and I think it is always well to avoid the chance of any such collision.

The Honourable Mr. ASHBURNER proposed, as the Bill could not be finally passed at the present meeting, to restrict his motion to Sections 29A and 29B, and to allow 29C to stand over for consideration by the Honourable the Advocate-General.

Sections 29A and 29B were accordingly adopted, and the consideration of Section 29C was postponed.

It was further resolved, on the motion of the Honourable Mr. Ashburner, that in Section 32, line 10, after the word ‘acting’ the words ‘with his express or implied permission’ be inserted.

That the following be substituted for Section 34 of the Bill, viz. :—

“34. All duties, taxes, fines and fees leviable under any of the foregoing provisions of this Act, or of any license, permit, or pass issued under it, and all amounts due from any farmer under this Act may be recovered from the person primarily liable to pay the same, or from his surety (if any) as if they were arrears of land-revenue.”

That in Section 43, line 21, after the word ‘drug’ the word ‘or’ be added.

That in Section 45, line 26, after the word ‘distillery’ the word ‘or’ be added.

That the words ‘if any’ in line 29 of Section 54 be struck out.

That the word ‘and’ in line 43 and the word ‘then’ in line 45 of Section 63 be struck out.

The Honourable Mr. ROOPE:—I have to propose an amendment to this Bill—a most important amendment. I do not know whether honourable members have received copies of a letter addressed by the Chairman of the Corporation to Government with regard to the repeal of Act IX. of 1867.

The Honourable Mr. ASHBURNER :—That subject is under the consideration of the Executive Government, and is the reason why the Bill cannot be passed through the third reading to-day. We intend to insert a provision guaranteeing to the Corporation all the rights and privileges they enjoy under Act IX. of 1867. If you will wait a few days you will find that your wishes have been anticipated.

The Honourable Mr. ROGAY :—Then I shall be glad to postpone my amendment. I did not know that.

The Honourable Mr. GIBBS moved that the following para. be substituted for the second para. of section 1 of the Bombay Municipal Act Amendment Bill, No. 6 of 1877, viz., “so much of this Act as relates to any rate or tax leviable by the Corporation, other than town duties, shall be deemed to have come into force on the 1st day of January 1878; the rest of this Act shall come into force on the passing thereof.”

The Bombay Municipal Act Amendment Bill further considered in detail.

Mr. Gibbs said that the amendment was necessary, so that the Corporation might get out their bills and assessment lists correctly.

The amendment was adopted.

The Honourable Mr. GIBBS next proposed that the words “or to mounted officers of volunteer corps” should be struck out from lines 34 and 35 of Section 33. The honourable mover said :—These cases were already provided for in Section 25 of Act XX. of 1869, the Volunteers Act, in which it was provided that every mounted officer of volunteers may keep one horse without paying municipal or other tax.

The amendment was adopted.

The Honourable Mr. LANG moved the following amendments to Section 120, viz. :—

That after the words ‘Town Council’ in the sixth line, the words ‘and of Government’ be inserted.

That for the words ‘within six months’ in the eighth line, the words ‘within two years’ be substituted.

That the words ‘or in the case of timber twelve months’ be omitted.

That for the word ‘five’ in the last line, the word ‘two’ be substituted.

That the following words be added to the section :—

‘Refunds amounting in all to rupees two or upwards shall be claimable on goods, whether of the same or different descriptions, exported on the same date or on different dates, during one month from date of first exportation, and whether consigned to the same or different persons or places.’

Mr. LANG said :—The reason for the first of these amendments is that the Municipality have not shown themselves very ready to follow the instructions laid down by the Government of India regarding the assessment and levying of town duties; nor had the local Government been very careful hitherto to see that the instructions of the Government of India were carried out, and though I hope the reiterated instructions of the Government of India will cause the local Government to give greater attention to the matter, the insertion of this provision in the Act will be a safeguard and enable the Government to interfere. The second amendment is to carry out the principle that people who import goods and pay town duties shall have every facility granted them to obtain

refunds. A great many people who import goods into Bombay are not able to sell them within six months, and it is unfair that they should suffer in consequence. The amendment regarding timber is in accordance with the views expressed by Mr. Pedder on the subject. I think it is right that we should exclude everything at all objectionable in the way of town duties, and I intend to move subsequently that timber be omitted altogether from the schedule. I do not think it is necessary for me to recapitulate all the arguments on the matter, because they are fully stated in the letter which the Chamber of Commerce sent to Government. With regard to the fourth amendment, I think the amount of Rs. 5 is very excessive, and will prevent refunds being obtained on many articles altogether, unless they are bought and sent out of Bombay in large quantities. For instance, wines and spirits pay about 4 annas a gallon, and there will have to be sent up-country a very large number of cases before the sender can get a refund to the amount of five rupees. I may mention that the Government of India, in one of their letters on the subject of Municipal taxation, referred to this very question of the minimum rate at which refunds should be granted, and instanced the Municipalities of the Central Provinces. From enquiries since made, I find from a letter received from Mr. Neill, Assistant Secretary, that the minimum refund in the Central Provinces has been generally fixed at Rs. 2 and in only a few cases on special grounds at Rs. 5. The general principle is Rs. 2, and I think that Bombay should adopt the same principle as the Central Provinces, which has been approved by the Government of India. Our object should be to give all the refunds we can. If the Municipal revenue suffer, it is for the Municipality to find out some more equitable means of taxation to make up the loss.

The Honourable Mr. DOSABHOY FRAMJI:—I am strongly opposed to this motion of the Honourable Mr. Lang, and especially to the proposal to lower the amount for which refunds shall be given from Rs. 5 to Rs. 2. Thanks to the enlightened views of the Town Council and the Municipal Corporation, the town duties are now levied in our city in such a manner that it cannot be said that they operate as transit duties. The Town Council has done everything in its power to meet the views of the Chamber of Commerce, and, on the suggestion of Mr. Pedder, made rules by which the levy of the town duties has been almost entirely divested of its objectionable features. I will quote figures to show the extent to which we have gone. The annual gross collections on account of town duties vary from six to eight lakhs of rupees; while the refunds in each of the last seven years have increased as follows:—1870—Rs. 15,316, 1871—Rs. 42,232, 1872—Rs. 51,436, 1873—Rs. 54,397, 1874—Rs. 1,00,316, 1875—Rs. 1,45,488, 1876—Rs. 1,90,770, and 1877—Rs. 2,04,965. Now, if we were to accept the motion of the Honourable Mr. Lang, the revenue of the Municipality from town duties will be so much reduced, as to render it necessary to find other sources of income to make up the heavy loss. At a time when the Corporation has resolved upon carrying out a drainage scheme for the city,—when a considerable addition to its already heavy liabilities is almost immediately expected,—it would be most inexpedient, if not unwise, to do anything which is likely to reduce its income. The city is already heavily taxed for municipal purposes, and further taxation in any shape will be something like the proverbial last straw which breaks the camel's back. The Select Committee has already reduced the limit of refunds to Rs. 5, and in my opinion it would be very injudicious to go any lower. I may add that the Municipal rules in respect of these refunds are more liberal than those of

Government in respect to Customs duties. The Government refund on goods re-exported is only seven-eighths of the duty paid ; whereas the Municipality refunds the whole of the amount, and takes nothing for all the advantages and protection which such goods enjoy during the long time they remain in this city before they are re-exported.

The Honourable Mr. GIBBS :—I was aware that Mr. Dosabhoj has devoted a great deal of time and trouble to the consideration of this matter, and I am glad he has taken the opportunity to speak as he has done. The letter of the Chamber of Commerce was, I am informed, very carefully considered by the Town Council, on which, as is well known, there were then many gentlemen whose views are very much, if not entirely, in accordance with those of the Chamber of Commerce. The reason why the Select Committee did not make any of the alterations suggested, was that the Town Council did not recommend any such alterations, I believe because they considered they were not necessary, and that some of them, if not all, would be calculated to entail a very great amount of additional labour and cost without very much advantage being obtained. It was on these grounds that the Select Committee came to the conclusion that the Town Council acted wisely in not recommending any of the alterations which are now proposed. I think I may add to what the Honourable Mr. Dosabhoj has said, that to liken Bombay to the Central Provinces is hardly fair. The amount of wines and spirits that come within the jurisdiction of Municipalities in the Central Provinces must be, comparatively speaking, extremely small, while the consumption of Bombay is decidedly very much larger than in those places. I do not think therefore the comparison is a good one. The Select Committee, after very careful consideration, have fixed the limit at Rs. 5, which I believe is just half what it is under the present law. I am not able to accept the proposals of the Honourable Mr. Lang with regard to that, nor with regard to the other amendments he has proposed. As far as timber is concerned the Select Committee were of opinion that, considering the enormous quantity of timber used in Bombay, compared with the quantity made up into carriages, &c., and exported, there is no necessity for making the exception which has been suggested. With regard to the first amendment moved by Mr. Lang, viz., that the words "and of Government" be inserted in the sixth line, I have no objection to that being adopted. I do not suppose that any differences of opinion are likely to arise between the Town Council and Government on the point; and if it would be a satisfaction to the mercantile community, and as the Chamber of Commerce has recommended the insertion of the words, I do not object to their being inserted. With regard to all the other amendments, their adoption would only cause a great deal of labour and trouble, and would not be satisfactory.

The Honourable Mr. LANG :—It is quite true that any system of refunds must entail a certain amount of additional labour and trouble. But as long as town duties are collected there must be a system of refunds, and it is clearly for the Government, now that they are remodelling this system of taxation throughout the Presidency, to take care—especially in Bombay, which should set an example to other Municipalities—that the refunds shall be as liberal as possible. We have the distinct orders of the Government of India to that effect. The Honourable Mr. Dosabhoj has stated that great improvements have been made within the last few years. I do not deny that improvements have been made, but that is no reason why greater improvements should not be made now. I have no doubt that it is somewhat unpleasant for the Municipality to lose some portion of its revenue, but on that point also the orders of the Government of India are perfectly distinct. I will just quote

a short passage from the Government of India's letter of September 1877. They there say:—"Such being the orders issued, and with such results, the Governor-General in Council would now request all local Governments and Administrations to take early steps to alter octroi taxation in towns, where such taxation transgresses against the acknowledged principles. Should this measure result in a serious falling off in municipal revenue, it will be for local Governments to decide whether it may not be desirable to combine direct with indirect taxation, or to enhance the rates on articles of consumption." It appears to me to be clearly laid down that this system of taxation should be as liberal as possible, and the sooner we set about making it more liberal the better. I think there is nothing in the arguments of the Honourable Mr. Dosabhoj or the Honourable Mr. Gibbs to show that it is not most desirable, and in accordance with the wishes of the Government of India, that town duties should be refunded when goods are exported from Bombay. As to its being unfair to liken Bombay to the small towns of the Central Provinces, I think that Bombay should set a good example to other Municipalities, and be in advance of them. Up-country Municipalities have not the same amount of popular representation that the Bombay Municipality has; in fact, most of them consist almost entirely of Government officials, of Government nominees, and the independent members have no opportunity of making their views known, or of carrying them out. I have had experience of the Kurrachee Municipality for several years; and I know that in this respect they are very much behind Bombay; and I know that unless liberal measures as regards refunds are inaugurated in Bombay, there was much less probability of their ever being adopted by up-country Municipalities.

