

PROCEEDINGS

COUNCIL OF THE GOVERNOR OF BOMBAY

ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

1877.

VOLUME XVI.

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Published by the Authority of His Excellency the Governor.

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1878.

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

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*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 16th February 1877, at noon.

**P R E S E N T :**

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, G.C.S.I., K.C.B.,  
Governor of Bombay, *Presiding.*

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE GENERAL.

The Honourable Major-General M. K. KENNEDY.

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

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

The Honourable Nacoda MAHOMED ALI BOGAY.

The Honourable DONALD GRAHAM.

The Honourable Rao Bahadur BEECHEDAS AMBAIDAS, C.S.I.

The Honourable SORAJI SHAPURJI BENGALI.

The Honourable Colonel W. C. ANDERSON.

Papers presented to the Council.

The following papers were presented to the Council :—

1. A memorial from the Bombay Association, dated 22nd December 1876, in regard to Bombay Act IX. of 1863 (An Act for the prevention of adulteration of Cotton and the better suppression of Frauds in the Cotton Trade in the Presidency of Bombay).
2. Letter from the Government of India requesting this Government to explain on what data and by what calculation the half-yearly payment has been fixed in the Bombay Municipality Consolidated Loan Bill at Rs. 1,78,326-2-6, and offering observations on the subject.

3. Report of the Select Committee on the Bill to prohibit the practice of Inoculation and to make the Vaccination of Children in the City of Bombay compulsory.

The Honourable Mr. GIBBS moved the second reading of Bill No. V. of 1876 (A Bill to prohibit the practice of inoculation and to make the vaccination of children in the City of Bombay compulsory).

Mr. Gibbs moves the second reading of the Compulsory Vaccination Bill, No. 5 of 1876.

The Honourable mover said—The Report of the Select Committee, which has just been read by the Secretary, contains, I think, nearly all the information which it is necessary to lay before the Council in moving the second reading of this Bill. The Bill, Your Excellency will remember, as it was originally drafted, provided that vaccination should be conducted in what in England is the ordinary manner, viz., from arm to arm of the children vaccinated. The prejudices of the people, which the Select Committee have noticed in their report, we found upon inquiry to be very deeply seated, and we came to the conclusion—a conclusion to which we were brought mainly by the arguments of the Native members of the Select Committee—that it would be far preferable, if possible, to make the Bill render vaccination compulsory only when the vaccine matter is taken from the calf. As the report observes, we had the advantage of the opinions of several leading medical men, especially those who have made vaccination their peculiar study; and it was from the opinions which those officers kindly gave to the Committee that we were enabled to make the suggestions which we now offer, viz., that the Bill for making vaccination compulsory in the City of Bombay should only, as a rule, require such compulsory vaccination when the vaccine matter is taken from the animal. I may state that the members of the Select Committee had before them, also, the reports which, during the last 8 or 10 years, have been issued in England in the form of Blue Books containing evidence taken either before the House of Commons or a Royal Commission upon the subject. One of the most important questions pressed on our notice was whether arm-to-arm vaccination is likely to tend to the communication of such a disease as syphilis from a child, in whom symptoms of the disease might be inherent, to another child. One case has occurred in this city which gave rise at the time to a good deal of discussion. We were not able to learn from the Surgeon who was then in charge of the Vaccination Department, as he is not present in Bombay, the exact facts of this case; but from what Dr. Pinkerton, who was then the Superintendent-General of Vaccination, informed us, it appears to have been very doubtful whether the lymph taken from the one child was actually the cause of the communication of the undoubtedly syphilitic symptoms that did appear in the other. We found from our enquiries that the general professional opinion is, that if nothing but lymph is taken from a vesicle with a clean lancet, it is then supposed to be in the highest degree improbable that it can communicate any disease of the kind; but if the vaccinator, in taking lymph from the arm of a child, performs the operation carelessly and takes a portion of blood along with it, then there may possibly, through that small portion of blood on the lancet, be communicated a disease from which the child from whom the lymph is taken may be inherently suffering. A lancet also might be used which had on it some slight vestige of matter from an unclean sore. In the case in point I believe that Dr. Turnbull, who investigated it, saw the child from whom the lymph had been taken, and it appeared perfectly healthy. He saw also other children who had been vaccinated from the same child, and he was unable to find in any of them symptoms of a like nature to those shown in the

particular case I have alluded to. It is, therefore, more than probable that in this case the disease was communicated by some other means than the mere lymph. Since the arrival of the last mail I have seen from the English papers that the question of compulsory vaccination has been again brought forward in England, though in rather a different phase from that which we have to deal with here. It is proposed there to make re-vaccination after a certain number of years compulsory; and, on looking at some of the papers that have been published on the subject, I find it apparently laid down as the result of the best opinions on the subject, commencing with that of the famous Jenner himself, that undoubtedly, where it is possible, vaccination by means of lymph taken from the animal, instead of from arm to arm, is the more satisfactory, as being more likely to render the person vaccinated secure from small-pox even after a term of years, than where the disease of vaccination, if we may so call it, has been communicated and passed through from child to child, for several generations perhaps, since the original lymph left the animal. I think that in the Bill now before the Council, the second reading of which I now move, we in the City of Bombay and in this Legislative Council are taking a course strictly in accordance with the very latest opinions of those who are best qualified to give an opinion on this subject, viz.,—not only by making vaccination compulsory, but by making it compulsory only, as a rule, when the vaccine lymph used is taken direct from the animal. The Municipality of Bombay have declared their readiness to meet the required expense, and as the question of animal *versus* arm-to-arm vaccination in Bombay is simply a matter of money, and the expense being provided for, I think the other members of Council who were not on the Select Committee will agree with members who sat on it in unanimously coming to the conclusion that the Bill, as now submitted, should become law. I trust that, should it so become law, Bombay will receive credit as having been the first city in the whole Empire of India in which this very necessary measure has been carried out. With these observations I beg to move the second reading of the Bill.

The Honourable Rao Saheb V. N. MANDLIK said the suggestions he made when the Bill was first introduced had been followed by the Select Committee. He wished to explain, in reference to Section 28, that the last clause of that section would very seldom, if ever, come into operation. From the inquiries he had made as to the failure of animal lymph, he found it was of extremely rare occurrence, and it was only in that case the Executive Government was empowered to make vaccination from arm to arm compulsory. He desired to make this explanation in this place, because the section might otherwise be misunderstood. He thought it was clear that this was entirely a provision for the protection of the public, rather than that any new experiment was sought to be introduced. The question of animal vaccination had now been satisfactorily solved as far as Bombay was concerned. He had great pleasure in supporting the second reading of the Bill as it was now submitted.

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

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

With regard to the clause in Section 1, empowering the Governor in Council to suspend the operation of the Act at any time, His Excellency the President asked why the power of suspension was specially given.

The Honourable Mr. GIBBS :—I believe the only object is to facilitate action with regard to financial arrangements. It was in the original draft of the Bill, and the Select Committee did not think proper to make any alteration in that respect.



The Honourable VISHVANATH NARAYAN MANDLIK thought it was very convenient that the Government should have that power in their hands.

His Excellency the PRESIDENT said he did not quite understand why it need be specially provided for.

The Honourable Mr. GIBBS :—Perhaps as the Bill was originally drafted it became necessary, but it may not be so now.

The latter portion of the clause, after the words *Bombay Government Gazette* in the 9th line, was accordingly struck out.

In Section 2, line 38, the word "cow" was struck out, and the word "calf" substituted.

In reference to Section 3, His Excellency the PRESIDENT said that, according to the section as drafted, the Sanitary Commissioner had the power to appoint the public vaccinators, but he was not empowered to remove them. This was an omission which ought to be remedied. Otherwise, supposing a man shirked his duty or proved not to be fit for it, how was he to be removed?

Accordingly, after the 20th line of the section, the following clause was added :—  
"Every such public vaccinator shall be removable from office by the Sanitary Commissioner, or other officer aforesaid."

The Honourable VISHVANATH NARAYAN MANDLIK pointed out that in case of a public vaccinator falling ill, it would be necessary to appoint a deputy. He asked whose duty it would be to appoint the deputies.

The Honourable Mr. GIBBS :—The Sanitary Commissioner's.

His Excellency the PRESIDENT suggested that deputies should be appointed by the Superintendent of Vaccination. The Sanitary Commissioner should not have anything to do with deputies.

The Honourable Mr. GIBBS said it was not necessary to make special provision for the appointment of deputies in the Act. Rules would be framed under the Act, and the appointment of deputies in case public vaccinators should fall sick or become otherwise incapacitated, could be provided for in those rules.

In Section 4, after the words "Public Vaccinator," in the first line, the following words were inserted : "unless specially permitted by the Sanitary Commissioner, or other officer aforesaid, to reside elsewhere."

With regard to Section 5, the Honourable Mr. ROGERS asked if it was intended that the certificates mentioned should only be given by the Sanitary Commissioner himself, or might they be given by any other officer who was appointed in his stead? As the section was worded, only the Sanitary Commissioner himself would be able to grant them. Mr. Rogers added that there was another point in the section to which he desired to call attention, viz., the provision for "medical practitioners" to practise vaccination. "Medical practitioner" was defined in Section 2, clause 4, as meaning "any person duly qualified by a diploma, degree, or license to practise in medicine or surgery, or specially licensed by the Governor in Council to practise vaccination and grant certificates under the provisions of this Act." By whom were these special licenses to be granted?

The Honourable Mr. GIBBS :—The Governor in Council has power to grant special certificates to persons who may not have any diploma, degree, or license. I believe the provision was inserted merely to prevent any difficulty arising with regard to certain gentlemen practising medicine and surgery in Bombay without either diploma, degree, or license, but who had been in Government service and afterwards started as medical practitioners on their own account, and do a very large business. There was a doubt whether, under the Act, these gentlemen could practise vaccination unless they were specially qualified, and it was proposed to get out of the difficulty by empowering the Governor in Council to grant these certificates.

His Excellency the PRESIDENT suggested that the portion of Section 5 referring to medical practitioners should be struck out, as being unnecessary.

The Honourable VISHVANATH NARAYAN MANDLIK :—I think a man should be prevented who is not qualified.

The Honourable Mr. GIBBS said one good would be obtained by the provision, inasmuch as it would enable the Sanitary Commissioner to know everyone who practised vaccination and to communicate with all in order to secure reliable returns.

His Excellency the PRESIDENT thought the insertion of the provision was a mere waste of paper, because any man, whether he were a medical practitioner or not, if he could vaccinate and had practised vaccination, would continue it.

The Honourable VISHVANATH NARAYAN MANDLIK thought that after the provision regarding the qualifications necessary for a public vaccinator, that regarding the medical practitioners was unnecessary.

After some conversation, the latter portion of the section after the word "Commissioner" in the 4th line was struck out, and the words "or other officer as aforesaid" were inserted.

In Section 6, the word "Government" in the 5th line was struck out, and the words "Sanitary Commissioner, or other officer aforesaid" were inserted.

The Honourable VISHVANATH NARAYAN MANDLIK, when Section 19 was read, suggested that it might be advisable to introduce after the first word of the section the word "wilfully."

The Honourable the ADVOCATE-GENERAL :—If a person does anything of the kind, it must be wilfully.

The Honourable VISHVANATH NARAYAN MANDLIK further said that, according to the section as at present worded, a man who was afflicted with small-pox, if he had contracted the disease by contagion, could not be prevented from coming into the city.

His Excellency the PRESIDENT :—That is a question of quarantine not belonging to this Bill.

The Honourable Mr. GIBBS :—The object of the section is to put a stop, as much as possible, to inoculation. If we go into the general question of sanitation, it is a very wide subject to deal with.

His Excellency the PRESIDENT :—According to this section, an inoculated man may go all over the country, but he cannot come into Bombay.

The Honourable VISHVANATH NARAYAN MANDLIK :—The man affected by contagion is the worst.

The Honourable Mr. GIBBS :—But he comes under the Quarantine Act. We cannot deal with that question.

In regard to Section 20, Clause 3, His Excellency the PRESIDENT said the informant would be the Superintendent of Vaccination, and practically the sufferer would be the Government.

The Honourable Mr. GIBBS :—It is a matter for the Municipality, not the Government.

His Excellency the PRESIDENT :—But they are Government officers ; the Government appoint them.

The Honourable Mr. GIBBS :—Yes, but the expenses of the Act will be paid by the Municipality, under the Municipal Act.

With regard to Section 28, His Excellency the PRESIDENT asked if it was absolutely necessary to insert the clause providing for the entire suspension of vaccination from the animal. Could it possibly happen that the supply of lymph direct from the animal would entirely fail ?

The Honourable Mr. GIBBS :—Yes, it has happened. We might have to send to Belgium.

His Excellency the PRESIDENT :—It has been pointed out that the issuing of such an order as is here contemplated by the Governor in Council would render the use of lymph taken from the animal illegal, because it says vaccination from the human being is to be entirely substituted. I think a proviso should be added that the notification should not interfere with the use of lymph taken from the animal if it be in the power of the parent or guardian of a child to procure the same. Then both systems can go on concurrently.

The Honourable Mr. GIBBS :—But that is not required, because the arm-to-arm vaccination is only to be adopted when the animal lymph cannot be obtained. The animal lymph is, of course, to be used if it can be obtained.

His Excellency the PRESIDENT :—Under this section you make arm-to-arm vaccination imperative, and discard the use of animal lymph altogether.

The Honourable Mr. GIBBS :—The object of the section is to legalise arm-to-arm vaccination when animal lymph cannot be obtained.

His Excellency the PRESIDENT :—There may be a limited supply of both, and in that case there is no reason why they should not go on concurrently.

The Honourable Mr. GIBBS :—It was supposed that upon the Superintendent of Vaccination certifying that lymph from the animal was not procurable in Bombay, then, until such time as animal lymph became again procurable, the Governor in Council might direct vaccination from arm to arm to be adopted.