The amendments were then put to the vote. The first was carried, and the 120th section was accordingly amended by the insertion of the words "and of Government" after the words "Town Council."

The remainder of the amendments proposed by the Honourable Mr. Lang to this section were all lost.

The Honourable Mr. LANG further moved that the words 'timber excluding railway sleepers—2½ per cent. on market value' be struck out from Schedule B.

The Honourable Mr. GIBBS:—I oppose this amendment. Considering the very large amount of timber consumed in Bombay, particularly owing to the way in which the native builders build their houses, it seems to me a most proper article for municipal revenue to be levied on.

The Honourable Mr. LANG:—I may mention that this was one of Mr. Pedder's recommendations when he was Municipal Commissioner of Bombay, because the duty on timber practically amounts to a tax on contractors in Bombay. When timber is cut up for contractors' work, and is afterwards exported, it is quite impossible to obtain any refund on it.

The amendment was lost.

The Bill read a third time and passed.

On the motion of the Honourable Mr. GIBBS, the Bill was then read a third time and passed.

The Revenue Code Bill further considered in detail.

The Honourable Mr. ASHBURNER moved that in line 2 of Section 84 of the Revenue Code Bill, No. 1 of 1875, for the words 'what revenue officers,' the words 'that such revenue officers as it deems fit' shall be substituted.

The amendment was adopted.

The Honourable Mr. ASHBURNER further moved that the following words and paragraphs be added at the end of the first part of Section 238 of the Bill, after the words 'relating thereto':—

' But the provisions of the said chapter shall be applicable to—

' (a)—all unalienated lands situated within the limits of an alienated village.

' (b)—villages of which a definite share is alienated, but of which the remaining share is unalienated.

' (c)—alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess, if any, above such amount belongs to Government. Mr. Ashburner said that according to the Survey Act, the survey could only be introduced into certain inam villages with the consent of the inamdar, and it happened that in certain parts of the Presidency there are inamdars who hold a rent charge on the revenue of a village. For instance, a certain inamdar might hold a rent charge of, say, Rs. 150 on the revenues of a village, with a proviso that the revenue did not exceed that sum. He would naturally object to the survey to ascertain exactly what he did obtain from the village. The object of this amendment was to enable Government to survey any village with or without the inamdar's consent.

The Honourable Mr. ROGAY opposed the amendment on the ground that he did not think any change in this respect ought to be made.

The Honourable Colonel ANDERSON :—The first case in which an amendment is proposed is to provide for cases in which while the entire village is recorded as an inam village, yet Government hold certain defined lands within the limits of the village, which are entirely excluded from the inamdars' authority, and are managed solely by Government. The amendment merely authorizes the survey of these Government lands—a measure which cannot affect or injure the inamdar in any way. The second amendment is very similar in effect to the first, as it provides merely for the survey of a definite share of a village, that definite share being held by Government, while the inam land is recorded and held as inam.

The amendment was carried.

On the motion of the Honourable Mr. ASHBURNER, it was resolved that the last 22 words of the same section should be omitted, being redundant.

The Honourable Mr. ASHBURNER said he had some important amendments to move to that part of the code containing the Hereditary Offices Act.

The Honourable Mr. GIBBS, in reply to a question from His Excellency the President, said there was a distinct understanding when the Code was introduced, that no alteration should be made in codifying the Hereditary Offices Act. The only way of amending it would be to have a conference of Commissioners and Collectors interested in the matter, and if it was decided to amend the Act, the amendments should be made by a separate measure.

The Honourable Mr. ASHBURNER said he objected very strongly to any more conferences: They had had nothing but conferences on the Hereditary Offices for years past. But if it was the case, that an assurance had been given that there should be no amendments of the Hereditary Offices Act, he was prepared to move that the Revenue Code Bill be read a third time and passed. It was accordingly read a third time and passed.

The Bill read a third time
and passed

His Excellency the President then adjourned the Council *sine die*.

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

JOHN NUGENT,

Under Secretary to Government.

Bombay, 8th February 1878.

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 Tuesday, the 5th March 1878, at noon.

P R E S E N T :

His Excellency the Honourable Sir RICHARD TEMPLE, Bart., G.C.S.I., Governor of Bombay, *Presiding*.

The Honourable J. GIBBS.

The Honourable L. R. ASHBURNER, C.S.I.

The Honourable the ADVOCATE GENERAL.

The Honourable E. W. RAVENSCROFT, C.S.I.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable SOBABJI SHAPURJI BENGALI.

The Honourable Colonel W. C. ANDERSON.

Paper presented to the Council. The following paper was presented to the Council:—

Letter from the Secretary to the Government of India, Legislative Department, No. 365, dated 19th February 1878, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend Bombay Act II. of 1868 (the Ferries Act).

The Council resumes consideration of the general Abkari Bill in detail. The Council resumed consideration of the general Abkari Bill in detail.

The Honourable Mr. ASHBURNER said:—Your Excellency will remember that on the last occasion when the Council met, an amendment of Section 29c., which stood on the notice paper of 7th February 1878, was allowed to stand over for the consideration of the Honourable the Advocate General. He has now reported on that section, and in deference to his advice, we have determined to abandon the amendment as likely to create difficulties and to conflict with the Indian Contract Act. Several petitions have been received on the subject of this Bill. One has been received only this morning, which the Secretary will read. Of the other two petitions, I will notice first that of Mr. Ardasir Framjee Moos, who prays that the Honourable Mr. Justice Bayley may be appointed to adjudicate the amount of compensation to which he will be entitled under the Act. There are several objections to this course, but the most obvious is that we have no power to impose such a duty upon one of the Judges of Her Majesty's High Court. Although that might be obviated, perhaps, by the consent of the Judge, still there would be the difficulty that circumstances might render it impossible for the honourable gentleman to make this award, and we should then be in the awkward dilemma of having no means of arriving at the award without special legislation. The next petition is from Mr. Sorabjee, who prays that his abkari rights may be considered

in the same way as those of Mr. Ardasir Framjee Moos. The evidence on which this claim rests has been very carefully investigated by the Honourable the Advocate General, who will state the grounds on which he has formed the opinion that the petitioner has no abkari rights whatever. The third petition, which was received only this morning, perhaps had better now be read.

The SECRETARY then read the petition from Messrs. Hormusjee Cursetjee, Bomanjee Cursetjee, and Heerjeebhoj Cursetjee.

The Honourable Mr. ASHBURNER :—Perhaps I may say the petitioners are mistaken in supposing that any such information as they refer to has been given by the Collector of Tanna. It will be observed how indefinite all the allegations contained in this petition are. It says if the Collector has furnished that information. If so and so has occurred. The Collector has not furnished that information, nor has the expected contingency occurred. The petition contains nothing whatever that has not already been considered most carefully during the last four or five months that these investigations have been going on. I therefore do not consider that it should induce us to suspend the passing of this Bill. I may say, not only in regard to this petition, but in reference to all the petitions that have been received on the subject of Abkari rights, that they have been most carefully inquired into by the Collector and the legal advisers of Government. If it had not been for this inquiry, we might have passed the Bill last October. Four or five months have been taken up by these inquiries alone, and I therefore think that we may with confidence say that, with one exception, which has already been provided for in the Act, there are no abkari rights whatever, and we may pass this Bill with the most perfect confidence that we wrong no man whatever. I will now move the amendment which stands on the notice paper, and which is so clearly expressed that it requires no explanation. I may mention that the sum of Rs. 1,43,750 has been arrived at by calculating the net receipts of the Municipality for the last ten years. The only other amendment I have to propose is in the schedule, and repeals the Bombay Abkari Act which has just been passed. All its provisions are embodied in the general Abkari Bill, and therefore it is no longer required. I beg first to move :—That the following section be added after Section 62 of the Bill—“Whereas it was provided by Section 14 of Bombay Act IX. of 1867 that all money realized, collected or obtained by the issue of licences, or by forfeitures or by imposition or infliction of fines and penalties under the said Act should be carried to the credit of the Municipal Fund of the City of Bombay for Municipal purposes, it is hereby enacted that in lieu of the money hitherto so received by the Municipal Corporation of the City of Bombay a fixed sum of Rs. 1,43,750 shall, from and after the 1st day of August 1878, be annually paid by Government to the said Corporation for the said purposes.”

The Honourable Mr. ROGAY :—With your Excellency's permission, I will make a few remarks with regard to this amendment and with regard to what has fallen from the Honourable Member in charge of the Bill. The amendment I believe meets the view of the Municipal Corporation, whose sole object in memorialising Government through their Chairman was to get some fixed yearly amount, or some substantial compensation from Government. I am glad that Government has seen the necessity of fixing some sufficient sum to compensate the Municipality for the loss their revenues will suffer from the effect of this Bill. With regard to the petitions which the Honourable Mr. Ashburner has referred to, and which Honourable Members are aware are numerous, I have only to say one word.

In the absence of any representation of these petitioners, either personally or through their counsel or legal attorney, we have been disproving their petitions, or rather making remarks that the allegations contained in their petitions are not correct. I think that the duty of deciding that would be better left to the Civil Court, before whom both sides may be ably represented. Of course, the Government would be ably represented by the Honourable and learned Advocate General, who seems to have taken a great deal of trouble in studying the nature and circumstances of the cases referred to in the petitions. Each petitioner claims an exemption, and I submit that we have no right to decide on their claims, seeing that we are doing things onesidedly,—that is, we have got one side of the case before us, and there are no representatives of the petitioners before us to refute any arguments brought against their petitions. I see no use in moving an amendment, considering the result of the debate on the last amendment proposed in this Council some time ago; but I submit that the passing of this enactment will prevent the petitioners, and any other persons who claim legal vested rights to exemption from Abkari taxes or from the tax on brab trees, from resorting to the Civil Courts. This enactment takes away the jurisdiction of those Courts in deciding these cases. I hope I may be pardoned if I use a little harsh language in support of the arguments which I have submitted to this Council. Honourable Members are aware that the glory of the British rule is to respect all vested rights, a state of things which the people of India never enjoyed when they were governed by the predecessors of the British Government. Further, in the eyes of the law, Government and the subjects are alike. This just right of the people will be abolished by the passing of this enactment, which leaves them no opportunity of establishing their rights before the Civil Courts,—a right which they have held in great estimation up to the present time. There is another subject to which I wish to draw the serious attention of this Council. The claimants in these cases are the recipients of grants from the British Government itself; and I for one would be happy to see these matters left to the decision of the general law of the country, and that the petitioners should be allowed the opportunity of proving any rights that they have before legally constituted tribunals. It is not to be supposed that any man, simply for the sake of litigation, would draw the Government into a Civil Court. It is not an easy matter now-a-days to go to the Civil Courts, which are always very expensive, and which are in some cases ruinous, and as the onus of proof lies on the plaintiff, Government are quite safe in leaving the matter to the decision of the Civil Courts. With regard to the amendment prayed for by Mr. Ardasir Framjee Moos, I have to say a word only. In his later petition, he has prayed for an amendment in such a way as not to mention the name of any Judge of the High Court; he has simply left it to the decision of “one of the Judges who may preside at the hearing of this suit.” And considering that his claim is admitted, I do not see any reason for having any mode of procedure which will perhaps be more expensive to the petitioner, and which is likely still to go to the High Court itself, because the amendment drafted by the Honourable the Advocate General in Section 63 leaves the matter in the first place to arbitration, and afterwards, in case of dispute, it is to be decided under the Land Acquisition Act, and if it is to be decided under the Land Acquisition Act, it will have to go to the High Court or to some other Civil Court. I therefore think there can be no objection to the amendment prayed for in the petition of Mr. Ardasir Framjee Moos, dated the 17th February 1878, which does not name any particular Judge of the High Court, but simply leaves the matter to the decision of whatever Judge may preside in the suit, unless this Council is disposed to insert a general saving clause which will obviate the necessity