His Excellency the PRESIDENT :—But suppose the father of any child says he will find a calf from which lymph can be obtained.

The Honourable Mr. GIBBS :—Then we should say—stop arm-to-arm vaccination.

His Excellency the PRESIDENT :—But one calf would not supply sufficient vaccine matter for the whole of Bombay.

The Honourable Mr. GIBBS :—If you have only one calf, vaccine matter never fails, because you can always procure calves for inoculation. It is possible that the supply of animal lymph may die out entirely—it did so once, and they had to procure a fresh supply from somewhere else. That was during the first months of the rains, or the month before the rains ; but I believe it will not occur again, because it has been discovered that the supply can be retained by sending a calf to Matheran or Mahableshtar, where a supply can be kept up without any difficulty, though the lymph cannot be obtained in the town and island of Bombay during a month or six weeks at that season. It might so happen that we should have to send to Belgium, and that would occupy upwards of six months before we could renew the supply of animal lymph. I am only repeating the scientific opinion that was given to the Select Committee. There is either a plentiful supply or none at all, and in the latter event arm-to-arm vaccination must be adopted until a fresh supply can be obtained.

After the whole of the sections had been read through, the Honourable Mr. ROGERS suggested that the Sanitary Commissioner should be appointed to grant the special licenses to practise vaccination, instead of the Governor in Council.

The Honourable Mr. GIBBS said he did not think the circumstances under which the provision alluded to was inserted in the Act would be quite met by that. It was rather an indirect question respecting the etiquette of the medical profession, and regarding certain doubts that had arisen with regard to some particular cases. In fact it was said that a former Inspector-General of Hospitals could not have practised as a medical man anywhere except in Bombay. There would be public vaccinators all over the place, and the provision was to admit of ordinary medical practitioners performing vaccination. It was desired that the vaccination should be done properly, and not that the people should go to any one they might choose.

The Honourable Colonel ANDERSON said there was no provision for taking away these special licenses, which would be desirable in cases where a low class of people might obtain them. Assistants in hospitals and such persons might perhaps obtain them.

The Honourable Mr. GIBBS :—No ; this provision is not intended to apply to them at all. There are two or three gentlemen practising in Bombay who do not come under the description of possessing a diploma, degree, or licence, but who are still doing a large business, and the only way out of the difficulty that arises is for Government to grant them special certificates.

His Excellency the PRESIDENT, referring to Section 22, asked if, on a child's birth being given notice of by a Registrar to a public vaccinator, a certain time went by and the Vaccination Department discovered there was no record of the child's vaccination in their books, and issued a summons against the parent, and when the case came before the Magistrate, he proved that the child had been vaccinated, what would be the result? The Vaccination Department would have to pay the cost and loss of time the parent had been occasioned.

The Honourable Mr. GIBBS:—The answer to that is that, before a public vaccinator would take a summons out against a parent, he would see the child himself, and could then tell whether it had been vaccinated or not, because vaccination leaves a mark for some time afterwards. A public vaccinator need not trouble people unnecessarily, but he must take all measures to satisfy himself. If a parent refuses to allow a public vaccinator to see his child, then, of course, the Magistrate before whom the case may be taken will ask why he refused.

His Excellency the PRESIDENT:—A parent might say "My child is ill, and I will not have him disturbed."

The Honourable Mr. GIBBS:—I do not think that is likely to arise.

His Excellency the PRESIDENT:—How if the parent has not any certificate?

The Honourable Mr. GIBBS:—He must get a certificate, or he is liable.

His Excellency the PRESIDENT:—Then, indirectly, you make vaccination by other people than medical practitioners and those who hold licenses unlawful.

The Honourable Mr. GIBBS:—Yes, for the purposes of this Act vaccination must be performed by a medical practitioner or some one licensed for the purpose, and by no one else.

It was then decided that the Bill should be printed as amended, and consideration in detail resumed at the next meeting of the Council.

The Honourable Mr. RAVENSCROFT moved the first reading of Bill No. 1 of 1877 ("A Bill to amend the law for the prevention of adulteration of

Mr. Ravenscroft moves the first reading of Bill No. 1 of 1877 (The Cotton Frauds Bill).

Cotton and for the suppression of fraudulent practices in the Cotton Trade"). Mr. Ravenscroft said:—During the rains, when your Excellency's Council met at Poona, I made a few remarks on the general question of this Bill, but your Excellency was, very rightly, of opinion that a matter which affected the mercantile interests of the whole of the Presidency, and particularly of the City of Bombay, had better be discussed at the Presidency town of Bombay itself. Since the meeting in September, a memorial has been presented by the Bombay Association against the Act, and I believe representations have also been made by the Chamber of Commerce and other bodies interested in the cotton trade against the Act. The memorial which has just been read contains, in a general way, most of the objections which have been urged against the Act, though I must say I have never seen the objections urged in so weak and inefficient a manner. However, from this document we can ascertain really what the chief objections are, and I will take the opportunity the present occasion offers of explaining how very erroneous most of those opinions are, and how very incorrect the premises are from which they are stated. And in order that the Council may have some understanding as to how the cotton question really arrived at its present stage, I will, with the permission of your Excellency, revert to the original state of things, commencing from about the year 1863. About that time, the American War was in full operation, and the prices of Bombay cotton, which had previously ranged, I believe, about 4 or 5 annas per pound, suddenly sprang up to 15 or 20 pence a pound. The consequence was that everybody tried to make as much money as he could out of cotton, and in that particular year 1863, as my honourable friend Mr. Rogers will be able to assure you also, the cotton which had previously been tolerably

clean became so infamously dirty and adulterated that the very name of Indian cotton was a perfect reproach in the markets of Europe—so much so that in Liverpool and Manchester merchants said that, unless there was a very marked improvement, they would set aside Indian cotton altogether and have nothing whatever to do with it. Those are facts which cannot be gainsaid, and the merchants of this city, taking, in my opinion, a more liberal and proper view of matters than the present merchants do, went in a body to His Excellency Sir Bartle Frere, who was then Governor of the Presidency, and begged him to turn his immediate attention to the subject. Sir Bartle Frere at once requested those merchants to form themselves into a committee and visit the cotton districts, and ascertain, from personal observation, the exact condition of things, and then to report on the matter to him and make suggestions as to a remedy. This committee was formed about the fall of 1862 or the commencement of 1863, and proceeded through the chief cotton-growing districts, where they found things just as I have reported them. In almost every bale of cotton they opened there were large substances, such as stones, dirt, &c.—I am speaking moderately when I say that 20 per cent. of the cotton bale consisted of substances which were only put in to adulterate and deteriorate the cotton and increase its weight and consequently its price. This state of things the Government of the day very properly determined to put a stop to; and after much consideration, and with the advice and entire concurrence of the whole of the mercantile community of that day, they passed Act IX. of 1863. Sir Bartle Frere did me the honour to select me as the first officer to introduce this Act to the Bombay Presidency, and this, to the best of my ability, I did. For about 8 or 10 months I was employed upon that duty, during which time I laid the foundations of the present system, which has been carried on with, I consider, very material advantage to the country, to the present day. From that time, or shortly after, the condition of the Indian cotton, as is allowed on all sides, has most materially improved. The opponents of the Act say the Act had nothing to do with it, and allege the improvement was mainly attributable to other causes, such as the altered state of trade, the introduction of railroads, the telegraph, the admission of Europeans into the interior of the country, and the other processes enumerated in this memorial. On the other hand, it is maintained by those who allege the Cotton Frauds Act has been useful, that to that Act, mainly, is the advantage due. That is my opinion, and that I have invariably and consistently asserted. At all events, whether the improvement is due to that or to other causes, there is no doubt, as is allowed by the merchants of Bombay and also of Liverpool and Manchester, there has been a very marked change. So things went on until about 5 or 6 years ago, when the price of cotton having gone materially down, and the profits of the local merchants having, of course, been reduced to a minimum, every endeavour was made to pare down all unnecessary expenditure, and it was then alleged by some of the merchants—in fact, the majority of the Bombay merchants—that the Act was unnecessary, and it was urged that fees which were levied under the Act should not be levied in future. The late Governor, Sir Seymour FitzGerald, who took a great interest in the cotton question, did not coincide in those views. He listened very courteously to what was urged, but it was his opinion that the Act had proved of the very greatest advantage, and he was not prepared in any way to modify or curtail its operations. On the contrary, he introduced a Bill which would have extended its operations to an extent which I think would not have been necessary. However, that Bill was not sanctioned by the Government of India, and, therefore, there is no necessity to mention the matter further. After H. E. Sir Seymour FitzGerald departed in 1872, and

was succeeded by the present Governor, the merchants again brought forward the question, which was again fully considered, and, in accordance with the wishes of the merchants, Government, at the close of 1873 appointed a Commission at the head of which was my honourable friend Mr. Rogers—than whom there is no more competent person to speak on the question of cotton in India—to inquire into the matter. The other members of the Commission were Mr. LeMesurier, the late Mr. Narayan Vasudev, Mr. Fogo, and myself. Now, I come to the really important and serious part of this question, and though in any remarks I may make I do not wish to hurt the feelings of any individual, or body of individuals, still I think it my duty to state distinctly what I am going to state now, which is that when this Commission was appointed it was the bounden duty of those merchants, Native and European, who had objections to urge against the Act, to come before the Commission and plainly and distinctly state what their objections were. Well, what was the course that was followed? At the request of Mr. Rogers I inserted in the local papers of the day notifications requesting all interested in the matter to appear before the Commission and give whatever evidence they could on the subject. I not only did this, by Mr. Rogers's request; but he himself personally requested the different merchants, and I personally requested them also, in order to carry out their expressed desire and the intention of Government, to come and give us the benefit of their opinions and advice. And what was the result? Out of the whole of those merchants, Native and European, who had taken the trouble to appeal to the local Government, the Supreme Government, and the Secretary of State, only one European merchant could be induced to come forward. That gentleman was Mr. Bythell, for whom I have the greatest respect. He certainly was and is one of the ablest and most experienced merchants in Bombay, and I look upon him as a man whose opinion on such subjects is a very valuable opinion; but, as I say, he was the only European merchant out of all those interested in the subject, and who had so often petitioned the different authorities, who came forward and gave us evidence. His evidence was certainly strongly against the Act, and I have no doubt it was evidence conscientiously given; but it is a fact that the representative of the firm of Gaddum & Co., which was Mr. Bythell's firm, was one of the unfortunate people who had been prosecuted under the Act, and I have no doubt that this, of itself—as Mr. Bythell distinctly told me—gave him a strong feeling with reference to the Act. This, I consider, is a matter of much importance,—that the only European merchant who would take the trouble, notwithstanding our pressure, to give evidence before us, was a merchant who had felt the coercive pressure of the Cotton Frauds Act. The result of our inquiry was that the Commission generally were of opinion that, though it was not advisable to annul the Act, it was advisable to place it temporarily in abeyance. That was not my opinion, but it was the opinion of the majority of the Commission. The report of the Commission was considered by the Local Government, and the papers then went Home to the Secretary of State, who, however, took a different view, and said he thought the majority of the evidence taken before the Commission was in favour of the continuance of the Act; but that there were certain portions of the Act which he thought might be modified, and certain other portions which he thought might be made more stringent. Accordingly, instructions were sent out to the Government of this country that a Bill embodying the views of the Home Government should be prepared, and though further representations have been made by the Chamber of Commerce to the Secretary of State, he has distinctly said he is not prepared to sanction the annulment of the Act, but he wishes these modifications should be carried out. There are one or two points in

this paper (the memorial from the Bombay Association), which I now see for the first time, upon which I will make a few remarks before I close. I see there are four objections particularly urged against the Bill. The first is—"It is unsound in principle, and opposed to the established commercial policy of the British Government." Probably the gentlemen who wrote or signed this document have a very limited knowledge of the subject on which they were writing. Had they possessed more experience and wider knowledge, they would have known perfectly well that in all the countries of Europe the regulation of trade is most closely looked after by the State. In France or Germany you will find the trade of the sale of tobacco is monopolised and entirely kept in the hands of Government, who look most closely after everything connected with it, instead of its being beyond the control of Government. Also in England; I suppose these gentlemen have never heard of the different Acts that now exist in England with reference to the manufacturing trade. It is necessary that I should explain what they are to the Council. At the present moment the law in Ireland is that all flax sold by sample, or classed or exposed for sale, shall be of equal cleanness and quality throughout each parcel, and every person who offers or exposes flax for sale except on those conditions, is liable to a fine for every stone of flax so sold or exposed. Commissioners are appointed corresponding to our inspectors of cotton, and exactly the same surveillance is practised in reference to the linen manufacture in Ireland as in the cotton trade in India. I think that of itself is a sufficient answer to the first of these allegations. Instances without number might be quoted if necessary. The second allegation is that—"It necessarily hampers trade." This I entirely deny. The limit of the fees imposed is 4 annas, but the fee that is actually levied is 2 annas per bale, and if you wish to tell me seriously the 2 annas on each bale of cotton has any appreciable effect on trade, I must say I receive that statement with a very large amount of disbelief. The fact is this,—the merchants at Home who purchase cotton send instructions to merchants here that they will give a certain sum for it, either inclusive or exclusive of freight; they do not take into account the fee of 2 annas per bale, which falls on the merchants of Bombay who ship the cotton as agents for the people at Home. The local merchants very naturally, therefore, do their best to sweep away fees which fall on themselves, and I will allow that the majority of them are now hostile to the Act; but the Liverpool and the Manchester merchants are quite of another way of thinking, and are, I fully believe, most anxious that the Act should be maintained. They prefer, reasonably enough, to get good cotton, and it is perfectly indifferent to them whether the merchants here have to pay 2 annas more or less. The third allegation in the memorial is that—"It is necessarily open to abuse." Well, I quite allow that any surveillance in India is occasionally open to abuse. Occasions have happened when policemen have been known to make extortions, and perhaps have tortured people in order to extort confessions—at least allegations are made to that effect; but what I do say as regards the cotton surveillance is, that there is no more abuse than in any other department, and every care is taken to see that no undue pressure is used. All the district magistrates, moreover, are in a position and willing to punish any oppression that can be brought home to any inspector. Therefore, I say the carrying out of this Act is not more open to abuse than in any other surveillance which is necessary for the suppression of crime or protection of trade; and as to its being "unfair in its practical working," I won't admit it, but I will say this, that the original Act, in one or two points, does require slight modification, and that I think you will find in this new Bill the changes are not very great, but I think they really do remove the two or three blots which perhaps exist in the existing law. At all



events, no matter of very important principle is involved in them, and any improvements which may be suggested in Committee will be very gladly agreed to. With these remarks I beg to propose that the Bill be read a first time.

The Honourable DONALD GRAHAM said :—I have a few remarks to make with reference to this Bill, which I cannot approve of altogether. I will not oppose it at this stage, but at the second reading I shall propose an amendment to the effect that the Bill may be passed with the omission of Section 20—a section providing for the levying of fees. The two main features in the Bill are Section 13, which modifies the penal sections of the present Act IX. of 1863, and No. 20, providing for an increase of the fees, that is, for levying fees upon cotton used in the country as well as on cotton exported. As regards the penal clauses, the officers appointed to carry out the working of the Act have always admitted, in fact, have always cried out, that they were utterly useless in their old form—that they have made nothing of them, and the result will, therefore, be that if this Bill is passed you will have, if possible, a more useless Act with a more costly working and greater expense in keeping it up. If my amendment is carried, it will have the effect of nullifying the whole thing, and that is, I think, what ought to be done. I know the argument in favour of this legislation is that cotton has greatly improved since Act IX. of 1863 was passed, and that, if it is done away with altogether, the state of things will become much the same as in 1863, at the time of the American War. There is one thing with regard to the argument I should like to point out, and that is its curious inconsistency with what was urged five years ago by those who favour this legislation. At that time it was intended to bring forward a more stringent Act, and then Act IX. of 1863 was described as useless. I see a Select Committee, in reporting to the Council on Bill 4 of 1869, declared that “the existing system is practically useless.” Government Resolution 31 of May 1869 says “the officers of the Department are unanimous in condemning the utter inefficiency of the Act of 1863.” In the Statement of Objects and Reasons attached to Bill 4 of 1869 it is said: “It has been found that the present law does not sufficiently provide for the suppression of fraud in respect of cotton.” That was when it was proposed to bring forward a more stringent Act. Now, on the other hand, when the Act is on its defence, and a more modified Bill is being brought in, the argument is that the great improvement that has taken place is due to this Act, and that, if it is done away with, cotton will become as it was 15 years ago. My honourable friend Mr. Ravenscroft has alluded to the merchants and the position they took up when, some four years ago I think it was, the Commission of Inquiry sat upon this question, and has said the merchants did not come forward as they ought to have done to prove the uselessness of the Act. I was not here myself at that time, and I hardly remember what took place, but I can quite understand the merchants not coming forward. It would be exceedingly difficult to prove that the Act is useless; merchants could do little more than express their opinion on that point. It is not a matter that affects the merchants personally, as my honourable friend has suggested. The 2 annas fee which he has put down as their motive for opposing the Act does not come out of their pockets, but, like all charges, it comes on the cost of production. The merchants, I dare say, would have found it very difficult to prove the uselessness of the Act if they had tried to do so. What they say, on the other hand, is, that the onus of proof must rest with those who advocate the Act; that there is a large expenditure of public money, and

that those who advocate it are bound to show in the most unmistakeable manner that that expenditure is required. I cannot say I think that has been done by the mere assertion of what is undoubtedly a fact, that cotton has improved since 1863. I quite admit that has been the case to a very great extent, but as to whether that has been caused by the passing and working of the Act of 1863 is quite another question. On the contrary, I think it can be very easily shown that the improvement is due to totally different causes. Indeed, by the time the Act came into force, the causes which led to it were already passing away. That was during the American War, and frauds and adulteration were the inevitable results of the great excitement which took place at that time. Merchants seized hold of everything in the shape of cotton bales that they could find, and bankers advanced upon it before they could see what it was. But when the American War closed, all that passed away, and a totally different condition of things arose. Merchants and bankers were brought to their senses by the losses they had made. And gradually a system of selection sprung up which made fraud—at any rate the grosser kinds of fraud—impossible, and very soon these were unknown. I believe, myself, that all kinds of frauds would have passed away sooner than they did but for this Act. For a short time,—for a few years, perhaps,—some merchants and bankers put faith in this Act, and trusted to it, instead of relying upon themselves as they ought to have done, and this gave an indirect encouragement to frauds which in the ordinary process of things would have been done away with long before. I believe, myself, that every trade has, at some period of its existence, to pass through a trial such as happened to the cotton trade in 1863. I could give instances in a great many trades. I will mention one or two as they are more familiar to us in Bombay. I will take the piece-goods trade, the frauds in which sprung from very much the same causes as those which gave rise to the frauds in cotton. I am perfectly sure that at one time the piece-goods were as much a byword and reproach in Bombay as the Bombay cotton was in the European markets. There was a great outcry, and some people went so far as to call for a Piece-goods Frauds Act, but fortunately wiser counsel prevailed. And what was the result? Why, after a few years, the trade righted itself, and now such a thing as fraudulent piece-goods is unknown. These frauds were far more serious than the frauds in cotton, because it was impossible to detect the substances that were put into cloth to increase its weight, whereas anyone with a little experience, and by taking a little trouble, can tell whether cotton is adulterated or not. Then there was another case a few months ago in connection with the linseed trade in Bombay. From some cause a great advance took place in the price of linseed, and great frauds and adulteration at once began. It was notorious that dealers in linseed carried dirt and rubbish into their godowns, and deliberately mixed it with linseed. But what happened? Buyers knew that they had to take care of themselves, and they immediately arranged amongst themselves not to take such adulterated linseed, and the result was that this evil passed away, as did that in the case of the piece-goods. That is as regards frauds.

Then, as regards the improvement in cotton, that improvement arose from different causes to those assigned by supporters of the Act. My honourable friend Mr. Ravenscroft has admitted the great influence which the opening up of railways and telegraphs, and the penetration of Europeans into the country have exercised, and no doubt they have had a very great effect; but the real leading influence came into force about five years ago, in the introduction of what is called the Mutual Allowance System, by which, as is explained in the memorial of the Bombay Association, the buyer of cotton has to pay to the seller

an extra price on cotton which turns out to be better than a certain standard. That is, a direct inducement to the shipment of good cotton. Up to that time it was the custom in Bombay to ship cotton according to what was called the fair average of the season. There was no classification; as long as the cotton passed the average that was all that was required, and there was an inducement to mix good cotton with bad so as to pass that standard. The Mutual Allowance System itself has passed away long ago, but it gave rise to a system which has the same result, that of classification in Indian cotton. Now, cotton is classed in 7 or 8 different classes, and the man who takes the trouble to select good cotton gets a corresponding good price for it.

My honourable friend Mr. Ravenscroft has alluded to the position the merchants took up in 1863. I think he is in error in saying they came in a body to ask that an Act should be passed. The records of the Chamber of Commerce tell a different story. A number of merchants did advocate it, but, on the other hand, there were several merchants who thought differently, and some very able minutes are recorded in the Chamber of Commerce books—among others by Messrs. E. Bates & Co., and Messrs. Campbell, Mitchell & Co.—against the proposed Act, and foreseeing very much what has taken place. The majority of the merchants did not express any very positive opinion; they were willing to acquiesce in what they recognised as an honest attempt to get over what was, at the time, most undoubtedly a very great evil. But, the very first year after the passing of the Act, a number of merchants began to point out its uselessness, and every year since then the conviction has grown that it is not only useless but highly mischievous, and that the money spent on it is wasted. I have not alluded to the mischief of the Act, because it is rather difficult to prove that the Act is absolutely mischievous; but I think any one reading the reports of the Cotton Department itself must say that a great deal of injustice is done, and a great deal of annoyance and hampering of trade is occasioned. I see that of cases tried there have been from year to year about 50 to 100, and in some years as many as half have been dismissed, and in those cases in which convictions have been secured, several have been reversed on appeal. In one case I notice the accused was acquitted, but his cotton was confiscated, which reads rather funnily without further explanation. In the cases where convictions were not obtained there must have been a great deal of annoyance caused, and perhaps some injustice. Then, as regards the cases in which convictions were obtained but which were reversed on appeal, a great deal of trouble and annoyance must have been caused; and it is not unreasonable to suppose that many of the other convictions would have been reversed had they been appealed against, but the penalties, as a rule, are small, and that would scarcely be worth while. I make this observation, because I see the Inspector of the Broach District says in his report:—"It is no use getting a conviction in the lower Court because it is sure to be reversed in the higher Court." What does that mean? Merely that convictions cannot be obtained without injustice, and a wrong interpretation of the law in the lower Courts; and no doubt a great deal of injustice does take place. I notice the great bulk of these convictions are obtained in the Southern Maratha Country, and one would expect to find a great improvement in the cotton coming from that district. The fact is that is the only place where there has been no improvement since the passing of this Act. That is a fact which speaks for itself. In other places where the Act is not so stringently worked a great improvement has taken place; but here, where the Act is very stringently carried out, not the slightest improvement is to be found. That is a fact which appears to me unanswerable. Glancing over

these very voluminous reports of the Cotton Department, my attention has been attracted by one by Mr. Inspector Manley, who seems to have taken some credit to himself for having stopped cotton brought over from Gogo to Broach to be pressed there and brought down to Bombay by rail. Mr. Manley takes upon himself to insinuate that the person who brought over those bales of cotton deliberately intended a fraud, and he mentions the name of the owner, a very respectable Bombay merchant. The reason Mr. Manley gives is that "the cotton would be brought down and passed as Broach in Bombay." Nothing shows more distinctly that Mr. Manley is utterly ignorant of the way the business is carried on in Bombay. I have no doubt he acted in perfect good faith, but there is the fact that he seems to have done his best to stop that cotton from coming to Bombay. A glance at the map will show at once that that is probably the cheapest way cotton could be brought down from Gogo. There are only 20 or 30 miles between Gogo and Broach, and cotton could be very cheaply, and without much risk, be brought to Broach by water, and then forwarded by rail. On the other hand, it would have to be carted to Wadhwan, a distance of 60 or 80 miles, and would then have a long and very expensive railway journey to Bombay, while if sent all the way by sea more risk would be incurred, and there would be the loss of time. Thus Mr. Manley has evidently done his best to hamper trade by his own act, for which he takes considerable credit to himself, and Mr. Turner, the Inspector-in-Chief, in his report, says he exercised what he calls "a wise discretion" in stopping some cotton waste from being shipped. The reason given is that he thought it could be shipped for no useful purpose, and he has got an opinion from Messrs. Nicol & Co. saying they thought it could not be used for a useful purpose. I don't know anything about this particular case, but who is Mr. Turner that he should say what is to be shipped and not to be shipped. That is the danger of this kind of legislation; you put power in the hands of men who, I admit, may act in perfect good faith, and you stop the export of a certain article which must have some value, or else it would not be shipped. Mr. Turner gives one reason, that it might have been dangerous to the ship; but the owner of the ship is the best judge of that, and it seems to me Mr. Turner has gone beyond his duty and, in fact, acted illegally in stopping this shipping of cotton waste, an article which, I may mention, has a sale in England and is of some value.

Now, it is proposed to tax the cotton used in the country, no doubt on the assumption that as cotton generally benefits by this legislation, the cotton used in the country should be taxed as much as the cotton exported; but I may say I think any manager of a cotton mill is perfectly able to protect himself, or if he is not he is unfit for his work. He will not buy adulterated cotton if he wants good cotton, nor will he buy good cotton if he wants bad cotton. So long as there is a demand among the mills for good cotton, they will get good cotton. This is the real point of the whole question. As long as merchants in Liverpool, Manchester, and Bombay want good cotton they will have good cotton, as there will then be a direct inducement for its production, and as long as they want it mixed, it will be mixed by merchants, who are perfectly justified in doing it. On the other hand if they wanted it adulterated, if another war arose and people got into a careless system and bought adulterated cotton, you would have the frauds and adulteration again, and there cannot be a greater mistake than to suppose that a few Inspectors scattered over this great country would have any appreciable effect in preventing it.

There is one other point I wish to touch upon. By Section 21 it is intended that part of the fees shall be devoted to cotton improvement. Now, I have no objection to

improvement in cotton, or to experiments being made for the improvement of cotton; but I cannot help thinking that is an imperial matter, and should be done through the Collectors of the Districts and the Agricultural Department of the State. If you have a Cotton Improvement Fund, why should you not have an Indigo, a Wheat and Seed Improvement Fund. You encourage an irresponsible expenditure, and, in consequence, a waste. That there has been a good deal of waste is undoubtedly the case. I have just been struck by a report of the Collector of Khandesh to the Revenue Commissioner, in which he writes about experiments in cotton growing, and says—"I cannot pretend to understand the intricacies of the cotton cultivation at present, but I should say they are not good. It is again found that patent manures are a failure. \* \* \*. I don't think it will be possible to introduce machinery among the native cultivators. \* \* \* \* Mr. Stormont points out that, as regards the crops of this country, instead of teaching the cultivators, he frequently requires instruction from them. This may appear strange, but I believe it is perfectly true." No doubt a great deal of waste has taken place in making these so-called experiments. I don't complain of that, because they have been made with a good intention; but I do complain of a special department being kept up for experiments of this kind. I do think expenditure of this kind should emanate from the regular system of the Government, and not through separate and practically irresponsible departments.