of making any exception under this Bill, providing against any individual case, I will not attempt to move any amendment, but I hope my remarks will have due consideration at the hands of the Council, and I trust that the British Court of Justice will be better trusted than our judgment, seeing that we are in a very peculiar position, deciding the case in a one-sided way. I cannot agree with the remark of the Honourable Member in charge of the Bill, that we may pass this Bill without any fear, and in the belief that we wrong no man whatever. I for one think that we wrong many, and I cannot accept his conclusion that the Bill having taken so much time in passing through this Council is a conclusive proof that we are not doing wrong to any man. There are petitions before us; we say one thing, the Government officers say another; and unless we have evidence before us as the evidence taken before Civil tribunals, I do not think we shall be justified in passing this Bill without any saving clause, reserving all existing vested rights or leaving the parties option to go to the Civil Courts.

The Honourable the ADVOCATE GENERAL:—First I will say a few words as to the petition of Mr. Ardasir Framjee Moos. I do not think the petitioner understood the reason for the alteration of the section, which is now drafted so as to avoid any difficulty that might arise in consequence of this Council not having power to throw any work at all on the High Court or on any Judge of the High Court. That is beyond the power of the Council, and I desired to avoid any difficulty in that respect. And as regards any difficulty there might be in consequence of the compensation question not being referred to the arbitration of any Judge, I am in a position to say that the learned Judge to whom it was first proposed that the matter should be referred will be happy to take the reference, notwithstanding the alteration of the Bill. Moreover, it was necessary that the provisions of the Land Acquisition Act should be incorporated, as otherwise if the Judge of the High Court to whom it was proposed to be referred was prevented from taking it, there would be no tribunal at all to take it. That is my explanation as regards the operation of Clause 63, which I think will be deemed sufficient by the Council. Well then, Sir, I come to the several petitions which have been presented to the Council by different parties claiming abkari rights in respect of certain estates at Salsette, and I think I may say that the whole of the claims may be considered in dealing with that presented by the Bhandoop petition. This matter has been subjected to very great consideration by different persons acquainted with the administration of the revenue in Salsette and other places, and elaborate reports in reference to the facts of the case have been furnished by the Collector of Tanna and by other persons who have technical knowledge of the subject. All these reports have been furnished to me, and I have gone through them very carefully, and I trust also with impartiality. I certainly entertain a very strong opinion against the claim put forward in the petition. I cannot see upon the facts that have been presented to me that the petitioners have a shadow of title to the rights that they claim. And I may say it is not so much a question of law as a question of fact, as will appear from different matters which I shall mention to the Council in going through the petition. This is not simply the opinion of a lawyer, but an opinion that any person may form from the facts presented to him. And I may mention, too, that this is not the first time apparently claims have been made for the very rights the petitioners now claim. These claims were investigated, as I gather from the records of the Collector of Tanna, as regards the Bhandoop estate, so far back as the year 1826, and upon these claims, and in reference to them, the then Collector of Tanna (Mr. Simpson), after that investigation, writes as follows to Mr. Morgan, who was the solicitor for the then proprietor, Mr. Simpson says—"I have fully

“satisfied myself that the right of the public to draw a revenue from liquor in the mode recently reverted to has never been resigned. It was not contemplated by the parties when the village was transferred to the proprietors; it is not provided for by the deed passed, nor is it sanctioned by prescription.” Well, that inquiry took place in 1826, and as we all know the regulation which now regulates the abkari law was passed on the 1st of January 1827, and although I do not find it stated in the reports before me that this inquiry had any reference to claims made in consequence of the anticipated change in the law, yet I cannot help thinking that when the claims were made, those who made them were cognizant of the intended alteration. Now in order to deal with those claims it is necessary perhaps to give the Council a short history of the estate. The grant under which the petitioners claim was made in 1803, but a sunnud was informally granted by Government in 1794, when a distillery was established for the purpose of distilling liquor for the use of the troops; and although no tax was paid by the owners of the Bhandoop estate for any liquor drawn from their trees, yet the fact was this, that toddy from the estate was taken into the distillery and used for the purpose of distilling liquor for the troops, and no liquor so distilled was exported without payment of the abkari duty. Now, the petitioners, in the seventh paragraph of their petition, say that no rent or tax has been paid to the Government beyond the fixed annual ground-rent reserved by the grant. The grant has also been before the Council and has been adverted to on former occasions, and it is only necessary for me to say that by the first clause there is a reservation of some 2,000 and odd rupees as land revenue. The second article of the grant also states that there was a certain tax payable to Government for the brab trees with reference to their situation and the amount of their produce; this tax was remitted, and I have advised Government that the tax remitted by the second article of the grant was a tree tax, and did not affect abkari rights. Then we come to see whether or not—and this is very important of course—any of the proprietors for the time being has ever claimed to be released from any abkari tax. The first tax I have already mentioned, that is, the tax payable by the proprietors at the Bhandoop distillery for liquor distilled from their own toddy, and that shows, as far as it goes, that they paid abkari duties on the liquor so distilled. Then we have this further fact, that in 1798 the abkari rights of Salsette were farmed, and in the lease of the farmers there were express provisions made that so long as the proprietors of the Bhandoop estate applied the whole of the toddy of the estate to the manufacture of sugar or the distillation of liquor for exportation, so long they should not be subject to the farm penalties. But the provision went on to say if the liquor was otherwise used than for the manufacture of sugar or the distillation of spirits for exportation, then the proprietors should be subject to the penalties specified in the lease. That again I think shows that they were subjected to abkari dues. Then I come across another very important matter, and that is as to how the license for the sale of liquor in Bhandoop was dealt with. That is shown in the report sent in to Government by Mr. Jervois, who says—“I may add that the abkari license for liquor for local consumption is annually sold by Government on account of Bhandoop as well as on account of Tanna and other places in Salsette.” And Mr. Jervoise also quotes a letter of Mr. Simpson, of November 1826, to the Solicitor for the then proprietor, in which Mr. Simpson writes:—“The licenses to distil and sell, &c., in the villages transferred to proprietors were disposed of of course with the rest, and we find invariably those proprietors becoming the purchasers of the annual licenses, and in none more so than Bhandoop, of which Cowasjee Maneckjee (the grandfather of the petitioners) bought the farms for every year except one, and then he was security for some one else.” I think all these

circumstances, the manner in which the liquor of the Bhandoop estate was distilled, the manner in which the estate was made subject to the abkari farm in 1798, and the manner in which the licenses for local consumption in the village of Bhandoop itself have been dealt with by proprietors themselves, each and all of these plainly show that the then proprietors considered they had not received a grant of abkari rights and were liable to abkari duties. Well, then comes the further fact that there was the inquiry in 1826, with the result that I have shown to the Council by the quotation I have made from the letter of the then Collector, Mr. Simpson. And, I say, it is possible that inquiry had reference to the intended change of the law which was effected by the passing of Regulation 21 of 1827, and it is to be observed that there was no reservation of the rights claimed by the petitioners under that regulation, by which the ancestors of the petitioners are placed precisely in the same position as everybody else in the Presidency of Bombay who is subjected to abkari laws. Then I also ought to say that very recently, in the case of the petitioner's father, the then Collector of Tanna, Mr. J. Robertson, in 1872, writing to the late Cursetjee Manockjee, says—"The right in the brab trees has been made over to you;" and then he goes on to say—"in making this concession they did not and never have abrogated their right to excise derived from toddy or spirits that may be manufactured by fermentation of produce derived from such trees?" So we have what we find fifty years ago and we have a recent statement of the Collector. And the result of the correspondence with the petitioner's father was that he took a license for the sale of liquor in the village of Bhandoop itself. The petitioners in their petition have not only relied upon their own grant, but upon the grant in the same terms made by the East India Company about the same time as theirs to a Dr. Scott, and in their petition certain facts have been stated which, if correct, would lead the Council to suppose that the East India Company had acknowledged the claim of Dr. Scott to abkari rights. I am referring to the 13th paragraph of the petition, which says—"One Dr. Scott in the year 1793 obtained from the East India Company a grant of certain lands in Salsette on terms precisely similar to our own, and, notwithstanding, the Government of Bombay levied taxes on toddy derived from trees grown on this land, and although repeated applications were made by Dr. Scott to the Bombay Government, he failed to obtain relief, and afterwards forwarded a memorial to the Court of Directors praying to be relieved from this—the prayer of this memorial was granted, and an order from the Court of Directors stating "that the tax was levied upon the estate contrary to the terms of the original grant." You will find that the complaint of Dr. Scott relates to a tax levied on brab trees and not upon toddy drawn from the trees at all. The difference is a very material one. Perhaps I may shortly mention what the facts were. There was a complaint made by Dr. Scott that his property had been taxed contrary to the terms of his grant. The Government instituted an inquiry as to whether or not the complaints were true, and that inquiry was conducted by a Judge of Salsette, who had with him, I am informed, two high officials of Government. They investigated the matter very carefully, and the result of their report was that Dr. Scott's complaints were held to be without foundation, that he had only been taxed just in the same way as the other people in Salsette, and that the terms of his grant had not been infringed. And in 1815 the then Government of Bombay reported to the same effect to the Court of Directors. No reply was made by the Court of Directors until 1820, when they sent a despatch, the effect of which was that the Government of Bombay remitted part of the sum due for arrears. Dr. Scott was indebted to the estate to the sum of Rs. 20,000, and

the amount of Rs. 5,050 was written off. The arrears of rent were never paid by Dr. Scott and the estate became forfeited to the Crown. It appears from a subsequent despatch by the Court of Directors that they considered that the Government of Bombay did not properly understand their despatch of 1820, and in a despatch of 28th June 1837 they say—"It will be seen in reference to our military letter dated 9th August 1820, that we never in fact decided the question at all. We then informed your Government that 'some tax' had been levied on the estate contrary to the original grant (but without specifying what), which decision we have now repeated in the present case." Subsequently the letter says:—"You are well aware of our sentiments on the subject of the abkari revenue, and we shall never willingly consent to its alienation." That shows that no reliance is to be placed on the despatch of 1820 as having admitted that Dr. Scott was entitled to any abkari rights. So I think the case of Dr. Scott is clearly explained. Then there is another case, that of Hormusjee Bomonjee, which is cited in the petition, and it is said that the Government had stated that he was entitled to abkari rights. But I find, on referring to page 71 of the Appendix to the Memorial of the Proprietors of the Bhandoop Estate, that those claims were denied and resisted by the East India Company. It is recited in the conveyance to Hormusjee's representatives there set forth that Hormusjee had "made divers claims on the East India Company relating to the produce of the trees growing on the land and premises conveyed to the said Hormusjee, which claims have been denied and resisted by the East India Company." Therefore, both the cases instanced as to the claims of Government having been foregone fall to the ground. Here is another matter referred to by the petitioners, viz., the Poway Estate. They say that the original grant to Poway was in the same terms as their own grant; but if the Council will refer to the particulars of the Poway grant, they will find it was expressly provided that the abkari revenue should be paid to Framjee Cowasjee. He made an application with a request that the abkari revenue should be paid to him, and in consequence of that extra grant of the abkari dues, the rent payable for the estate was increased by Rs. 500 a year. Those, I think, are the principal instances that have been cited by the petitioners. However, there is one matter which I nearly omitted, and that is the statement in the 31st paragraph of the petition that the High Court had determined that the petitioners had a right to bring toddy from Bhandoop into Bombay was free of municipal taxes. That was cited as endeavouring to show that the High Court had decided upon the terms of the grant that they were entitled to abkari rights. But the statement of the case was totally misconceived. The case itself is reported in the High Court Reports; and all that was decided there was that the Municipal Commissioner had no power to levy a town duty upon toddy just imported into Bombay, because it was not spirit within the meaning of the Bombay Municipal Act. These are the principal points relied upon by the petitioners. Certainly, upon investigation of the facts,—and really this is a question which resolves itself into one of fact,—I have, as I said to the Council, formed a very strong opinion adverse to the petitioners. It seems to me that the facts are unanswerable. Some gentlemen came to see me privately on the subject, and I mentioned some of these facts, and told them what my own opinion was. They suggested it was possible that the whole thing might have been misconceived by the Collector of Tanna, and I said upon that I would make further inquiries. I have written to the Collector of Tanna, but I have not received any reply. It is almost impossible to conceive that Mr. Simpson, the Collector, should write as he did in 1826, who had himself then made an investigation into the matter, and whose mind was necessarily fresh on the subject in consequence of that

investigation,—it is impossible to conceive that he could have misconceived the matter when he wrote that letter. I have based my opinion on the facts—I trust entered into the investigation in an impartial spirit, and the result is that I think the petitioners have no claim at all to abkari rights.

The Honourable Mr. ROGAY :—That as the Honourable the Advocate General thinks there are such substantial facts in favour of Government's argument that the petitioners have no abkari rights whatever, and I dare say the official members of the Council share in his opinion, I for one do not see why we should refuse to give these people the opportunity of going to the Civil Courts. If they have no right whatever, Government need not fear it. He could not see any use in barring their claims by this piece of legislation.

The Honourable Mr. BENGALI :—I wish to make a remark with regard to the Honourable Mr. Ashburner's amendment fixing the amount of the contribution to be paid in compensation for the fines and penalties and fees for licenses which are now paid to the Municipality. The sum has been fixed by the Honourable Mr. Ashburner at Rs. 1,43,750 per annum. Perhaps I may be permitted to ask whether the Municipal Corporation have been communicated with on this subject, and whether they have acknowledged the correctness of the amount.

The Honourable Mr. ASHBURNER :—I can reply that it was from the Municipal records that this sum was arrived at. These figures were furnished by Mr. Grant (Municipal Commissioner).

The Honourable Mr. BENGALI :—I think it would have been advisable that the opinion of the Corporation should have been asked. I cannot see that the plan adopted by the honourable mover, of taking the aggregate figures of ten years, is quite correct. The rate of fees during ten years has varied very much, and the aggregate amount per year has also varied,—I mean it has increased steadily. When we find that the receipts from liquor licenses and fines have been steadily increasing, I cannot see that it is quite fair that this calculation should be based on an average of ten years. The proper plan would be to take the revenue of last year, and add something for prospective increases. I do not think it is right to fix the sum to be paid by Government in future at anything less than the receipts of last year. That is my objection to the amendment.

The Honourable Mr. ASHBURNER :—The honourable gentleman's argument may be very easily met by the assertion that though the revenues were granted to the Municipality, the amount of these revenues depends upon the orders of Government. Government can raise or lower the fees to be paid for these licenses at will.

The Honourable Mr. BENGALI :—I understood the amount was fixed by law.

The amendment was then put to the vote and carried, the Honourable Mr. Bengali voting against it.

The Honourable Mr. Ashburner further moved :—“That Bombay Act I. of 1878 be inserted in the Schedule of enactments to be repealed,” remarking that the object of it he had already explained.

This amendment was adopted.

Mr. Ashburner moves the third reading of the Bill.

The Honourable Mr. ASHBURNER :—I beg now to move that the Bill be read a third time and passed.

On the motion being put to the vote, it was carried by six to one, the order of voting being :—

Ayes—6.

The Honourable Mr. GIBBS.
 The Honourable the ADVOCATE GENERAL.
 The Honourable Mr. ASHBURNEE.
 The Honourable Mr. RAVENCROFT.
 The Honourable Mr. SORABJI SHAPURJI.
 The Honourable Colonel ANDERSON.

No—1.

The Honourable Mr. ROGAY.

The Bill read a third time
 and passed.

The Bill was accordingly read a third time and passed.

His Excellency the PRESIDENT then adjourned the Council.

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

JOHN NUGENT,

Under Secretary to Government.

Bombay Castle, 5th March 1878.

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 20th July 1878, at noon.

P R E S E N T :

His Excellency the Honourable Sir RICHARD TEMPLE, Bart., G.C.S.I., Governor of Bombay, *Presiding*.

His Excellency the Honourable Sir CHARLES STAVELEY, K.C.B.

The Honourable J. GIBBS, C.S.I.

The Honourable L. R. ASHBURNER, C.S.I.

The Honourable the ADVOCATE GENERAL.

The Honourable E. W. RAVENSCROFT, C.S.I.

The Honourable Colonel W. C. ANDERSON.

The Honourable DOSABHOY FRAMJEE, C.S.I.

The Honourable SYUD HUSSAN EL EDROOS, C.S.I.

The Honourable M. BALFOUR.

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. 646 dated 14th March 1878, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill for the licensing of trades, dealings and industries in the Presidency of Bombay.
2. Letter from the Secretary to the Government of India, Legislative Department, No. 995 dated 5th July 1878, states that the Governor General cannot give his assent to the General Abkari Bill in its present form. Signifies His Excellency's reasons for withholding his assent, and suggests that the Bill may be amended.

The Honourable Mr. ASHBURNER introduced Bill No. 2 of 1878 (a Bill to consolidate and amend the Abkari Law of the Presidency of Bombay).

Mr. Ashburner introduces the new Presidency Abkari Bill.

Mr. ASHBURNER said:—Your Excellency has just heard that

His Excellency the Viceroy has declared his willingness to consent to the Bill already passed by this Council with three trifling exceptions. The objections are (1) that the rights of Cursetjee Ardasir and Jehanghir Ardasir to Abkari rights in the Island of Salsette, which were said to be granted to them in the early part of this century, were not reserved in that Bill; (2) that a slight amendment of the definition of intoxicating drugs was necessary so as to make it clear that opium is not included; (3) that Section 13 should be omitted and a clause added to the Bill providing that "nothing contained in this Act shall be held to affect any enactment passed by the Governor General

in Council since the 16th November 1861," the date on which the Indian Councils Act came into force. Lastly, the Viceroy suggests that the last paragraph of Section 67 would be *ultra vires* of this Council, inasmuch as it derogated from the jurisdiction conferred by the charter of the Bombay High Court, and a clause has been introduced expressly saving the jurisdiction of that Court. All the amendments suggested by His Excellency the Viceroy have been attended to, and I have now to ask for leave to suspend the standing rules before moving the first reading of the Bill.

The Standing Rules suspended and the Bill read a first and second time and considered in detail.

His Excellency the PRESIDENT having formally suspended the standing rules,

The Honourable Mr. ASHBURNER moved that the Bill be read a first time, and the motion was adopted.

It was also resolved on the motion of the Honourable Mr. ASHBURNER that the Bill should be read a second time, and then the Council proceeded to consider the Bill in detail. This was accordingly done.

The Honourable Mr. ASHBURNER pointed out that Section 3 (clause 9) defining the term 'intoxicating drug,' had been amended by the addition of the following words:—" but does not include opium or anything included within the meaning of that word as defined in the Indian Opium Act, 1878."

The Honourable Mr. ASHBURNER proposed an amendment to Section 14, by the excision of the last clause, and the substitution of the following:—" Except under the authority and subject to the terms and conditions of a licence to be granted by the Collector in this behalf, or under the provisions of Section 24." Mr. Ashburner added that the object of this amendment was to prevent any doubt arising as to what was the exact meaning of the section in connection with the one which followed it, and part of the amendment which he had to propose was to strike out Section 15, which defined certain functions of the Collector, but omitted that of granting a licence. There was no change proposed in the meaning of the Act, but the amendment would make more clear what was intended. It might be argued in the absence of this amendment that *expressio unius est exclusio alterius*, and that the Collector had therefore no power to grant licences.

The amendment was carried.

The Honourable Mr. ASHBURNER said Section 66 was an amended section added in accordance with the wishes of His Excellency the Viceroy, and he had to propose the adoption of an additional section, to follow Section 66, which had been drafted as follows:—" Any holder of a village in the Island of Salsette other than the villages mentioned in the last preceding section, who shall apply to the Governor in Council at any time within three months after this Act comes into force, and shall establish to the satisfaction of the Governor in Council that he holds his said village under an indenture containing the same terms as to exemption from taxation or assessment, or terms to the like effect, as those contained in the said indenture of the 25th January 1819, shall be entitled to be dealt with in the same manner as the holders of the villages named in the last preceding section, and in any such case the provisions of the last preceding section shall apply as if such holder's village had been specifically named therein." The object of this amendment was obvious. His Excellency the Viceroy had requested that the rights of Cursetjee Ardasir and Jehangir Ardasir should be reserved, and as it was found there were certain other

holders who held land on grants of a similar nature, the added section would permit of their rights being reserved in the same manner as those of Jehangir Ardasir.

The Honourable the ADVOCATE-GENERAL wished to say that the petition of Cursetjee Ardasir and Jehangir Ardasir was not before the Council when they considered the previous Bill, but was sent to His Excellency the Viceroy after the Bill had been passed by the Council. At the time the Council passed the Act they were not in any way infringing the rights of any claimants who had preferred any claim to Government or brought their claims before the Council.

The Honourable Mr. DOSSABHOY FRAMJEE :—This new section will remove all grounds of complaint.