The Honourable BECHERDAS AMBAIDAS :—I support the Bombay Association and Mr. Graham. It appears to me that the cause of the adulteration of cotton was the American War, which sent prices up from  $2\frac{1}{2}d.$  to  $25d.$  per pound. In 1857, during the Russian War, the price went down to  $2\frac{1}{2}d.$ , and the cotton used to come in very good indeed. In 1863, when the price went up so immensely high, I had a letter from a friend in Liverpool telling me that England was in great want of really good cotton, and would take the East India cotton. As my honourable friend Mr. Graham said, the real cause of the improvement in the cotton was the Mutual Allowance System which was established some four or five years ago. By that, whoever shipped bad cotton suffered for it naturally, and the trade righted itself. Government had nothing to do with it; it was a matter between the seller and buyer themselves, and it is always their business to settle these things. I quite agree with all that Mr. Graham has said. I myself had experience of the frauds in the linseed and rapeseed last year. A man bought some rapeseed and mixed a cartful of river sand with it, but when it came to Bombay the fraud was discovered, and no one would buy it. I can also bear witness to the annoyance caused by the working of the Act. There are few cases of prosecutions in Gujarat, and most of the convictions obtained in the Lower Courts have been reversed. One man brought down some cotton from Drángadra, a Native State, and the cotton was confiscated, and he was fined Rs. 200; but afterwards he went to the High Court, and the decision was reversed. That is nothing but causing annoyance and trouble and hampering trade.

The Honourable SOBABJI SHAPURJI BENGALI said:—I am glad that Her Majesty's Secretary of State has recommended that the Cotton Frauds Act should be continued with some modifications. In my humble opinion the question should not be considered from the point of view of the European shipper or of the Native dealer, but it should be considered on the broader ground of what is conducive to the interests and the good of the country. If the European shipper pays for the cotton what it is worth, it does not matter to him whether it is adulterated or unadulterated; and in the same way, if the Native dealer can increase his margin of profit, even to a very small extent, by practising adulteration, it is quite immaterial to him if he ruins the trade of the country in respect of one of

the principle articles of its exports, in which we have to contend with very intelligent and enterprising nations. It has been said that the cotton trade should be left alone, and that legislation has done no good for it; but that, I think, would be to ignore its past history; such could not be the opinion of any one who has known the history of the cotton trade for the last 30 years. Mr. Ravenscroft in his speech did not go farther back than 1863; but, if he will look into the records of Government previous to 1863, he will find that before 1851, when deterrent measures, in one shape or another, began to be adopted, our cotton trade with foreign countries was rendered nearly extinct, owing to a system of the grossest frauds ever practised, and of which I believe men of the present generation have no conception. In 1851, or a year or two afterwards, some regulations were brought into force, and I believe they succeeded, at least so far as Gujarat is concerned, to a great extent. These Regulations of 1851 did, I believe, an immense deal of good, they revived the trade and again gave Indian cotton a position in the markets of Europe. Hardly one-twelfth of the present quantity of cotton exported was sent abroad in 1847, and had things gone on as they were going for a year or two longer, I firmly believe the trade would have been extinct. However, legislation revived it long before the establishment of European agencies up-country. I have no doubt that, as has been stated, the establishment of European agencies, up-country, has done a very great deal of good; but, at the same time, to say that legislation has not done good is, I think, wrong. Both forces have combined together, and have brought forth results which are satisfactory and greatly for the benefit of the country. When I speak of legislation for cotton in this way I must not be understood to say that I consider the Act of 1863 has worked altogether satisfactorily. I am aware there have been hardships in its working, and that it has brought injustice upon many people. If my honourable friend Mr. V. N. Mandlik had been able to stay he might have given numerous instances from his own professional experience of injustice occasioned by the working of this Act. This phase of the question is noticed in the memorial of the Bombay Association, and I believe the representation they make so far as the penal clauses of the Act are concerned are quite correct. As we are going to have the Act altered and have a Bill before us for that purpose, we should take advantage of the opportunity and have these penal clauses modified. The honourable member who has charge of the Bill has said, in his Statement of Objects and Reasons, that it is his intention to modify the provisions of the Act, as they appeared to be unnecessarily stringent, and to render it in other respects more efficient. I don't think that by the addition of a few words in the Bill under the head of Offences and Prosecutions, he can attain his object; in fact, if these words are allowed to remain the Act will be a dead letter, and the intention to render it less stringent and more efficient will, in my opinion, not be carried out. I think that to make the Act as it is required, viz., less stringent and more effective, the punishment by imprisonment should be done away with altogether. I would make confiscation the punishment for adulteration and require no proof but that the cotton was actually adulterated; and if the confiscated cotton could not be well cleaned, it should be destroyed. That, I am persuaded, would be a system that would be attended with very good results. To adopt this principle will, I think, fulfil the object which the honourable mover of the Bill has in view. The honourable Mr. Graham mentioned in his speech that the quality of the cotton received from the Southern Maratha Country has not been improved at all by means of legislation. I was in the Southern Maratha Country myself in 1858, and the cotton which comes now to Bombay from that district is certainly far superior to what was received in 1858. It was then

very dirty and full of seeds; sometimes the seeds might amount to 25 per cent. of the cotton. That has now been done away with. No doubt, as Mr. Graham has said, during the last few years the Southern Maratha Country cotton has not improved, but since 1858 it has immensely improved. As to the adulteration in piece-goods having been carried to an extraordinary extent, and afterwards the trade righting itself, and as to the argument that, therefore, the cotton trade ought to right itself in the same way, it should be remembered that the two cases are altogether dissimilar. If a man in Manchester prepares and finishes a fine piece of shirting, an honest article, it cannot be afterwards adulterated, so that after its production and issue ticketed, there is no danger of its being adulterated, but after cotton is produced by the cultivator it is liable to adulteration; so in the one case there is an inducement to adulterate after production and in the other there is none. On that account piece-goods could right themselves, but the trade in cotton could not. There is a point in the petition of the Bombay Association regarding the Central Provinces, where they say there is no law and no adulteration of cotton. A person who is practically acquainted with the cotton trade at the present time writes to me—"In the Central Provinces there is no Act relating to cotton frauds, and consequently Hinganghat cotton, which is the best in India, is adulterated. To the south of the river Wurdah lies the province of Berars. The cotton produced there is ordinary Amrāoti cotton, and the Marwadi dealers of Hinganghat are in the habit of buying Berar kapas (which sells cheaper than Hinganghat kapas) for mixing with the genuine Hinganghat kapas. Both are mixed and then ginned, and thus a great portion of the finest cotton in India is adulterated. The ryots do not do this; they bring the kapas to the market as it is produced in the fields." It would appear from this that scarcely any real Hinganghat cotton is exported to Europe. One man adulterates his cotton and is able to sell it so many rupees per candy cheaper than another, and if his neighbour sells his cotton pure he is forced to be a loser. Competition forces one dealer to follow the example of another, or he cannot go on with his business; and so it is impossible, or almost impossible, when adulteration has once been introduced for the article to regain its position, except through the intervention of the law.

The Honourable Mr. ROGERS:—My honourable friend Mr. Ravenscroft in asking for leave to read this Bill a first time, having alluded to the proceedings on the Cotton Commission of which I was President, I think it necessary to say a few words with regard to it. I am here, unfortunately, in a kind of dual capacity. As a member of the Government I am bound to support the measure the Government have introduced for the continuation of some legislation for the prevention of frauds in cotton, whereas, as a member of the Commission appointed by Government to inquire into its working, I gave an opposite opinion. I must say that nothing that has since then occurred has induced me to alter that opinion in any way. Mr. Ravenscroft mentioned the difficulty the Commission were under in making their inquiries from the fact of only one European merchant coming forward to give evidence on the occasion; but the Commission had other evidence to rely upon in their inquiry. What led me—and, I presume, the majority of the Commissioners also—to the opinion I have just stated was particularly the evidence of the officers of the Cotton Department itself. We found from their examination that in reality they could do very little, and from that and from the fact that Act IX. of 1863 was passed to meet an exceptional state of things at a very exceptional time, we considered there was no good in continuing the Act in force, and we, therefore, proposed to place it in abeyance. It was not the case, at least so far as I was concerned, that we merely contemplated the Act

being put temporarily in abeyance. My object, at all events, was that it should only remain on the Statute Book in the case of such an exceptional state of affairs as that of 1863 arising again, when, possibly, adulteration would again become rampant. That was our sole reason for advising that the Act should be held in abeyance. As Her Majesty's Secretary of State has told us to continue the Act in a modified form, we are of course bound to obey; and I may say that since Mr. Ravenscroft brought forward his proposal in the rains at Poona, I have looked carefully into the subject, and one of the chief objections I raised to the Draft Bill which was then brought forward, has been done away with by the insertion in paragraph D in Section 13, of words which will enable people to sell even adulterated cotton or bad cotton and provide that such sale shall not be penal unless conducted with fraudulent intent. I conceive that any merchant may sell what he likes—he may sell the veriest dirt, the sweepings out of his compound. So long as he tells the person to whom he sells it what it is, there is no fraudulent act whatever; and I think this provision will do away with many of the cases of hardship which my honourable friend Mr. Graham alluded to. There are one or two other points in the Act which do not affect matters of principle, but which I shall take occasion when the Bill is before the whole Council in Committee—and if they are not amended by the Select Committee before it comes up—to get amended. I allude particularly to the proposal which Mr. Graham has objected to, regarding the taxation on cotton used in the country. At present I don't see how that can be done; I cannot see what machinery could be invented for taxing that cotton. However, that is a matter for the Select Committee to consider, and therefore I will not now say any more on the subject. Another point which I shall bring forward—which is not a matter of great principle—is that, according to the old Act any person who mixes dirt with cotton does a penal act. According to the present form of the Draft Bill any act, to be penal, must be done fraudulently or dishonestly. The mere mixing of sweepings, dirt, &c. with cotton can, in my opinion, only be done with fraudulent intent. As this is the first reading of the Bill merely, I will leave these matters until the Select Committee has considered them, and will agree to the first reading.

The Honourable DONALD GRAHAM.—I wish to say, with reference to what the Honourable Mr. Sorabji has said as to the adulteration of piece-goods after production, I think it would be perfectly possible to adulterate them at any period after their manufacture; in fact, it is often the case that piece-goods are filled with substances of various kinds. That is well known to be the case, not only in England, but in this country also.

The Honourable MAHOMED ALI ROGAY :—Sir, this Bill having been so much discussed on principle, there is nothing for me to speak of. However, on a matter of such importance, I beg your permission to address the Council. The first question seems to be whether there is any necessity for having on the Statute Book an Act for the prevention of adulteration in cotton; whether the merchants are not able, or not sufficiently expert, to take care of themselves. This is a very difficult question, and there is much to be said on both sides. The Honourable Mover of the Bill has, as far as lay in his power, showed this Council that it is utterly impossible to prevent adulteration; that the merchants cannot take care of themselves; and that the establishment and officers of the Cotton Department are necessary to remedy the evil. The Bombay Association and the Chamber of Commerce agree that the Cotton Frauds Act was necessary in the exceptional circumstances of the cotton mania period, but that, these exceptional circum-



stances having disappeared, it is no longer necessary to have such an expensive establishment and so heavy a charge upon the revenues of the Bombay Presidency. Not having studied the subject properly, and not being a merchant myself, I am not in a position to decide one way or the other; but I am pretty sure of this, that the improvement in the cotton is not solely due to the working and operation of the Cotton Frauds Act. It is also due to the latest improvements; to the new mode of dealing between the merchants and the growers; and to the railway and telegraphic communication, which brings the agents of the European firms in more convenient and direct correspondence than was possible in the olden times. There can be no better evidence against the Cotton Frauds Act than the Report of the Cotton Commission, the head of which was my honourable friend Mr. Rogers. He has heard the arguments on both sides, and his opinion has not been shaken at all. He says that though the merchants did not come forward to give evidence as they ought to have done, still the evidence of the officers of the Cotton Department themselves went to show that the Act was to a certain extent useless and that it was not sufficient. My own opinion is that we are not justified in passing an Act which the people do not want. The Honourable Mover of the Bill said that the merchants of Bombay went in a body to Sir Bartle Frere, who was then Governor of Bombay, and asked for a law for the prevention of frauds and adulteration in cotton. The merchants and the public bodies of Bombay now petition against this Bill being passed. Their opinion ought most to be considered, and I value it, and contend that we should not force upon people legislation which they do not require. Adulteration is common in every commodity of commerce. The Honourable Mr. Graham has shown that wherever there is a demand greater than the supply, adulteration creeps in, and if the Cotton Department is to be kept up for the purposes of the people of Liverpool and Manchester, and not for the people of Bombay, who do not require it, I don't see any reason why we should not go and ask the American people to produce fair cotton and keep an expensive establishment there. I am very sorry that the Secretary of State has decided that this Act should be retained on the Statute Book, as it may paralyse the opinion of some of the members of this Council. For instance, the Honourable Mr. Rogers has told us that though his opinion is against the Bill he is voting against his conscience. The Secretary of State has not left the free opinion of the official members of the Council to be given. He has bound them, by his arbitrary ruling, to support any Government measure, and I am sorry that some of the official members cannot give an expression of opinion as they would have wished to do. However, I do not object to the Bill being read a first time and referred to a Select Committee. As the Honourable Mr. Sorabji has said, the penal clauses press more hardly on the people than a measure for the prevention of adulteration need do; and if the penal clauses can be done away with and the Act can be worked without prosecuting or persecuting people, I shall be most happy to support it. I would only express a hope that the Select Committee will gather some more information, and supply more data, about the extent to which the Act has been carried, and how many convictions have been secured. I hope the Select Committee will consider most carefully both sides of the question, and will modify the Bill so as to make it harmless.

The Honourable Colonel ANDERSON said;—Your Excellency, I wish to make a few remarks on the subject of the Bill now before this Council. The Honourable Mr. Graham has stated that this Bill is unnecessary, that the merchants of Bombay are well able to take care of themselves, and will pay no more for cotton, bad or good, than it is worth.