The amendment was adopted.

The Bill read a third time and passed.

On the motion of the Honourable Mr. Ashburner the Bill was then read a third time and passed.

The Honourable Mr. GIBBS said before the Council separated, perhaps His Excellency the President would allow him to make an explanation to honourable members. He believed the first notice for this meeting which was issued to honourable members included in the list of business an Act to amend, or rather to legalise a portion of, the new Bombay Municipal Act, which received the assent of the Governor General on the 19th of June

last, and from the second notice paper that item was omitted. The reason was that Government received an emergent letter from Mr. Grant, the Municipal Commissioner, pointing out that the Solicitors to the Municipality had informed him that, owing to the assent of the Governor General not having been published before the 1st July, there would be difficulties in several ways with regard to the carrying out of the new Municipal Act Amendment Act, especially with regard to the coming election of members of the Corporation and Town Council. He (Mr. Gibbs) thereupon took an opportunity of speaking to Mr. Naylor (Legal Remembrancer) and knowing that a meeting of the Council was about to be held, he asked Mr. Naylor to draft a short Bill to amend the blots which had been discovered by the Solicitors to the Municipality. But in the meantime further legal advice was taken by the Municipality and the Advocate General was consulted, and Government received another letter stating that Mr. Marriott and Mr. Latham in consultation had arrived at the conclusion that there was no occasion to pass a fresh Act as the Solicitors of the Municipality had advised. The opinion of the Advocate General was very clear on the point that His Excellency the Viceroy's assent gave effect to the Act from the date on which it was passed by the Council, which was the 8th February last, and therefore there was no occasion for providing against any difficulty likely to arise in the carrying out of the Act.

His Excellency the President then adjourned the Council.

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

J. MONTEATH,

Acting Under Secretary to Government.

Poona, 20th July 1878.

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 Friday the 13th September 1878, at noon.

P R E S E N T :

His Excellency the Honourable Sir RICHARD TEMPLE, Bart., G.C.S.I., C.I.E., Governor of Bombay, *Presiding.*

His Excellency the Honourable Sir CHARLES STAVELEY, K.C.B.

The Honourable J. GIBBS, C.S.I.

The Honourable L. R. ASHBURNER, C.S.I.

The Honourable the ADVOCATE GENERAL.

The Honourable E. W. RAVENSCROFT, C.S.I.

The Honourable Colonel W. C. ANDERSON.

The Honourable DOSABHOY FRAMJEE, C.S.I.

The Honourable SYUD HUSSAN EL EDBOOS, C.S.I.

The Honourable M. BALFOUR.

The Honourable Colonel C. J. MERRIMAN, C.S.I., R.E.

The Honourable MORARJEE GOCULDASS, C.I.E.

Paper presented to the Council. The following paper was presented to the Council:—

Letter from the Secretary to the Government of India (Legislative Department) No. 1110, dated 10th August 1878, regarding the Cotton Frauds Bill which was read a third time and passed on the 3rd March 1877.

The Honourable Mr. Ashburner moved the first reading of Bill No. 3 of 1878—a Bill to provide for the levy of Fees for the use of Government Landing-places in the Port of Kurrachee. Mr. ASHBURNER said:—Your Excellency is aware that in the port of Kurrachee certain dues have for some years been collected, but hitherto there has been no legal sanction for this collection, and the object of this Bill is to legalize the collection, and also to provide for the expenditure of the money so collected. I beg to propose that the Bill be read a first time.

His Excellency the President put the motion to the vote, and it was carried unanimously.

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

The Bill was accordingly read a first time.

The Honourable Mr. Ashburner proposed that the following gentlemen be appointed a Select Committee to consider the Bill in detail and report to the Council within a week, viz., the Honourable Mr. Gibbs, the Honourable Colonel Anderson, the Honourable Mr. Morarjee Goculdass, the Honourable Mr. Syed Edroos, and the Mover.

The motion was adopted.

It was also resolved, on the motion of the Honourable Mr. Ashburner, that the Bill and the Select Committee's report should be translated into the Sindhi and Guzerathi languages.

The Honourable Mr. RAVENSCROFT:—Your Excellency, I beg to move the first reading of Bill No. 4 of 1878—“a Bill to amend the law for the prevention of adulteration of cotton and for the suppression of fraudulent practices in the cotton trade.” It is unnecessary to go into the whole question of the Cotton Frauds

Mr. Ravenscroft moves the first reading of the Amended Cotton Frauds Bill, No. 4 of 1878.

Act at present, that matter having been fully discussed at the commencement of last year, when a Bill was passed and sent to the Government of India for approval. After some correspondence, in which one or two points in the Bill were objected to, especially with regard to the application of fees, the opinion of this Government was asked whether any objection was entertained to the omission of that provision. This Government explained that they had no objection to the omission proposed, and the Government of India recently sent a letter to this Government, stating that, if certain omissions were made, they were prepared to pass the Bill. In accordance with the suggestions made by the Government of India, the present Bill, No. 4 of 1878, has been drawn up. The only material portions of last year's Bill which have been omitted are those with reference to the application of fees and forfeitures. It was thought advisable by this Government to expend a portion of the fees in the general improvement of cotton cultivation in the Presidency, but this Government had no very strong opinion on the subject, and when the authorities on the other side of India took objection to that point, this Government was quite prepared to meet their view. The only other change is the insertion of the words “not belonging to the Government” after the word “cotton” in the 21st section, the object of which amendment is to avoid all possibility of conflict with Section 20 of the Sea Customs Act, 1878. With the exception of some verbal alterations, these are the only changes which have been made, and we have it stated that with these changes the Government of India are prepared to give their sanction to the Bill. With these remarks I beg in the first place to move that the Bill be read a first time, and afterwards I shall ask that the standing orders may be suspended, so that the Bill may be passed through all its phases.

The Honourable Mr. BALFOUR said:—Your Excellency is aware that the renewal of this Bill is not regarded with satisfaction by the mercantile community of Bombay. Their opinions have lately been stated at length by the Honourable Mr. Lang, but the Bill was passed by this Honourable Council, and, subject to some slight alterations, it has since received the sanction of the Government of India. I therefore think that at this stage of the proceedings it would be merely a waste of time to raise any discussion on the principles of the Bill. I would however appeal to Your Excellency's known anxiety to foster the trade of the Presidency to limit the duration of the Bill, so that those interested in the Cotton trade may have an opportunity within a reasonable time of expressing their opinion of its working, and of showing whether it has proved a benefit or otherwise. When such a divergence of opinion exists, as in this case, between those theoretically and those practically interested in cotton, it seems to me fair that the duration of a law passed for special purposes should be limited, and I would therefore venture to suggest that a clause be inserted limiting the operation of the Act to two years. I believe I am in order in making this suggestion although I have given no notice, as it does not in any way affect the principle of the Bill.

The Honourable MORARJEE GOOTLDASS:—I regret very much that Government has thought it necessary to continue this Act, notwithstanding the continued protests of the mercantile community during the past ten years. I have been a persistent opponent of this Act for the past ten years, and I cannot therefore give a silent vote on this occasion. I do not propose to take up the time of the honourable members in repeating the arguments brought against the Bill by some of the previous members of this Council, all of which arguments still hold good. There is, however, one point to which I would call attention, which is the change that has taken place in the cotton trade, owing to the practice of pressing up-country. This practice prevents examination in Bombay at the time of shipment and the result is that a good portion of the cotton is sold in Bombay, under a guarantee given by the seller, that on reaching Liverpool it will come up to a certain standard of quality. Under these conditions, therefore, any adulteration would be only to the injury of, and at the expense of, the seller himself. All the tendency therefore of the changes which have taken place in the course of trade in the past few years, is to make any such Act more and more unnecessary. I would appeal, therefore, even at this late date, to honourable members to reconsider the principle of this Bill. The rice, indigo, cotton, jute, tea, sugar, silk, skin, wheat and seeds of Calcutta, and the indigo, cotton, skins, and sugar of Madras all flourish without Government protection; why should Bombay alone be taxed? Why cannot we have the same freedom in trade which the other parts of India enjoy? I go a step further. In the Manchester trade adulteration is notorious, and yet the British Government does not interfere. Do we not live under the same Government? Do not the same principles of trade apply here as there? With these few remarks, I am sorry I am unable to support the Bill.

His Excellency the PRESIDENT:—Does the honourable Mover wish to reply?

The Honourable Mr. RAVENSCROFT:—With regard to the Honourable Mr. Balfour's suggestion that the Bill should be passed for only three years, I think it is always advisable to avoid any extraordinary course of legislation if possible. The Legislature has always the power, at any period, provided an Act does not work satisfactorily, to bring in a short Act to amend or repeal it. I do not see why we should anticipate any change taking place in the circumstances and condition of the cotton trade in the next two or three years, but if it is found that the Act is not necessary, no doubt the Government of the day will take the matter into consideration. The Governor General having expressed his readiness to sanction the Bill with certain minor alterations, I do not think we can introduce an entirely new provision of this kind now.

The Honourable Mr. Ravenscroft's motion was then put to the vote and carried, the Honourables Mr. Balfour and Mr. Morarjee only voting against it.

The Bill read a first time.

The Bill having been read a first time,

The Honourable Mr. Ravenscroft next asked His Excellency the President to suspend the standing orders, to allow him to move the second and the third reading.

His Excellency the PRESIDENT:—Then, considering the circumstances of the case, I accede to the request to suspend the standing orders.

The Honourable Mr. RAVENSCROFT:—The standing orders having been suspended, I have now to propose that the Bill be read a second time.

The motion was carried, and the Bill was read a second time.

The Bill was next considered in detail. No amendments were made or suggested.

The Bill read a third time and passed.

The Bill was then, on the motion of the Honourable Mr. Ravenscroft, read a third time and passed.

The Honourable Mr. GIBBS :—I beg to move the first reading of Bill No. 5 of 1878,—

Mr. Gibbs moves the first reading of the Kurrachee Vaccination Bill (No. 5 of 1878).

A Bill to prohibit the practice of inoculation, and to make the vaccination of children in the town of Kurrachee compulsory. Some honourable members present will remember that a Bill similar to this was introduced by me into the Legislative Council some time ago, and subsequently became an Act, by which compulsory vaccination was introduced into the town and island of Bombay, and the practice of inoculation put a stop to. From the reports we have received of the operation of that Act, I believe compulsory vaccination is working tolerably well in Bombay. The authorities in Sind, having unfortunately had to meet on several occasions rather severe epidemics of small-pox, took it into consideration whether a similar Act might not be passed for Sind, or some portion of it. The result of their inquiries and consultations is that they consider an Act somewhat similar to the one passed for Bombay might be introduced into the town of Kurrachee, and this present Bill has been drafted on the model of the Bombay Act and as drafted has been approved by the Commissioner and the medical officers in Sind. The matter is, of course, of very great importance, and I think the Council will consider with me that the Act should be very fully made public to the persons who are to be brought within its operation. The Government of India have approved of the penal clauses of the Bill, and the Secretary of State has expressed his opinion that there is no objection to the Bill in its present state. The notification of the decision of these two high authorities was received only the other day, and in consequence the Bill was only sent to the Commissioner in Sind to be translated into Sindhi on the 26th August. The Bill comes regularly before us for the first reading, but afterwards in referring it to a Select Committee, I think good time should be allowed them to report, because as yet the Bill has not been published to the public of Kurrachee, who I think should have full time to consider it and to make any suggestions they may wish, and their suggestions should be considered by the Select Committee.

The motion was adopted, and the Bill read a first time.

On the motion of the Honourable Mr. Gibbs, the Bill was referred to a Select Committee consisting of the Honourable Mr. Ashburner, the

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

Honourable Mr. Ravenscroft, the Honourable Mr. Dosabhoj Framjee, the Honourable Mr. Morarjee Goculdass, and the Mover, with instruction to report within two months; and it was ordered that the Bill and the report of the Select Committee be translated into Sindhi and Guzerathi.

His Excellency the PRESIDENT :—There is a supplementary motion, which the

Mr. Ashburner moves for permission to introduce a Bill for the relief of indebted ryots.

Honourable Mr. Ashburner will explain to the Council, regarding certain points of legislation with reference to the indebtedness of the ryots of the Deccan.

The Honourable Mr. ASHBURNER :—Your Excellency is aware that for some years past a certain proportion of the agricultural population of several districts of the Deccan have been in a very depressed state. The reasons for this were obscure. The Survey Depart-

ment had given a fixed tenure, which had been hitherto unknown; had limited the Government rental of the soil to a very moderate share of the net produce; every available acre of waste land had been brought under cultivation, proving that agriculture was a profitable occupation; population had increased 30 or 40 per cent., showing that at least the necessaries of life were abundant; but nevertheless the depressed condition of this class was an undoubted fact—it was obvious everywhere and was the subject of frequent reports by the Local Officers. It culminated about three years ago in riots in certain parts of the Ahmednagar and Poona districts. A Committee composed of representative men, European and Native, one member having been deputed by the Government of India, was appointed to investigate the causes of the discontent. They have made a very able and elaborate report, showing that the depression was mainly confined to those who were involved in debt, who composed about 25 per cent. of the population (I speak from memory), and was mainly due to abuses connected with the administration of justice, which gave the creditor an unfair advantage over his debtor and made it almost impossible for him to free himself from debt when once involved. The Committee made certain suggestions for the removal of those abuses which were embodied in a Bill we submitted for the consideration of the Governor General in Council. His Excellency approved generally of the proposed measure, but suggested that some of its provisions might be more conveniently dealt with by legislation in this Council. I should have preferred that the subject had been dealt with in one comprehensive Act, passed either in this Council or in that of the Government of India, but in deference to the wishes of the Supreme Government a Bill has been drafted which I now beg permission to introduce. Its principal objects are as follows:—(1, to limit the rate of interest payable by agriculturists to a reasonable amount; (2) to provide that all payments on account are carried to their credit; (3) to prohibit their being made liable to compound interest; (4) to extend to all classes of agriculturists the equitable Hindoo rule of “dam dupat”—this it is well known limits the amount of a debt to double the principal, but has hitherto been only applicable to Hindoos; (5) to limit the liability of agriculturists in respect to ancestral debts. It is not pretended that this measure will cure all the evils which afflict the Deccan ryot, or entirely protect an improvident man from the consequences of his own improvidence, but it will at least tend in that direction, and at least deprive the Sowkar of the unfair advantage he has hitherto had over his debtors.

The Honourable Mr. GIBBS :—If I understand the matter aright, the case stands thus:—After considering the Report of the Deccan Riots Commission proposals were sent from this Government to the Government of India, who came to the conclusion that it was desirable to legislate in the manner suggested, but that it was inadvisable, looking at the ordinary working of the two Councils, for them to legislate in such matters as this Council has it in its own power to legislate for. There were certain of the proposals made by this Government which would interfere with certain Acts of the Government of India passed subsequently to 1861, and those this Council had no right to interfere with. There were also matters which affected the jurisdiction of the High Court, and those, too, were beyond the power of this Council. This Government was of opinion that it would be advisable to pass one Bill including all the different topics of legislation; but the Government of India having considered the matter, and having carefully taken into account the position which the Legislative Council of India holds with regard to the Local Councils, are of opinion that it is advisable for them not to go beyond that

portion of the jurisdiction for which it is absolutely necessary for them to legislate and that the remaining proposals should be returned to this Government with the suggestion to introduce a Bill in its own Legislative Council. That Bill, I believe, is in course of being drafted, if it is not already drafted, and I apprehend the position this Council will find itself in will be that it will have to pass a Bill to supplement the Bill now before the Council of the Governor General. Neither Council takes upon itself the entire field of legislation which is considered necessary in consequence of the Report of the Deccan Riots Commission. There is one other observation I have to make though it is encroaching in a manner on the province of my honourable colleague (Mr. Ashburner). In connection with the supplement to the *Government Gazette* which was recently sent to each of us, containing several pages of questions regarding the famine, I have been making some inquiries. I mention this matter because I see from the last weekly report on the Vernacular Press that one of the Vernacular papers laments that the assessment on the land generally is so excessively high, and suggests to Government to have mercy on the ryots, and in future to be content with taking not more than one-fourth portion of the gross produce. Well, that is rather ridiculous, because Government have never, in any single case, taken so much as one-fourth. My honourable colleague (Mr. Ashburner) said he spoke from memory; but I have been making inquiries from the Honourable Colonel Anderson who has charge of the records of what is called the crop experiments, taken every year in all parts of the Presidency in order to try and find out what proportion the assessment actually bears to the gross produce of the land; and I believe it may be said that, assuming ordinary cultivation, the maximum portion of the gross produce taken as assessment is one-seventh and this is exceptional and the minimum is one-fortieth, or in isolated cases, for the common grains, even less. I think it is as well that these facts should be made known, because, as has been often observed, there is great misunderstanding on this subject of the Government assessment on the land. In a case chosen specially this year as being as poor and careless a form of cultivation as could be found—salt rice land in Kanara—the gross produce was valued at 13 rupees, while the assessment was $2\frac{1}{2}$ rupees.

The permission asked for was given, and it was ordered that the Bill when drafted be published and translated into the Marathi, Guzerathi and Kanarese languages.

His Excellency the President then adjourned the Council.

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

J. MONTEATH,

Acting Under Secretary to Government.

Poona, 13th September 1878.

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 Thursday the 26th September 1878, at noon.

P R E S E N T :

His Excellency the Honourable Sir RICHARD TEMPLE, Bart., G.C.S.I., C.I.E.,
Governor of Bombay, *Presiding.*

His Excellency the Honourable Sir CHARLES STAVELEY, K.C.B.

The Honourable J. GIBBS, C.S.I.

The Honourable the ADVOCATE GENERAL.

The Honourable E. W. RAVENSCROFT, C.S.I.

The Honourable Colonel W. G. ANDERSON.

The Honourable DOSABHOY FRAMJEE, C.S.I.

The Honourable M. BALFOUR.

The Honourable Colonel C. J. MERRIMAN, C.S.I., R.E.

The Honourable MORARJEE GOULDASS, C.I.E.

Paper presented to the Council. The following paper was presented to the Council, viz. :—

Letter from the Secretary to the Government of India, Legislative Department, No. 1228, dated 14th September 1878, conveying the assent of His Excellency the Viceroy and Governor General to the Bombay Abkari Bill (No. 2 of 1878).

The Honourable Mr. Gibbs moved the first reading of Bill No. 7 of 1878,—a Bill to remove doubts as to the time when certain portions of the Bombay Municipal Act Amendment and Continuance Act, 1878, were intended to come into force. Mr. GIBBS said :—Your Excellency and the other members of the Council will remember that

Mr. Gibbs moves the first reading of Bill No. 7 of 1878, to amend the Bombay Municipal Act.

on the 20th July last, at a meeting of this Council, I explained the reason why I did not bring forward a Bill which had been prepared to amend the new Municipal Act. The reasons I gave were that Government, having had the benefit of the opinion of the Honourable the Advocate General and another learned counsel, were of opinion that there was no occasion to legislate for the period at which the Act came into operation, but since then it has unfortunately turned out that, by some mistake in the Municipal Commissioner's Office, the lists which he (the Municipal Commissioner) is bound under the Act to prepare and publish by the 1st July, were not so published, but were issued from the Municipal Commissioner's Office only on the 1st July, and did not appear in the public papers until the 2nd July. This having been brought by the Municipal Commissioner to the knowledge of the law officers of the Corporation, they arrived at the conclusion that it was quite open to any one interested in the coming elections to take objection either to a voter or candidate on account of the notice of these lists not having been published in the public papers before the 1st July. The only way of correcting this blunder of the Municipal Commissioner's Office is to bring in a short Act setting aside the doubt which has arisen on that point, and clearly setting forth the fact that the lists having been published on the second instead of on

the first day of July, should not be invalidated, but that the elections should be just as good as if the lists had been published on the 1st July. The necessity for a short Bill having arisen in this way, advantage was taken of the opportunity to make clear a point which has led to some legal consultations, as to the meaning of the Act coming into operation "on the date of the passing thereof." Those words have led to some doubts in the minds of counsel and so a section has been added to this short Bill to clear that point up thoroughly. There is another matter which has turned up in the meantime and on which counsel's opinion has been taken by the Municipality; and the opinion of one learned counsel was entirely in favour of the Municipal Commissioner's view of the case, while another learned gentleman, although favouring that view, still said he thought there was considerable doubt on the point. The point in question is whether the new schedule came into operation with the Act "on the date of the passing thereof," or whether it does not come into operation until the 1st January next. There being, as I said, a necessity for a short Act, this question also has been taken into consideration, and a section has been added to clear up the doubt. How the doubt arises and the reasons for legislation on this point I will leave my honourable friend the Advocate General to explain. To these few observations I would merely add that the preparation for the Municipal elections being now about to take place, it is advisable that this Bill should become law as soon as possible; and for that reason, and because it does not affect the interests of the people of Bombay in any way, except perhaps the lawyers, in that it will prevent actions being brought, I shall ask Your Excellency to suspend the Standing Orders so as to allow the Bill to be passed through all its stages to-day.