This, I doubt not, is correct; but the people of this country—that is, so far as this matter is concerned, the producing cultivators and the petty dealers—are not able to take care of themselves, and a most valuable article of produce is suffering greatly from deterioration, to a great extent wilful, of its natural value. I speak more particularly of the cotton of the Southern Maratha Country, one of the largest cotton fields in this Presidency. The cotton is naturally of excellent quality, but it is notoriously damaged and depreciated in value in every stage it passes through, between taking it from the field and its appearance in the market in Bombay. The great market for this cotton has of late years been Russia, and I was informed last year by a large exporter in this city that the continual deterioration in quality had attracted attention there and would probably endanger the demand from that market. The Southern Maratha Country cotton field may, in round numbers, be estimated at a cultivation of one million of acres annually. Putting the average produce per acre at the moderate estimate of 60 pounds of clean cotton per acre, a depreciation of price to the extent of one penny per pound will involve a loss in the Southern Maratha Country alone of 25 lakhs of rupees annually. To show that an improvement in price to the extent of one penny per pound is not unattainable, I may mention that when the subject of the extent to which an improvement in the quality of cotton would affect price was being investigated before the Committee on the proposed Carwar Railway some three or four years back, a merchant produced before the Committee accounts of two sales of cotton in Liverpool shipped here at the same time, and both obtained from the Southern Maratha Country; the one being of the ordinary average quality fetched  $6\frac{1}{2}d.$  a pound, and the other being of superior quality fetched  $8\frac{1}{2}d.$  a pound; the two cottons were identical in original natural quality: the difference was in cleanness and superiority in preparation in ginning. Cotton was, it is true, at that time at a higher price than now; but even at the present time it is not too much to assume that careful preparation and freedom from admixture and adulteration would entail an increase of value to the extent of a full one penny per pound. It may be said that the producers and petty dealers are as able to take care of themselves as the European merchants of Bombay are. On this subject I have often conversed with up-country dealers. The invariable answer has been: "I should be very glad to send clean cotton to market if every one else was obliged to do the same; but if I alone did so, it would only be to my loss, as no one would believe that my cotton was superior to the general average." This must be admitted to be an answer not without reason, for it could never pay a minor dealer to try and stand by himself in opposition to the general crowd. The great want of India is export trade, and value is evidently as important as quantity. Anything which will increase the value of exports is a matter of equal interest to the State and the people, as affecting the land revenue on the one hand and the well-doing of the people on the other. What is the cause of the great difference in the circumstances of the agricultural population of the Deccan and of the Southern Maratha Country, Gujarat and Berar? The former produces comparatively little in the way of valuable exportable articles; their chief produce is food grains, any surplus of which above their own requirements is of course available for export elsewhere, but from the ordinary low price in proportion to bulk is not usually capable of being carried for remunerating rates. The cotton districts, on the other hand, enjoy a capability of producing an article which can always be readily turned into money, and the less adulteration there is and the better the preparation for the market, the more money will the sale of their produce bring into the country. It has been asserted that the existing Cotton Frauds Act has proved of no practical use; that the complaints of adulteration have been

loudest as regards the cotton of that province, the Southern Maratha Country, where the Act has always been most stringently worked. This is not unexplainable. Before the Act of 1863 came into operation, the adulteration of Coompta cotton was pushed to an excessive extent. After the Act came into operation very exaggerated ideas prevailed among the up-country dealers regarding the penalties they might incur; they were much on their guard, and marked improvement in the quality of Coompta cotton occurred. Time has, however, familiarized them with the precise powers of the Act and the difficulty of obtaining convictions under it; consequently there has been a continual decrease of care on their parts accompanied by an excessive deterioration in the quality of the cotton. I cannot help regretting that the present Bill does not go farther than it does, and thereby touch the main root of the evil sought to be remedied—namely, by providing for an inspection of sawgins and other machinery used for separating cotton from the seed. For it is to the wilfully inefficient and destructive character of much of the machinery of this nature now in use that much of the depreciation in the value of the Coompta cotton is due, and during the ginning process much of the admixture and adulteration which occurs is carried out. The fall in the general price of cotton during late years is an additional reason for all possible means being taken to attain improvement in quality. We otherwise run a risk of altogether losing a market for the most important article of export from this side of India. In provinces remote from active European local competition the people are incapable of protecting their own interest, and a great national loss is occurring, to attempt to apply a remedy for which is a just reason for the Bill now under consideration.

Bill read a first time.

The Bill was then read a first time.

The Honourable Mr. RAVENSCROFT asked if it would be necessary to appoint a Select Committee to consider the Bill.

His Excellency the PRESIDENT said he did not think that would be of any use, because all the points to be considered by a Select Committee could be as well dealt with by a Committee of the whole Council.

It was then decided that the Council should meet again to consider the Bill in detail on Thursday next, the 22nd instant.

Time for presenting the report of the Select Committee on the Bill No. 4 of 1868 extended.

Three weeks further time was given for the presentation of the Select Committee's report on the Bill No. 4 of 1876 (A Bill to amend Bombay Act 4 of 1868).

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

G. C. WHITWORTH,  
Acting Under Secretary to Government.

*Bombay, 16th February 1877*

*Abstract of the 1*

*for the purpose of making Laws and Regulations, under the provisions of  
"THE INDIAN COUNCILS ACT, 1861."*

The Council met at Bombay on Thursday, the 22nd February 1877, at noon.

*P R E S E N T :*

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, G.C.S.I., K.C.B.,  
Governor of Bombay, *Presiding.*

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE GENERAL.

The Honourable Major-General M. K. KENNEDY.

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

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

The Honourable Nacoda MAHOMED ALI ROGAY.

The Honourable DONALD GRAHAM.

The Honourable Rao Bahadur BECHERDAS AMBAIDAS, C.S.I.

The Honourable SORABJI SHAPERJI BENGALI.

The Honourable Colonel W. C. ANDERSON.

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. 305, dated 7th February 1877, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the "Bill to consolidate and amend the law relating to the Powers and Procedure of Mámlatdárs' Courts."
2. Memorial from the Bombay Chamber of Commerce regarding Bill No. 1 of 1877 (A Bill to amend the law for the prevention of adulteration of Cotton and for the suppression of fraudulent practices in the Cotton Trade).
3. Memorial from the Bombay Millowners' Association regarding Bill No. 1 of 1877.

The Honourable Mr. GIBBS :—We went through Bill No. 5 of 1876, as your Excellency will remember, when the Council last met, and it was left over for further consideration in case it might be found necessary to make any verbal alterations in accordance with the amendments that had been made. Since that meeting, one or two matters have cropped up which it is necessary to notice. The Council will remember that the third clause of the first section of the Draft Bill which the Council considered last week, read as follows :—“ It shall come into force on such day as the Governor in Council directs by notification in the *Bombay Government Gazette*, and its operation may at any time be suspended by the Governor in Council by notification in the said *Gazette*,” and the Council, at your Excellency's suggestion, struck out the last portion of that paragraph, regarding

Consideration of the Bombay  
Vaccination Bill resumed.

the power of suspending the Act, because it did not appear to yourself or to the Council that there was any need for keeping it in. It has, however, been since discovered, on referring to the correspondence that has taken place between this Government and the Government of India on the subject, that those words were inserted in the Bill at the request of the Government of India, who thought the measure being rather novel in kind might not turn out to work so well as we think it will. That provision, it was accordingly suggested, should be put in so that power would be given, if any necessity arose, to stop the Act without calling a meeting of the Council and passing an Act to annul it. Under these circumstances, perhaps, the Council will not object to the words being replaced in the section. I beg, therefore, to move that, in the third paragraph of Section 1 the words "and its operation may at any time be suspended by the Governor in Council by notification in the said *Gazette*" be re-interpolated.

The proposed amendment was made.

The Honourable Mr. GIBBS further said :—I would also, in order to make the Act a little more symmetrical, and to bring all the punishment clauses together, propose that the present Section 28, which permits Government to suspend the operation of the Act so far as vaccination by animal lymph is concerned and direct it to be carried out with lymph taken from arm to arm, and which was inserted by the Select Committee, be taken out from the position in which it now stands, and be divided into two portions, the first of which shall be placed between the present Sections 11 and 12, and the remaining portion, containing the punishment provision, between clauses *a* and *b* in the present Section 22. With slight verbal alterations the two portions will read in this way. The first portion, which will be Section 12 in the Bill, will read :—

"Except as is hereinafter otherwise provided, the vaccination of a child under the provisions of this Act must, if the parent or guardian of the child so require, be performed with animal lymph; but it shall at any time be lawful for the Governor in Council, on its being shown to his satisfaction that animal lymph is not procurable, to direct by notification in the *Bombay Government Gazette* :—

- (a) that during such period as he may deem fit to appoint, the vaccination of children may, without the assent of the parents or guardians of such children, be performed with lymph taken from a human being,—and
- (b) that the Public Vaccinator or medical practitioner to whom at any time during the said period a vaccinated child is brought under the provisions of section eight of this Act for inspection, may, if he see fit, take from such child lymph for the performance of other vaccinations."

The second portion, which will form clause *b* of Section 23, will read, after "whoever, in contravention of this Act,—(b) at any time during the period for which any notification made under Section 12 of this Act is in force, prevents any public vaccinator from taking lymph from any child whom he has vaccinated, or,"

And then follows, after clause (*e*), the punishment clause, "shall be punished for each such offence with fine which may extend to fifty rupees."

I think these changes will make the Act more symmetrical, and I therefore move that they be made.

The amendments proposed having been confirmed,

The Honourable Mr. GIBBS moved the third reading of the Bill.

The Bill read a third time and passed.

The Bill was then read a third time and passed.

Mr. Ravenscroft moves the second reading of the new Cotton Frauds Bill.

The Honourable Mr. RAVENSCROFT moved the second reading of Bill No. 1 of 1877 (A Bill to amend the law for the prevention of adulteration of Cotton and for the suppression of fraudulent practices in the Cotton Trade).

Mr. RAVENSCROFT said :—When I moved the reading of the Bill for the first time on Friday last, the principle of the Bill was closely discussed on both sides, and beyond making one or two observations on the arguments advanced by honourable members who took the opposite view to myself, I will not trouble the Council with any lengthy remarks in moving the second reading. With reference to this letter from the Chamber of Commerce, which I have just seen and heard for the first time, I would observe that when their communication came requesting 50 copies of the Bill, they were not immediately available. In addition to that, as the Bill had been previously published in the local journals, the memorialists were, of course, quite competent, from the information in their possession, to make any comments on it which they might deem necessary. Both to them and to the Millowners' Association one copy was sent, and as it was impossible to obtain any others at the Central Press, where they ought to have been ready, there were no more available. However, they have apparently had information at their disposal to enable them to offer sufficient remarks with reference to the Bill. I see that the Chamber of Commerce have summed up their objections under four heads. They were all discussed on Friday last; but as this document has come before the Council to-day, I may as well repeat a few observations with reference to each of the four objections urged by the Chamber. The first is that "the Cotton Trade considers legislation on this question unnecessary;" and that "it is unjustifiable to burden that trade with the whole or any part of the cost of an establishment maintained for the purpose of an Act from which the trade derives no benefit." As I said last Friday, this may be the opinion of the Bombay merchants, but I distinctly deny that it is the opinion of the merchants of Liverpool and Manchester. I said on Friday last that the great difficulty we had to contend against when our Commission was sitting, was in our inability to get the European and Native merchants of Bombay to come forward and openly state before the Commission, where their statements could be subjected to cross-examination, what were their objections to the Bill. We could not get the Bombay merchants to come forward and say what were their objections to the Bill, and the memorials which had been previously received by the Government and the Secretary of State were able documents, drawn up by the Secretary, and which might be emanations from his own brain, or the result of joint deliberations of the whole of the members. At any rate, we could not get any one to come forward except Mr. Bythell, who is a very able exponent of his views. His evidence, and a few remarks addressed to the Commission, when I was not present, by the Honourable Mr. Becherdas Ambaidas, constituted the whole of the evidence which, with all our exertions, we were able to obtain from the merchants of Bombay. Therefore, I say that under those circumstances they cannot expect that the dictum which lays down that the Cotton Trade considers legislation of this description unnecessary is the dictum which may be acquiesced in by the majority of those who are interested in the matter. In fact, I will go so far as to say that the majority of the senior partners in England of the chief Bombay merchants do not acquiesce in what is proposed by the Chamber of Commerce. When I was at Home in