The Honourable the ADVOCATE GENERAL:—Your Excellency, I think I can in a very few words put before the Council an explanation of the difficulty, referred to by the Honourable Mr. Gibbs, with regard to the levying of town duties. The Council are probably aware—at all events those gentlemen who are connected with the Municipality will be aware—that by the provisions of the Act the Municipal Commissioner must prepare before the close of each year an estimate of Municipal expenditure for the ensuing year, which is laid before the Town Council, who make an estimate of the duties which will be requisite to provide for the expenditure; and then, under Section 115 of the Act, it is provided that at a special general meeting the Corporation shall fix the rates and town duties to be levied for the year following. It is provided also that the rates so levied shall be the town duties leviable for the next ensuing year. Now, the town duties for the current year were fixed by the Corporation, in pursuance of that Section 115, at their meeting last November. At that time, under the old Act, town duties were leviable in respect of metals amongst other matters, and the town duties fixed last November for the year following of course included the duties leviable upon metals. But in course of the preparation of the Amendment Act, the question arose, I think in Committee, as to whether it would not be desirable to omit metals from being subject to town duties and to put firewood into the schedule instead; and that amendment was adopted, and the Act, so amended, passed. The result was that in the Amended Act a new schedule was inserted, in which firewood was included in place of metals. Thus, on the face of the amended Act, it would appear that metals will not be subject to any duty under it, but that firewood would be substituted: but upon the construction of the Act I think there can be no doubt whatever, that it was the intention of the Legislature that the duties fixed by the Corporation in

November last should be continued on the articles then made subject to them for the ensuing year. There is no power given by the Act to enable the Corporation to fix town duties at any period of the year except at the meeting in November; and the difficulty of course is this—if it be held that in consequence of the amending Act metals are no longer liable to town duties, the Corporation would lose all the duties it would otherwise derive from metals, and which are necessary to provide for the expenditure for the year, and it would not be able this year to levy any duties whatever on firewood to meet the loss of the duties on metals. Had it been the intention of the Legislature, in altering the schedule, to exempt metals from town duties during the present year, provision would have been made for levying duties on firewood in substitution. It has been suggested, in consequence of the doubt which has arisen, that the Act should be amended in the way proposed in the Bill now before the Council.

The Standing Orders having been accordingly suspended,
 Bill read a first time. the Bill was read a first time.

The Honourable Mr. GIBBS :—It is unnecessary for me to take up the time of the Council with further explanations, because the Statement of Objects and Reasons contains every thing that I might say upon the present occasion. I have already explained the necessity for bringing the Bill in, and that the object and principle of the Bill is to prevent any difficulties arising during the remainder of the present year and the beginning of the next year, as regards Municipal matters generally, and particularly as regards the elections which are about to take place. With these observations, I beg to move that the Bill be read a second time.

The motion was put by His Excellency the President, and
 The Bill read a second time carried, and the Bill was read a second time.

On the motion of the Honourable Mr. Gibbs, the Bill was
 The Bill considered in detail and read a third time and next considered in detail and read a third time and passed.
 passed.

His Excellency the President then adjourned the Council.

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

J. MONTEATH,
 Acting Under Secretary to Government.

Poona, 26th September 1878.

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 Tuesday the 17th December 1878, at noon.

P R E S E N T :

The Honourable J. GIBBS, C.S.I., *President*.
 The Honourable L. R. ASHBURNER, C.S.I.
 The Honourable the ADVOCATE GENERAL.
 The Honourable E. W. RAVENSCROFT, C.S.I.
 The Honourable DOSABHOY FRAMJEE, C.S.I.
 The Honourable SYUD HUSSAN EL EDROOS, C.S.I.
 The Honourable M. BALFOUR.
 The Honourable Colonel C. J. MERRIMAN, C.S.I., R.E.
 The Honourable MOBARJEE GOULDASS, C.I.E.
 The Honourable Sirdar MUDHOJIRAO ZANRAO NAIK NIMBALKUR.

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 Bill No. 3 of 1878 (A Bill to provide for the levy of fees for the use of Government landing-places in the Port of Kurrachee).
2. Letter from the Secretary to the Government of India, Legislative Department, No. 1400, dated 29th October 1878, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to remove doubts as to the time when certain portions of the Bombay Municipal Act Amendment and Continuance Act, 1878, were intended to come into force.
3. Letter from the Secretary to the Government of India, Legislative Department, No. 1429, dated 12th November 1878, 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 prevention of adulteration of cotton and for the suppression of fraudulent practices in the cotton trade.

The Honourable Mr. ASHBURNER moved that Bill (No. 3 of 1878) to provide for the levy of fees for the use of Government landing-places in the Port of Kurrachee be read a second time. Mr. Ashburner said he had merely to lay before the Council the Report of the Select Committee. It was not necessary for him to make any further statement. He called upon the Secretary

Mr Ashburner moves the second reading of Bill (No. 3 of 1878) to provide for the levy of fees at Government landing-places in the port of Kurrachee.

(Mr. Nugent) to read the Select Committee's Report.

The Report of the Select Committee having been read,

The Honourable Mr. MORARJEE GOULDASS asked if any representations or petitions had been received from Kurrachee in connection with this Bill.

The Honourable the PRESIDENT :—None.

The Bill read a second time.

The Bill was then read a second time.

The Honourable Mr. ASHBURNER moved that Bill No. 8 of 1878 (Bill to further amend Act XIII. of 1856) be read a first time. He said the objects and reasons for the Bill were clearly set forth in the Statement of Objects and Reasons, and it appeared to call for no further remark.

Mr. Ashburner moves the first reading of Bill (No. 8 of 1878) to further amend Act XIII. of 1856.

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

The Bill was then read a first time.

The Honourable Mr. ASHBURNER next moved that the Bill be referred to a Select Committee, consisting of the Honourable Dossabhoj Framjee, the Honourable Morarjee Gouldass, the Honourable E. W. Ravenscroft, and the Mover, with instructions to report within one month.

The Honourable the PRESIDENT :—Is that necessary? The Bill affects no one but the Police.

The Honourable Mr. ASHBURNER said a suggestion had been made by Sir F. Souter, which he thought should go to the Select Committee. His Excellency the Governor had not yet seen it.

The motion was accordingly adopted.

The Honourable the PRESIDENT :—The next item on the Agenda is the first reading of Bill (No. 10 of 1878) to facilitate the introduction of the Bombay District Municipal Act into Sind. I have charge of this Bill, and I will proceed to move that the Bill be read a first time. The objects and reasons which

Mr. Gibbs moves the first reading of Bill (No. 10 of 1878) to facilitate the introduction of the Bombay District Municipal Act into Sind.

render this Bill necessary have been printed and published and are in the hands of Honourable Members. It is really and truly a Bill to get over a legal difficulty, which has principally occurred owing to the Government of India, in one of their general repealing Acts, having repealed certain clauses, which in ordinary Acts would be of no consequence after the Act had once come into force; but when we wanted to extend this Act to Sind, we found that the repeal of these clauses had caused a difficulty to arise, and the present Bill is introduced to get over that difficulty, and also to clear up certain doubts which were entertained whether the Bombay District Municipal Act was not applicable to the Province of Sind as well as to the remainder of the Presidency from the date when the assent of the Governor General was given to it.

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

The Bill was then read a first time.

The Honourable the PRESIDENT next moved that the Bill be referred to a Select Committee, consisting of the Honourable the Advocate General, the Honourable E. W. Ravenscroft, the Honourable Morarjee Gouldass and the Mover, with instructions to report within six weeks, and that the Report be translated and published in Sindi.

This motion was adopted.

The Honourable Colonel MERRIMAN :—I beg to move the first reading of Bill (No. 11 of 1878) to provide for irrigation in the Bombay Presidency.

Colonel Merriman moves the first reading of Bill (No. 11 of 1878) to provide for Irrigation in the Bombay Presidency.

Honourable Members will recollect that, in 1876, the necessity for legislation in this respect was prominently brought to notice. Reports were then received that the people were constructing wells along the banks of the new canals, into which the water from the canals flowed or percolated, and that irrigation was being carried on from these so-called wells without any payment of water-rate. I may mention that the geological formation of the Deccan is peculiarly favourable for a tapping process of this nature. The Government at that time directed a Bill to be prepared to protect their interests against all forms of surreptitious abstraction of water from Government canals. Subsequently, as other difficulties arose, notably in connection with water-courses (including the distribution of water to the people) and the supply of labour required in cases of great emergency to avert calamity and extensive public loss, the Government also directed that provisions should be made in the same Bill to meet these cases. I just mention these facts to show that the subject has been under consideration for some time past; but before any definite action could be taken upon these orders, the famine made its appearance, and while its pressure lasted, the Irrigation Bill had to be set aside. On the whole, however, I venture to think that the delay has been productive of more good than harm, because the famine has certainly proved the very great importance of doing all that is practicable for increasing the water-supply and the protection against drought in many parts of the Deccan, which can only be effectually done by means of very large irrigation works. Experience goes to show that wells and small works dependent upon purely local rain-fall are very liable to fail entirely in bad seasons. As an instance it is not, I think, too much to say that but for the Ekrook tank and its small perennial canal in the neighbourhood of Sholápur, that town would have had to be entirely abandoned at the end of 1876, or the early part of 1877. Then opportunity has been afforded of observing the action of the people in respect to irrigation works during the bad seasons of 1876 and 1877. In 1876, for the most part, they kept on hoping for rain until it was too late to take canal water. In 1877 they were wiser, and there was a very considerable extension of irrigation. In 1876-77 the area under command was 210,318 acres, and the area actually irrigated 17,059 acres, whereas in 1877-78 the area under command was 244,137 acres, and the area irrigated 35,387 acres. This is, however, a very small proportion, and it is obvious that if the country is to be properly irrigated, and the works are to be financially successful, some measures for a more speedy utilization of the water must be adopted. Then, again, the subject can now be considered in connection with the recently proposed scheme of Provincial Finance. The Government of India could not, without setting aside principles repeatedly enunciated, throw upon the taxpayers of India at large the burdens caused by works designed to provide for purely local necessities. The interest charges, while the works are under construction, will of course have to be met, and doubtless will be met, by a general scheme for mutual insurance or protection against the evil effects of drought among the various provinces, but as soon as the means of irrigation have been actually provided, these charges should certainly then be placed on the locality benefited, and until the ordinary income expands sufficiently to cover interest and working expenses, it is proposed to meet the deficiency by levying a small water advantage or insurance rate, not exceeding 8 annas per acre, upon all protected cultivable land which is not paying any water-rate. I may mention that the people in the Northern Deccan are

accustomed to the levy of a cess somewhat analogous to that proposed in the Bill, to meet the cost of working expenses of their own channels. This cess used to run as high as 11 annas per acre on sugarcane and 5 annas on other irrigated crops. It is now, I believe, only 4 annas on sugarcane, and 2 annas on irrigated land on which other crops are grown. The people pay it voluntarily and admit its equity and utility. The present Bill embraces all the points I have alluded to and some few others; but the necessity for this legislation is very clearly set forth in the Statement of Objects and Reasons, and I do not think I need take up the time of the Council by going into any further details on these subjects. I would like to say a few words regarding the general policy of the Government with reference to irrigation works at the present time. Including the share of normal outlay due to an expenditure of about 30 lakhs of rupees incurred during the famine period upon 18 new works which were carefully selected with a view to the mitigation or prevention of famine in future, the Government has already invested a capital sum of about 132 lakhs of rupees (direct charges) upon all the irrigation works and projects in the Bombay Presidency, exclusive of Sind, *i.e.*, in the Deccan and Guzerát. The expenditure has been distributed, for the most part, over the last 15 years, and the works are in various stages,—some few in operation, and others in partial operation only, while several are under construction and not yet brought into operation at all. The policy of the Government is to complete all these works within the next 5 or 6 years at a cost of 83 lakhs of rupees (direct charges), and, if suitable financial arrangements can be concluded, to supplement six existing canals with storage lakes, at a cost of 29½ lakhs of rupees (direct charges), and further, to commence, and partially complete, within the same period, 14 new works estimated to cost 113½ lakhs (direct charges). These works will be carried out in various parts of the Deccan and Guzerát. I may mention that a programme of works, with forecast of expenditure amounting to 200 lakhs of rupees, for the five years ending 1883-84, has been prepared at the desire of the Government of India and submitted to that authority. Should this programme be sanctioned, our position may be stated somewhat as follows:—At the end of the next seven years we should have a series of works, having an unfailing supply of water and capable of completely protecting an area of 1,231,834 acres, of which 514,831 acres could be irrigated annually. The progress would, of course, be gradual, in fact very gradual. On the basis of results arrived at in connection with existing large works, it may safely be assumed that the schemes will pay their working expenses in the second or third year after they are brought into operation, and that at the end of the tenth year they will cover the interest as well as the working expenses. It is calculated that the ultimate results may be looked for about the end of the fifteenth year. I need scarcely enlarge upon the enormous benefits that will be afforded by the construction of such works in a country liable to be stricken with drought, and over portions of which the rainfall is always more or less precarious. The penal clauses of the Bill have received the approval of the Government of India, and no objection has been raised to the Bill in its present form by the Secretary of State. With these remarks I beg to move that the Bill be read a first time.