1874, I pointed out to numerous merchants in Manchester and Liverpool, that though the local merchants had protested in strong terms against the Act, they either could not, or did not choose to come forward and give evidence against it; and I was then assured by men of the highest rank in the Cotton Trade in Liverpool and Manchester that the Act as it then stood, or with modifications on the same principle, was in accordance with their views and the views of the majority of the leading mercantile men in England. I have no doubt it was on evidence of that description and on reading the evidence recorded by the Commission that the Secretary of State came to the, in my opinion, very wise conclusion that the Act, or some modification of it, was necessary for the maintenance of the purity of the cotton exported from India. That answers the second objection of the Bombay Chamber of Commerce, viz., that "the principle of the Bill is unsound." As I have said previously, there are two points to be considered. There is, first, the actual Cotton Trade, which, in the interests of trade and commerce, it is the desire of Government to maintain in its present flourishing condition; and, secondly, there is the political question for consideration. The revenues of cotton are of a very large amount—I do not know what the receipts are this year, but a great many millions of pounds, and I maintain that a poor country like India cannot afford to run the risk of throwing away many millions of pounds, which it is quite possible to do if, by any steps you may take, you deteriorate to any considerable extent a trade upon which the prosperity of the country to a large extent depends. The opponents even of the Act allow that an occasion might arise when some legislation of the sort would be required. For instance, if the price of cotton was to run up to 20*d.* a pound again, instead of the Bombay merchants opposing the measure, they would, I believe, come in a body to request Government to legislate on the matter. If you say it is utterly impossible that cotton can go up again to 20*d.* a pound, I maintain that a combination of political affairs might very easily render it possible. At the present moment a crisis exists in the United States of America, which, were it not that the Americans are wiser now than they were in 1862, might quite easily lead to civil war, and a consequent dearth of cotton. Probably the Native members of this Council, who do not take very great interest in European or American affairs, may not be aware that at the present moment a state of things exists in America which has never existed before. Instead of the Presidency of the Republic having been fixed last November, as it should have been, it is at the present moment uncertain who will be President on the 4th of next month, when it is to be definitely decided. Less than that about fourteen years ago brought on an American war, and a contingency of that description is quite possible again. In that event cotton would run up from 4*d.* or 5*d.* to 20*d.* a pound, and according to their (the opponents of the Bill) own showing, adulteration and deterioration would at once commence. The next objection is that the offences enumerated in the Bill are sufficiently provided for by the general criminal law. No doubt in that argument there is something. If any one can prove that the criminal law and the general supervision at present exercised under it are sufficient to prevent adulteration and deterioration, that would be making out a very strong case for withdrawing special legislation. But I maintain the general criminal law does not suffice. It may suffice to punish in cases where adulteration and deterioration are discovered; but there is, under the general criminal law, no establishment whose sole duty it is to look after the Cotton Trade and see that adulteration and deterioration do not take place. Therefore, so long as the general criminal law does not provide specially for the emergency, I maintain that Government are bound, as they have been hitherto, to continue the surveillance

which has proved, in my opinion, so efficacious. The fourth objection urged by the Chamber of Commerce—that no benefit will accrue to the Imperial revenue from the operation of the Bill now before the Council—I entirely concur in. Government never wished to make revenue out of it; what they wished to do was to prevent adulteration and deterioration of cotton, and also to remove the reproach from Indian cotton which in previous years attached to it, and which I maintain would attach to it again were the surveillance removed. My honourable friend Mr. Graham has, I presume, no particular objection now to the Bill provided Section 20 is omitted—that is to say, the section which regulates the fees. I do not know whether I am right in understanding that he has withdrawn his objection to the principle of the Bill, and only objects to the trade paying for it. If I am right, I must say I have got rid of a very formidable opponent, and that is how I read his amendment, of which he has given notice, that the Bill be read a second time on omitting Section 20. With reference to that, I do not think it would be fair to impose on Government the whole of the charges. It is true that the Government, in a political sense, do gain by the change that has taken place in the improvement of cotton, but the main gainers are the cotton traders, and under those circumstances I think it is fair that they should pay for the supervision to which, in my opinion, the great improvement is mainly to be attributed. I see the Chamber of Commerce objects to the clause which has been introduced into this Bill to empower the Government to expend the revenue, or a portion of the revenue, to be derived from the fees on the encouragement and improvement of the cultivation and manufacture of cotton. This, it is quite true, was not originally intended, but it has been thought fit that Government should possess the legal power of encouraging the growth of cotton, and by that means the cotton trade generally; and though, individually, I do not lay any very great stress on the provision, yet I think it is, on the whole, a reasonable provision, and one which, I trust, the Council will pass. With reference to the memorial from the Millowners' Association, I remark that they appear to object to fees being levied on cotton which is not to be exported. That also is an innovation; but, as they derive benefit from the supervision which is exercised, insomuch that clean cotton instead of adulterated and dirty cotton is brought to them, I do not see that it is unfair to exact from them the same fee as is exacted from whoever has to pay the fee on cotton that is exported. I see it has been alleged by some one that the fee falls on the cultivator, or the grower. That, of course, is a point upon which a divergence of opinion always will arise. My belief is that the fee falls on the exporter from Bombay; but others, who are probably more competent to form an opinion on that subject, think that it falls on the cultivator who grows the cotton, and that alleged fact is urged particularly as a reason why they should be exempted from any payment at all. At the last meeting of the Council it was asserted by two or three honourable members that cotton received in Bombay from districts where the Act is not in force, is equal to, and in some instances better than, the cotton received from districts where the Act is rigorously enforced. To that assertion I must beg to give an unqualified denial. There is no doubt that in the Berars and in some parts of Kattywar,—in Bhaunagar for instance—where the Act is not in operation, the cotton is very well looked after and is kept clean, and adulteration and deterioration are very uncommon; but if Act IX. of 1863 is not in force in those provinces, a very much stricter surveillance is in force, especially in Bhaunagar, where the Joint Administrators, European and Native, maintain a very close supervision indeed. The result is that the cotton received from there is as pure as any cotton that grows in India. In the Berars, also, no Act exists, but it is what is called a Non-regulation



Province, and it is the duty of the Magistrates and Commissioners to see that the cotton is not adulterated, and they exercise a pressure in the Berars which is unknown in the Bombay Presidency. To these circumstances is attributable the purity of the cotton received from those districts; and this, I think, sufficiently answers the arguments of those who say that that cotton is equally clean as, or even cleaner than, the cotton which comes from any place where the Act is in force. I noticed in one of the local journals this morning a letter from Mr. Bythell, who was formerly a member of this Council, and who is probably as competent to judge of cotton matters as any one; but I see from this letter that he has probably not read very carefully what I said, or, at any rate, he has misunderstood me. In my remarks on Friday last, I most distinctly said, and I see I was distinctly reported to have said, that I have no doubt Mr. Bythell gave his evidence before the Commission perfectly conscientiously; and that I repeat. What I said then, and what I repeat now, is that it is utterly impossible that a person who has a special feeling about a particular Bill can be taken as a competent authority upon that Bill. I say it is not in human nature that a man can speak with reference to a Bill with that judicial impartiality that is required in such a case if he has been brought either directly or indirectly into contact with it. It has been asserted that I insinuated Mr. Bythell was actuated, in giving his evidence before the Commission, by the proceedings that had taken place previously with reference to his agent; but to that allegation I beg to give the most distinct denial. I am not in the habit of insinuating on any occasion; if I think it my duty to say a thing, I always do say it, and I always have said it, with the utmost distinctness. I have here nothing to insinuate. All I have said, and what I say now, is that a man who has had any personal connection with a Bill of this description cannot be taken as such an unbiassed authority on that Bill or matters pertaining thereto, as one who had no previous connection with it and was not interested in it in any way. With these remarks I beg to move the second reading of this Bill.

His Excellency the PRESIDENT observed that the amendment of which the Honourable Mr. Graham had given notice, was rather one to be considered after the second reading of the Bill.

The Honourable Mr. DONALD GRAHAM:—But my argument is, that my amendment, if passed, will have the effect of nullifying the whole Bill. I venture to think that if the Bill is passed without providing for any establishment, neither the Government of India nor the Government of Bombay, after the opinions that they have expressed regarding the Act, will provide an establishment out of separate funds. I stated my reasons pretty fully on Friday last for thinking this legislation useless, and I have very little more to add. I thought, and I still think that it is useless and mischievous in a very great degree. I admit, as I admitted the other day, that it is very difficult to prove that the Bill is useless; but there are many things which we all know and feel are useless, and yet that we have great difficulty in proving to be so. That the Bill is mischievous I think the records of the Cotton Frauds Department itself will show. I quoted on Friday some of the cases that have arisen under the Act from the records of the Department, and it is evident from these that there has been great injustice and hardship and hampering and annoyance to trade. Then, even if I have failed in establishing these two points, I contended and again contend that it is incumbent on the other side—on those who advocate this Bill—to show that the Act has done good and is necessary; that there is a large expenditure of public

money involved, and that those who advocate the expenditure are bound to show that it is necessary. I maintain that no such case has been made out,—that those who advocate this measure rely on the simple assertion of their opinion and conviction that the Bill is necessary, and that without it we should have adulterated cotton. But that, Sir, I contend is not proof. It is necessary that in such a case as this the most unmistakeable proof should be brought forward that the Bill is necessary; and I am perfectly sure that it is impossible for any one to bring forward any such proof. The Honourable Mr. Ravenscroft referred to the Irish Flax Act, the mention of which, I confess, rather took me by surprise on Friday, as I had not heard of it before. Mr. Ravenscroft has been good enough now to allow me to look at it, and I think this Flax Act is for a different purpose altogether; it seems to be intended to protect the public at fairs, and places of that kind, and it is distinctly stated at one point that no fees of any kind are to be levied. In Section 26 it is provided that certain committees shall be allowed, if they like, to appoint inspectors, and the clause concludes by saying—“provided that it shall not be lawful for such committees to impose any fine, charge, or impost to provide for the payment and emolument of such inspectors.” I, therefore, say this Act is not a case in point at all. Another thing I attempted to point out on Friday was the inconsistency of the arguments that were brought forward in favour of this Bill, as illustrated by the fact that those who five years ago contended the Act had been utterly useless and would have to be made stronger to do any good, now say it has brought about all the wonderful good which undoubtedly has taken place. On the other hand, I tried to point out that the improvement that had taken place was entirely owing to natural causes, and nothing whatever to do with the Act; and that in the same way other trades had improved, such as piece-goods and linseed, which at one time were adulterated under special circumstances, and gradually righted themselves as those special circumstances passed away. I might have given another instance which is perhaps more analogous, but which did not occur to me at the time. In the Calcutta Cotton Trade, I know from my own experience, some seven years ago, there were some very great frauds practised, and there was some discussion as to extending the Cotton Frauds Prevention Act to Calcutta, but that was not done, and as far as I can learn now there are no frauds known there, the fact being that the same causes were at work there as in Bombay, and the same results have been brought about regardless of any Act. I tried also to show that in Dharwar and the Southern Maratha Country, where the Act is most stringently enforced, it has no special effect for good, as the worst cotton comes from those districts. I might have pointed out also, as the honourable mover of the Bill has suggested, that from the Berars, where there is no Act in operation, good cotton comes to Bombay. I don't say the Berars cotton is the best cotton in India, but certainly that was the first district which responded to those causes to which I have referred, and some 5 or 6 years ago, when other districts sent out comparatively adulterated cotton, the Berars sent good cotton, unadulterated in any way. According to the theory upon which this legislation is based, we ought to have beautiful pure cotton from the Southern Maratha Country, and adulterated cotton from the Berars, full of stones, and dirt, and all kinds of things; whereas the truth is entirely opposite. The Honourable Mr. Ravenscroft has said that in the Berars there is a supervision and a pressure put on the people; but that is not the case. The honourable gentleman is probably not acquainted with the system in the Berars, or I do not think he would have fallen into that error. I know, from my own experience, that no supervision of any kind is exercised in the Berars, but the cotton is carried from the fields, bought by the European merchants in the Berars

markets, sent down to Bombay in full-pressed bales, and shipped from Bombay, and no inspector, or supervisor, or any officer of any description interferes with it. The Honourable Mr. S. S. Bengali, in his speech the other day, said that in his opinion this question should not be considered from the point of view of the European shipper or of the Native dealer, but on the broader ground of what is conducive to the good of the country. That is precisely the view I have always taken of the matter. I may not have made myself understood, but I certainly intended to approach the question from that point of view. I know it has been said that the merchants of Bombay think that because they are satisfied with their own business and are able to take care of themselves, the trade can do the same and that therefore they do not want this Bill. That is not the case at all. I have looked in vain for any authority for that statement. I know the merchants have always said the trade is able to take care of itself—not that they are able to take care of themselves,—and that because the trade is able to take care of itself this legislation interferes with and taxes it unnecessarily. I would strongly urge Government to beware lest they defeat the very object they have in view. The Indian Cotton Trade is already beginning, I may say, a struggle which, I fear, will be a very long and severe one, and every tax, however trifling, and every interference and hampering, however small, will tend to make that struggle more severe. The cotton produce of America has been increasing steadily since the war, and so has that of Egypt. These are the two other great cotton-producing countries, and I fear the Indian Cotton Trade will have all it can do to hold its own in the competition with which it will have to contend in future years. I therefore maintain that either this or the old Act are unnecessary, and that the sooner all legislation of the kind is done away with the better. I now come to the second part of this 20th section, regarding the fee to be levied “upon every other such bale of cotton as may be indicated by orders to be from time to time made in this behalf by Government,” referring, no doubt, to the consumption of the local mills. No case has been made out for this either so far as I can see, and I am glad to see the Millowners’ Association has protested against it. Mill-managers are perfectly able to protect themselves; if they want good cotton, they will get it. There is one point referred to by the Honourable Mr. Ravenscroft with regard to the incidence of the tax which I want to say a few words upon. I said the other day—and I think it will scarcely be denied—that the tax of 2 annas, or whatever it is, per bale, falls on the producer. That is with regard to cotton exported. In the case of the local mills, there is a slight difference, and I rather think, though I am not quite positive on the subject, that the tax would fall on the mills. I think so for this reason, that the prices of cotton are regulated in the main by the export trade, and the mills, from their consumption being smaller than that of the exporters, would have to pay the exporters’ prices. Therefore the price would be regulated on that basis, and the fees would have to be paid by the mills. Of course it is small, but, however small, it is still a tax, and I do think it should be avoided. Certainly, the Government of this country cannot be credited with having stimulated, or done much to encourage, private enterprise, and I think it would be a great pity for them to incur the reproach of beginning to tax the one great industry which private enterprise has established on this side of India. Another point was referred to by the Honourable Mr. Rogers, viz., the collection of the tax. The Bill apparently makes no provision for this, and I can only suppose that another system of inspectors will have to be organised to examine the mills. I should hope not. I do not wish to speak strongly, but I must say the system of inspectors in this country is one of the great evils of the administration. We have Municipal Inspectors, Boiler Inspectors, and Cotton Inspectors, and

now, apparently, we are to have Mill Inspectors; men who are entrusted with great arbitrary powers, with very insufficient control, and, to say the least of it, who are not always capable of exercising those powers judiciously; why, even now the name of Government is suffering from having been dragged through the dirt in connection with a scandal which occurred a few months ago, and from which it has never taken the trouble to dissociate its name, or to acknowledge its responsibility. This system of inspection is a great evil, and I do hope the project in the present Bill will be abandoned. I move "that the Bill be read a second time, omitting Section 20."