The Bill was then read a first time. It was resolved, on the motion of the Honourable Colonel Merriman, that the Bill should be referred to a Select Committee, consisting of the Honourable L. R. Ashburner, the Honourable E. W. Ravenscroft, the Honourable Colonel Anderson, the Honourable Dosabhoj Framjee, the Honourable Morarjee

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

Goculdass, and the Mover, to report within two months, and that the Bill and the Select Committee's Report be translated into Maráthi, Gujáráti, Kanarese, and Sindi.

The Honourable the PRESIDENT moved the first reading of Bill No. 12 of 1878 (A Bill 'to consolidate the land and other property vesting in the Trustees of the Port of Bombay, and certain other lands and property on, or connected with the foreshore of the Island of Bombay into one estate, and to vest the control and management of the same in the one Public Trust; and for other purposes'). He said :—

Mr. Gibbs moves the first reading of the Bombay Port Trust Bill (No. 12 of 1878).

The Statement of the Objects and Reasons which necessitate this Bill has been published, and is in the hands of Members of the Council. I may perhaps, however, give a short history of the management of the foreshore of Bombay down to the present time, and I think this alone will show the necessity for the Bill, the first reading of which I have now to move. It will be remembered that, on the purchase of the Elphinstone Estate, an Act was passed in this Legislature, by which that estate was made over to a body of gentlemen, called the Port Trust, consisting of 12 members, who had the entire management of property, with the bunders belonging thereto, and including the large works of the Prince's Dock, now under construction, and which we hope will shortly be opened. As the Trust went on managing this large property, the natural consequence was that the other bunders on the foreshore of Bombay, such as the Sassoon Dock, the Jamsetjee Bunder, the Mazagon Bunder, and the Frere Company's bunder, were more or less in competition with the Elphinstone Estate. After some years' experience of the working of the Trust, and after some months' discussion, the Government of India came to the conclusion, on the report and suggestions made by this Government, that there were only three courses open—either to openly allow a competition pure and simple, to purchase the other properties and convert the whole into one large Trust of the Port of Bombay, or to get the other owners of foreshore property to consent to one fixed tariff of prices. As for the last plan, immediately the suggestion was made, it was found utterly hopeless that anything of the kind could be carried out. In consequence of this, the Government of India decided that competition must be allowed to go on; but at the same time they submitted the matter to the Secretary of State at Home with a recommendation that the other properties should, if possible, be combined with the Elphinstone Estate, and that the whole foreshore of the harbour of Bombay should be managed by one body. The Secretary of State approved of the general principle of the whole foreshore being managed by one body, and made certain suggestions, one of which was founded on what was called the Morsey Docks scheme of Liverpool. There, some years ago, it was found that the competition going on between the different dock-owners had gone beyond the limit to which healthy competition might be allowed to extend, and that something was necessary to be done to put a stop to further competition, which might lead to ruin. In consequence, the dock-owners of Liverpool joined together and formed a Trust under an Act of Parliament, which is called the Mersey Dock Trust Act. The suggestion was thrown out by the Secretary of State that we should consider whether a similar plan could not be carried out in Bombay; but, at the same time, he admitted that there might be a necessity for purchasing the private properties from the owners, and so constituting a Trust. The matter has been very carefully considered, and a good deal of correspondence has taken place between the Government of India and this Government and the Secretary of State. Much of that correspondence has already been published in the *Government Gazette*, and

by it the public have been informed that we have arrived at the conclusion that the best, and only *satisfactory*, plan to adopt will be to purchase the other properties and throw the whole under the management of one Trust. This Bill has been drafted very carefully. In it there has been included the present Port Trust Act, with such alterations as experience has shown to be necessary, and it has also been prepared with a view to give the new Port Trust—provided that it be, as proposed herein, an elected body—greater powers than the present Trust (the members of which are nominees of Government) possesses. In fact, it is proposed that instead of having to refer a great many matters to Government, there should be a broader principle laid down—that they should submit, for instance, the yearly Budget and the establishment lists, but that they need not report every little measure, every lease they grant and every piece of land they sell, as they do at present. They will also have to report, as part of their Budget, what dues they propose to levy on the Dock and other properties. That is, generally speaking, about the amount of Government interference that this Bill provides for. The purchase need not necessarily have formed a measure for the consideration of this Council, but it was deemed desirable by the Secretary of State and the Government of India that such should be the course. The Bill as published comes before this Council in rather a different form to what Bills generally do. I will read the clause of the letter of the Government of India which explains how the Bill comes before this Council and what is expected and hoped will be the result of the action of this Council :—“On the whole, then, the Governor General in Council accepts the proposals of the Government of Bombay as put forward in paragraph 36 of your letter, and agrees to their being laid before the local Legislative Council in the form of a Bill, on the result of the discussions on which the Government of India will base their ultimate decision and orders. The draft of this Bill should be submitted for previous examination by the Government of India, in order to ensure the sufficiency of the financial security that it will offer to the Imperial and Provincial Revenues,”—I may mention that this has been done, and a telegram was received on Saturday giving the sanction of the Government of India to our proceeding with the consideration of the Bill,—“and I am to suggest for the consideration of His Excellency the Governor in Council that the sums ultimately to be fixed as payable for the properties to be acquired, and the rate of interest of guarantee should, in the first instance, be omitted, to be filled in when the Bill has been generally accepted, and the public discussions have shown that the Secretary of State’s condition would be complied with.”—You will notice that this has been done, and that the items have been left blank—“The Bill might also be looked upon as avowedly introduced to enable this discussion to take place, and therefore to be open to modification in its details as it passed through the Council.” The last sentence of this paragraph of the letter is very important, because it shows that this is a Bill which, although it has been drafted as carefully as we could draft it in accordance with what we thought were the wishes of the Secretary of State and the Government of India, still it is not like many Government measures introduced into this Council, which are carefully considered first and put forward in the form in which the Executive Government think they should be carried. In this instance that is not the case. The Bill is introduced in its present form with the full wish and intention that it should be carefully discussed; that the public should have an opportunity of representing to the Legislative Council and the Executive Government their views in the matter; and that when the purchases are finally made and the Act becomes law, it will be with the full consent of the trading community of Bombay. Amongst the important points which it will be necessary for the Select

Committee to consider very carefully, may be said to be the election of the Trustees for the new Trust, and the subject of the guarantee. The subject of the guarantee has been treated in this Bill on a precedent taken from the original agreement between the Government and the G. I. P. and E. I. Railway Companies, and I think also the Baroda Railway Company. The form of guarantee has subsequently, I believe in the case of one of these Companies, been altered; but I believe the same form is still in force with the East Indian Railway Company. It has been adopted in this Bill because it seemed to those concerned in the preparation of the Bill to be a very simple method of guaranteeing the Provincial Revenues against loss in the management of this Port Trust. The next point is the plan proposed for the election of members of the Trust, which is that five should be elected by the Chamber of Commerce, five nominated by Government, and two native members nominated and elected by the ten Trustees so already chosen. I believe I may say that those who had the drafting of the Bill were of opinion that the adoption of this mode of election would most probably lead to the least possible alteration of the constitution of the Trust up to the present time,—that what the Trust has been up to the present time is thus most likely to be continued. One principal difficulty that we had to contend with was that there is no organised association of Native merchants as there is of European merchants, to whom the appointment of certain members of the Trust might be confided. It was proposed—and I see in one of the newspapers of to-day the suggestion is thrown out—that the voting might be according to the amount of dues paid by the various Native merchants to the Port Trust; but on making inquiries from the Chairman of the Port Trust, we found that there was not that carefully prepared return, which is provided for under the Act of Parliament which constitutes the Mersey Dock Trust, for arriving at a safe conclusion on that point. We have therefore in this Bill adopted the plan which you find stated therein. It may possibly be the case that in the discussions in the Select Committee a better plan may be pointed out. If so, I have no doubt this Council will consider it most carefully, and make any alterations they think may be made so as to carry out the wishes of the Government in regard to this Trust in a more satisfactory manner than we have been able to do in drafting the Bill. The only other topic which I need touch upon is the amount to be given for the several properties. Those amounts have already been placed before the public by the publication of the correspondence which has taken place. They are not conclusive in all cases; in some of them the offers have been accepted; but they will now come under the further consideration of the Executive Government of the Government of India, with whom will rest the final decision of the amount to be given in each case. The settlement of these amounts will not be a matter for this Council, but before the Bill has passed through this Council, those figures will be finally added which the Government of India, in communication with this Government, have arrived at as the amounts to be paid. I do not think there are any other observations with which I need trouble the Council on this subject. It is a very important measure; but after having very carefully watched the proceedings of the Port Trust from the time I came into the Council to the present, I feel perfectly certain that a well organised Port Trust of the nature proposed will be for the benefit of the Trade and all persons concerned therein. I believe that it will lead to the most moderate fees being charged, and that at the same time it will give increased confidence to all who have anything to do with the Port. With these observations, I will move the first reading of the Bill.

The Honourable MORARJEE GOCULDASS said he would reserve anything he might have to say on the subject of the Bill for the Special Committee.

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

The Bill was then read a first time.

On the motion of the Honourable the PRESIDENT, the Bill was referred to a Select Committee, consisting of the Honourable L. R. Ashburner, the Honourable the Advocate General, the Honourable E. W. Ravenscroft, the Honourable Colonel Merriman, the Honourable M. Balfour, the Honourable Morarjee Goculdass, and the mover with instructions to report within one month, and it was resolved that the Bill and the Report of the Select Committee be translated into Gujârâti.

The Council was then adjourned *sine die*.

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

JOHN NUGENT,

Under Secretary to Government.

Bombay Castle, 17th December 1878.

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