The Honourable Mr. GIBBS :—I did not mean to speak on this subject, but it has struck me that the exact position we are placed in with regard to the Bill before us is not thoroughly understood. Act IX. of 1863 is still law, and as the object of this Bill is to amend it, supposing the present Bill to be thrown out, the result will be that Act IX. of 1863 remains law, although it is generally admitted that Act requires some modifications. The only way Act IX. of 1863 can be taken out of the Statute Book is by this Council passing an Act to repeal it, and supposing we did so, the repealing Act might obtain the assent of the Governor General, but it would have also to go to England and most likely, considering the views the present Secretary of State holds on the question, it would be vetoed. Therefore what has been said about the Secretary of State interfering with the action of the executive members of the Council in regard to this Bill has perhaps not been properly understood. The question does really rest with him. The present Act is law, and he can veto any Act we may pass to repeal that law. We are not called upon now, in the Bill before us, to deal with the matter *de novo*; we are not called on to say whether this system of inspection is the best system that could be enforced for improving the quality of cotton in this country. I apprehend that the question before us is simply this,—in what way can we render Act IX. of 1863 better suited for the purposes for which it was passed. That is all that is before us, and therefore I consider, as a member of the Executive Government, that I am merely called upon to use my best endeavours to modify Act IX. of 1863, and I may take, as a guide for that purpose, any observation that may have been made by the Secretary of State on the point. As I said before, we have not to consider the question *de novo*, and any observations as regards the principles of the Act are not therefore to the point. I must say I am surprised that my honourable friend Mr. Graham did not, instead of proposing the amendment he has put before us, move "that this Bill be read a second time, omitting all except the first paragraph of Section 2, viz., Bombay Act IX. of 1863 is hereby repealed." That, I think, would entirely carry out the view held by the Chamber of Commerce and by the Honourable Mr. Graham himself. I do not for one moment say that I concur in the opinion that upholds the present system as the best that can be adopted for the purpose. There are other systems which might perhaps be equally efficacious, and not so open to abuse as the present system is; but this we have not to consider. What we have to consider is, the present system having been put in force by Act IX. of 1863, whether we can by this Bill modify the provisions of that former Act so as to make the system less harsh in some respects and more satisfactory in others. That seems to me to be the only question we have before us.

The Honourable Mr. DONALD GRAHAM :—If your Excellency will permit me, I will alter my amendment and will adopt the Honourable Mr. Gibbs' suggestion, which coincides with my view exactly. Practically they are both the same, but the course suggested by Mr. Gibbs would arrive at the goal by a shorter route.

The Honourable VISHVANATH NARAYAN MANDLIK :—I was not present when the subject of this Bill was first introduced before the Council, and therefore had not an opportunity to make any remarks ; but seeing that we are discussing to-day the principle of the Bill, I think the observations I am about to offer will be in order on the present occasion. I am sorry to say the honourable member in charge of the Bill has not given the Native members of this Council—speaking for myself—sufficient credit for following the movements, so far as we can here understand them, of political affairs in America and Europe. For my own part I wish to say we take as much interest as educated British subjects ought to take in all such matters, and I trust our interest in European and American affairs will ever continue to increase, and as education in India continues to advance, I believe the time is not distant when every properly educated Native gentleman may be expected to take part in political discussions with as much preparation and as much knowledge of the facts of each case as any gentleman in the West can have. There is no doubt we labour under considerable disadvantages, but I think we are doing our best ; and for my own part, Sir, I think this Cotton Frauds legislation, ever since the Act came into force in 1863, has been proceeding on a principle which I take leave to say is a great mistake. I have taken notes of most of the cases that have occurred in the Mofussil, and have been brought into the Courts, ever since 1863, and I believe that the Bill is liable to all the objections that have been urged against it, both by the Chamber of Commerce and by the other Associations whose memorials and petitions are before us. There is no doubt that if cotton did rise again to 18*d.* or 20*d.* a pound, we might have an abnormal state of things in Bombay as in any other part of the world. We all know the unhappy times in Bombay when a special Act was passed for Bombay (Act XXVIII. of 1865), but you do not count on abnormal times or look back to them as precedents for framing legislative measures. This country is now prospering under British rule. We should consider broadly the principles which ought to underlie all legislation affecting industrial pursuits. In this country I believe the Indian Penal Code is quite sufficient to prevent adulteration of any article of commerce. If we are to have a special Act to prevent adulteration of cotton, I do not see where we are to stop. There are other rising industries, such as the jute trade, the tea trade, and others, with which the European members of this Council are quite familiar ; and I really do not know where the system of inspection for checking frauds is to stop if it is once begun. There is no doubt the Secretary of State has the power of vetoing any Bill that we may pass, but a Commission has sat upon the working of this Act of 1863, and has pronounced upon it a verdict, which—the verdict of the majority of the Commission—agrees with the verdict of the country ; and, judging by the light of recent events, if a strong case on which the local community has pronounced its verdict were to go before Her Majesty's Government in England, I think we have every reason to hope the Secretary of State, much as he may have made up his mind in favour of a particular Bill, would rather listen to the united voice of the country than keep to any particular views which he may have pronounced on a certain state of facts placed before him. I think in a matter of this kind you must consider the views of those merchants who are principally interested. No doubt their views may appear to some overdrawn, but merchants do not create facts any more than other people do ; and if we consider legislation by the light of what it has effected, and what it professes to effect, I think there can be no doubt that the Cotton Frauds Act of 1863 has been mischievous. Perhaps that is a strong term, but the cases that have come before the High Court on the Appellate Side have shown that it is, at all events, a system which has not done the good

it was anticipated it would do. In reference to a remark which fell from my honourable friend Mr. Graham, I think the onus is not upon those who oppose an Act of this kind to prove its uselessness, but upon those who seek to enact it.

The Honourable Mr. DONALD GRAHAM explained that that was what he said.

The Honourable VISHVANATH NARAYAN MANDLIK:—I thought the Honourable Mr. Graham said that he ought to have made out a case and regretted he had not positively made out one. I think he is not bound to make out a case, because the onus is upon those who seek to fetter industry and commerce by such exceptional legislation. Unless any one who supports the Bill can prove that the peculiar circumstances of the Cotton Trade are such that without such legislation the industry cannot go on, the interests of the country itself demand that there should be no such legislation. I have had no time to study the Act to which reference was made with regard to the trade of flax in Ireland, but I hope to do so before the next meeting of the Council, and also to study what has been said *pro* and *con* in another place on the subject. I have looked at several of the clauses in the present Bill, and particularly one, of which I have not yet seen any notice taken. Section 18 says:—“It shall not be necessary in any proceeding for any offence under this Act to prove an intent to defraud any particular person.” Now, ordinarily, in commercial transactions, a fraud can only be practised upon an individual. This Bill seems to me to introduce a new rule of evidence, which reminds me of a case from the Southern Maratha Country which was before the High Court within the last 6 months, and of another case where the prosecution was suddenly stopped, but not before the prosecuted man had had to come from near Dharwar to defend the case and to spend a large sum to protect himself from a most unjust attack. In this case, some cotton which this broker was the means of selling was seized when it was already packed in bales, and when part of the bales had actually been delivered and the others were being delivered by the vendor to the vendee. This man was merely a broker who had nothing to do with the actual transaction, except that the cotton was found in some place with which he was connected, and he was charged under the Cotton Frauds Act with adulteration. It was pointed out that he had nothing to do with either the buying or selling, and at last the prosecution was abandoned, but before that event I think the unfortunate man had to pay heavily. The prosecution was stopped, because the higher Court had already pronounced a strong opinion upon a similar case from the same part of the country. As regards the share of the present Legislature in the matter, I think if the old Act, which has been pronounced by the Commission of Inquiry to be useless, is to be repealed, the prospect of the Secretary of State vetoing the Bill need not deter this Council from passing it.

The Honourable Mr. RAYENSCROFT.—The Commission did not suggest that the Act should be cancelled, but that it should be placed in abeyance until such time as an emergency arose again.

The Honourable VISHVANATH NARAYAN MANDLIK.—What I said was the Commission had given its verdict as to the uselessness of the Act—that is, as far as I have followed their proceedings, and if they have not recommended that it should be repealed, the verdict of the Commission that it is useless might well be followed up by sanctioning its repeal. The responsibility then will lie with the Secretary of State to veto the Act, repealing it, and keep on the Statute Book an Act which has been pronounced to be a failure. As we know, all laws should be made for the public good, and if this law is not for the public good, the

Secretary of State must initiate some new legislation to enable him to retain an Act in force against the wishes of the community. The merchants may have expressed a very strong opinion, but those who feel strongly on a subject will speak warmly. Of course there may be different weights attached to different opinions, but where there are facts they can be dealt with by themselves, whether they are brought before us by the merchants, the Chamber of Commerce, the Mill-owners' Association, or any other Association, here or in the Mofussil. I have, therefore, very great pleasure in supporting the amendment of the Honourable Mr. Graham.

The Honourable BECHERDAS AMBAIDAS said :—With regard to the amendment proposed by the Honourable Mr. Graham I beg to offer a few observations. The principle of the original Act IX. of 1863 was intended to prevent fraud in cotton exported to England only, and not for what might be used in this Presidency for spinning either by hand or by machinery. The spinners being more competent than the inspectors, select the quality of cotton required for working in their different processes. They require no protection from the inspector, as they can make a thorough examination of the cotton at the time of purchasing; and know best what is most suitable to their trade. They are quite able to take care of themselves, and understand their own business without the assistance of official care and nursing. All past experience has made it evident that, unless in very extraordinary cases, legislative interference with trade is not only an annoyance but a hindrance to it. I may illustrate this matter by referring to the Gaekwar's *Naka* (transit duty) and the French octroi, which is in every way unpopular, and this Bill will become similarly obnoxious. The appropriation of the Cotton Fraud Fund under order of Government for the improvement of the cultivation and manufacture of cotton I think would be most objectionable, as Government will ultimately derive benefit in its revenue. The difficulty in the way of collecting the fees from others than England, *i.e.*, in this Presidency, would in all probability be great in keeping up the establishment in quite a different category. There can be no doubt that the expenses of collecting would amount to considerably more than the fees realized, to say nothing of the extra trouble and interruption in business operations. It is a pity that the Secretary of State has determined to continue the Act after the report of the Commission with a view of keeping it at abeyance. I think it would be prudent to keep it as harmless as possible without the expenses of the inspectors, and it would be much better to leave it entirely to the collectors and their subordinates, who would, I think, be the proper parties to carry it out, and the Penal Code is quite sufficient in case of any fraud. In conclusion, I support the amendment proposed by the Honourable Mr. Graham.

The Honourable Nacoda MAHOMED ALI ROGAY :—I beg to give my entire adherence to what the Honourable V. N. Mandlik has said. In addition, I wish to refer to the speech of the Honourable Mover of the Bill, and to speak on the principle of the Bill generally. Since the last meeting of the Council I have bestowed a good deal of attention upon this question with the object, if possible, of supporting the views of the Honourable Mover, but I regret to say the more I consider the matter the more I am impressed with the belief that the Bill is unsound in principle and interferes with the notions of free trade which people carry in their minds in this age of freedom and enlightenment. The freedom of trade enjoyed by England since the repeal of the Corn Laws has made that nation a "nation of universal shopkeepers," and that universal shopkeeping has contributed in no small measure to the prosperity of that great country. Bearing in mind the advantages

enjoyed by the mother country through judicious laws based on the modern principles of political economy and of free trade, I cannot but come to the conclusion that the retention of the Cotton Frauds Act on the Statute Book is a retrograde movement. This Act originated under circumstances of a very unusual character, and such circumstances are not likely to occur again for the next two or three generations. It is therefore a matter of no little surprise to me that the Secretary of State for India—a nobleman for whose opinion I have the highest respect, and who has always at heart the welfare of this country—should force a Bill upon the people of this Presidency when they have in various ways given expression to their views that under the altered circumstances of the Cotton Trade of Western India this enactment, instead of being a boon, is an unnecessary tax on an important article of commerce and a source of annoyance and trouble to those who are perfectly well able to take care of themselves without any legislative interference. There is another argument which can be advanced against the principle of this Bill. If the restrictive measures of the Bill are necessary for one article of commerce, they are equally necessary for all others. The most valuable article of commerce in Western India, next to cotton, is Malwa opium, and that is an article which can be easily adulterated without detection if merchants are not careful of their interests when making purchases. In order, therefore, to be consistent, the Secretary of State should direct the Council to pass a Malwa Opium Frauds Prevention Act; but fortunately there are no agitators in Hongkong and Shanghai, as there are in Manchester and Liverpool. The opium merchants are quite able to take care of themselves without the aid of any legislative measures. Self-interest is the guiding spirit in all commercial transactions and is the only incentive towards effectually checking the malpractices of unscrupulous dealers. Every chest of opium is tested by boiling and by other means, and the price depends on the result of such inspection. Some remedy of a similar description is the best means of preventing frauds being practised in connection with any and every trade. Of course, there are some black sheep to be met with all over the world; but it is not necessary to have special legislation for every article of commerce, the Penal Code being quite sufficient for that purpose. Having expressed my views generally on the principle of this legislation, I beg to refer to the speech of the Honourable Mover of the Bill. The Honourable Mr. Ravenscroft has informed the Council that he is the father of the Bill, and like a good parent he seems to entertain a great fondness for his offspring. It is often noticeable that the originators of schemes have a bias in their favour, in spite of public opinion being against them. I must beg pardon of my honourable friend Mr. Ravenscroft if I say the impression produced on my mind by his speech is of such a character. I am surprised that the Honourable Mr. Ravenscroft should still adhere to his opinion, in spite of the altered circumstances of the trade, and in spite of the verdict of the majority of the merchants of Bombay and the Commission of Inquiry against it. The Honourable Mr. Ravenscroft has admitted that Act IX. of 1863 was passed by the advice and with the consent of the mercantile community of that day, and if that were so, I see no reason why it should not be put in abeyance when the majority of those merchants wish that course to be followed. I think the merchants are right in alleging that the improvement which has taken place in cotton is mainly due to other causes; that the Act has exercised only a slight effect, and that merely during the year when high prices ruled in the Liverpool and Manchester markets for the staple. Mr. Ravenscroft has attached great importance to the fact that no one except Mr. Bythell appeared before the Commission to give evidence against the Act. I have been unable to find out the reasons for the merchants not appearing to give evidence before the Commission, but I am satisfied that they have expressed opinions antagonistic to the



Act in various ways in order to bring them to the notice of the authorities. Even in the absence of further facts from the merchants than those laid before them by Mr. Bythell, the Commission came to the conclusion that if it was not advisable to remove the Act from the Statute Book altogether, it should still be placed in abeyance. The report of the Commission showed that the Honourable Mr. Ravenscroft alone was in favour of the continuance of this his pet Act. In criticising the memorial of the Bombay Association, the Honourable Mr. Ravenscroft has alluded to the sale of tobacco in France and Germany which he said was quite in the hands of the Government. I do not think that is a parallel case. That trade is kept in the hands of the French and German Governments for reasons similar to those by which the salt trade is kept in the hands of Government in this country, and not for the purpose of preventing adulteration. Another instance quoted by the Honourable Mover of the Bill was that of the Flax Trade in Ireland. I can hardly deem that to be a parallel case either, from what I know of the character of the British nation in keeping its commerce free from all restraints. It must have something to do with special local causes peculiar to the district. I should have wished to have some particulars as to the bulk of the articles manufactured in England. Why was not a Frauds Prevention Act passed when the Manchester goods were adulterated? I trust it is now evident to every one that Mr. Ravenscroft has not made out a strong case for the continuance of the Act. In concluding my remarks I think I cannot do better than quote an extract from a leader of the *Bombay Gazette* of the 19th instant to the following effect:—"It appears from the historical sketch with which he"—meaning Mr. Ravenscroft—"favoured the Council, that about 1863 Indian cotton exported from Bombay had become so 'infamously dirty' that the English manufacturers 'said unless there was a very marked improvement they would set aside Indian cotton altogether and have nothing whatever to do with it,' they must have been men of a proud stomach, those English manufacturers, to make this virtuous resolve at a time when they really had nothing but Indian cotton to depend upon to keep their mills going." Another point to which I wish to call the attention of the Council, is that if Government deem it desirable to make improvements in the cultivation of cotton or any other agricultural produce, all expenses ought to be borne by the Imperial Revenue. Finally, I will say that though no doubt the Secretary of State for India has every right to veto a Bill passed by the Bombay Legislative Council, I think it doubtful whether that statesman could bind down official members of the Legislative Council to vote in favour of a Bill the principles of which might not be approved by them, but which he might wish to be introduced. I do not think the Marquis of Salisbury ever intended that. If it is so, the Indian Legislative Councils are nothing better than mere Committees to carry out the orders of the Secretary of State for India. I have much pleasure in supporting the amendment of the Honourable Mr. Graham.

The Honourable Mr. ROGERS:—As the Honourable Mahomed Ali Rogay has again brought up the point of conscience in regard to voting or not voting upon this Bill, I wish to make a few remarks. When the Bill was introduced the other day, I mentioned that I was still unconvinced by what had taken place; but what I meant to say then, and what I mean to say now, is that legislation on this subject is unnecessary. If there was anything morally wrong in such legislation, I should vote against it, notwithstanding any order of the Secretary of State; but I merely consider it unnecessary, and that the trade can do without it. There is nothing whatever wrong in voting for an Act which the Secretary of State has merely ordered us to pass in such a way as to make what is now too stringent, less stringent, and *vice versa*.

The Honourable Mr. SORABJI SHAPURJI BENGALI :—There is one word I should wish to say in reference to what fell from the Honourable Mahomed Ali Rogay about Malwa opium. I think it is a mistake to compare that trade with the cotton trade, because they are by no means analogous cases. In the Malwa opium trade this country has a monopoly. In China as regards opium we have not to compete against any other country, but in our foreign Cotton Trade we have to compete with nations not below ourselves in intelligence or enterprise, but far our superiors.

The Honourable Mr. MAHOMED ALI ROGAY said :—In reply to the Honourable S. S. Bengali, all I had intended to say was that to be consistent in principle, if we legislate to prevent frauds in the Cotton Trade, the Secretary of State and the Legislative Council ought to pass Acts for the prevention of adulteration in every other article of commerce. Competition has nothing to do with this point.

The Honourable Mr. RAVENSCROFT said :—The Honourable Ali Rogay did not appear to be aware that there were many articles, such as tea, coffee, &c., which were under supervision in England.

The Honourable Mr. ALI ROGAY :—Yes, articles of food.

The Honourable Mr. DONALD GRAHAM :—In such cases, supervision is necessary to protect the consumers. I believe it is a mistake to say any agitation had been carried on in Manchester or Liverpool. They were asked for an opinion, and Manchester expressed a doubtful opinion in favour of the Act, while Liverpool gave a decided opinion against it.

The Honourable Mr. RAVENSCROFT :—I think that is not the fact.

The Honourable Mr. GRAHAM :—Well, I may be mistaken, but I understood that was the case.

The Honourable Major-General KENNEDY :—The effect of the amendment before the Council is not to amend the present law, but to repeal it.

His Excellency the PRESIDENT :—Yes, if the amendment be carried it will go simply to repeal Act IX. of 1863.

The Honourable Mr. RAVENSCROFT was not clear that the Council could cancel an Act in such a summary manner. If so, they might in three words cancel the most important Act on the Statute Book, and that, surely, was against the spirit if not against the letter of the law.

His Excellency the PRESIDENT :—Among other clauses in this Bill has been inserted this—“Bombay Act IX. of 1863 is hereby repealed.” The amendment is that the Bill be read a second time, the whole of the clauses being omitted with the exception of this one. The same end would be arrived at, supposing the Mover had a majority, if instead of moving at once that the whole Bill be omitted now with the exception of this clause, he were to move, when the Bill is considered in detail, that each section, *seriatim*, should be omitted. This is merely a shorter way of arriving at the same end.

The Honourable Mr. RAVENSCROFT said he had no fear as to the Bill going on if the amendment was put to the vote, but a very important principle was involved in its being allowed, and therefore he had objected to it.

The amendment was then put to the vote when the result was as follows :—

| <i>Ayes.</i>  | <i>Noes.</i>                                   |
|---|--|
| The Honourable Rao Saheb VISHVANATH<br>NARAYAN MANDLIK. | The Honourable A. ROGERS.                      |
| The Honourable NACODA MAHOMED ALI<br>ROGAY.             | The Honourable J. GIBBS.                       |
| The Honourable DONALD GRAHAM.                           | The Honourable the ADVOCATE-GENERAL.           |
| The Honourable Rao Bahadur BECHER-<br>DAS AMBAIDAS.     | The Honourable Major-General M. K.<br>KENNEDY. |
|   | The Honourable E. W. RAVENSCROFT.              |
|   | The Honourable SORABJI SHAPURJI BEN-<br>GALI.  |
|   | The Honourable Colonel W. C. ANDER-<br>SON.    |

The amendment was therefore lost.

The Bill read a second time and considered in detail. The motion that the Bill be now read a second time was then put to the vote and the Council divided as below :—

| <i>Ayes.</i>                                   | <i>Noes.</i>  |
|--|---|
| The Honourable A. ROGERS.                      | The Honourable Rao Saheb VISHVANATH<br>NARAYAN MANDLIK. |
| The Honourable J. GIBBS.                       | The Honourable Nacoda MAHOMED ALI<br>ROGAY.             |
| The Honourable the ADVOCATE-GENERAL.           | The Honourable Rao Bahadur BECHER-<br>DAS AMBAIDAS.     |
| The Honourable Major-General M. K.<br>KENNEDY. |   |
| The Honourable E. W. RAVENSCROFT.              |   |
| The Honourable SORABJI SHAPURJI BEN-<br>GALI.  |   |
| The Honourable Colonel W. C. ANDER-<br>SON.    |   |

The Council next proceeded to consider the Bill in detail.

With regard to Section 1 the Honourable Mr. ROGERS suggested there might be some difficulty about the extent of the jurisdiction.

The Honourable Mr. GIBBS :—The Presidency of Bombay includes every portion of the Presidency subject to the Governor in Council.

The Honourable Mr. ROGERS :—Take Kattywar, for instance; I understand that is a foreign territory.

The Honourable Mr. GIBBS :—Upon that point there is a difference of opinion, but the Privy Council have decided that it is not foreign territory. If the Privy Council ruling is to be followed, the term "the whole of the Presidency of Bombay except Aden" will have a much more extensive meaning in this Bill than it has in Act IX. of 1863. When that Act was passed, it was never intended to go beyond the districts of Bombay, *plus* Sind. Now, the Presidency of Bombay includes all territory subject to the Governor of Bombay in Council.

The Honourable Mr. RAVENSCROFT :—No practical difficulty will arise, because Government would never appoint inspectors for Kattywar, or interfere with the present system in force there.

The Honourable Mr. ROGERS :—How would a case of adulteration that took place on the high seas be met?

The Honourable Mr. GIBBS said by the late decision regarding the "Franconia" the operation of the Act would not extend below low-water mark.

The Honourable Mr. ROGERS :—Then any person adulterating cotton in a boat coming down to Bombay would get off scot free.

The Honourable Mr. RAVENSCROFT :—Not if he kept it in his possession subsequently, and attempted to dispose of it fraudulently in Bombay.

Section 1 was then passed as drafted.

In reference to Section 3 His Excellency the PRESIDENT pointed out that the Chamber of Commerce objected to the clause defining the meaning of the word "bale" as used in the Bill.

The Honourable Mr. GRAHAM :—That is in reference to the proposal to tax the mills. They use cotton packed in *dokras*, but under the present system, only the exporters being taxed, the bales dealt with by the Act are all of the same size.

The Honourable Mr. ROGERS :—The time to consider this will be when the clause relating to the fee being levied on the cotton used in the country comes before the Council.

Section 4 having been read, the Honourable Mr. DONALD GRAHAM said he did not know whether it was necessary to keep up the expensive establishment in Bombay, or whether it could not, at any rate, be put on a different footing. At present it was really of no use. The chief inspector wrote a very elaborate report every year, but the sub-inspectors had absolutely nothing to do. He had often seen them lounging about doing nothing, and he pitied them as the most miserable creatures in Bombay.

The Honourable Mr. RAVENSCROFT :—Perhaps they may be doing nothing, but they are seeing that nothing is done; that stones, dirt, and other substances are not mixed with the cotton. The section merely places the power of appointment of inspectors in the hands of the Governor in Council. The reduction of establishment is in the hands of the executive officers of Government. Of course they can reduce the establishment as much as they think fit.

The section was passed as drafted.

In reference to the second clause of Section 5, the Honourable Mr. ROGERS said he thought that after "building," in the 11th line, the following words should be inserted :— "other than a dwelling-house," and also that the words "gin or" in the 12th line should be struck out as it was not advisable that inspectors should be allowed to invade dwelling-houses, and adulteration was not practised in ginning cotton.

The Honourable Mr. GIBBS said the section was worded as in the present Act.

After some conversation it was decided to strike out the words "gin or." The other amendment proposed was abandoned, it being pointed out that a cotton press would not be likely to be found at work in a dwelling-house.

In regard to Section 7 His Excellency the PRESIDENT asked who would have to appoint the subordinates.

The Honourable Mr. ROGERS :—The Governor in Council will appoint them.

Section 13 having been read, the Honourable Mr. GIBBS said :—There is an important change in that as compared with the old section.

The Honourable Mr. ROGERS :—Yes, and the Honourable Mr. Bengali has an amendment to propose which affects the whole of this section. I think we had better take that first.

The Honourable SORABJI SHAPURJI BENGALI moved that Section 13 as drafted should be struck out bodily, and that the following should be substituted :—

“ Any cotton, which shall be seized and detained under the provisions of this Act, shall be liable to confiscation, if the Magistrate or Court before whom, or which, such cotton is produced, shall be satisfied, that—

- (a) Such cotton has been fraudulently or dishonestly adulterated or deteriorated by mixing therewith seed, dirt, stones or other foreign matter ; or
- (b) Such cotton is a mixture fraudulently or dishonestly made of cleaned and uncleaned cotton (commonly called *kapás*), or of different varieties, or qualities, in one bale ; or
- (c) The weight of such cotton has been fraudulently or dishonestly increased or attempted to be increased by exposing it to dew, or by any other means ; or
- (d) Such cotton has been adulterated, deteriorated, mixed, or increased in weight with the fraudulent intent that it may be sold or offered for sale or compressed or offered for compression.

The Magistrate or Court ordering the confiscation of any cotton shall direct that such cotton shall be—

- (a) Destroyed ; or
- (b) Cleaned and sold ; or
- (c) Cleaned by or under the directions of the Inspector of Cotton, and returned to the person in whose possession the same had been found, on his paying the charges for cleaning same, and in addition thereto such fine as he may be directed to pay.”

The Honourable Mr. BENGALI said :—The penal clauses of the existing Act have been found to work very harshly and oppressively. I think that the opinion I expressed on the subject at the last meeting of the Council has received sufficient support by what has fallen from the Honourable Mr. Graham and the Honourable V. N. Mandlik, so I will not go over the same ground again. If the penal sections I have referred to had not existed, I do not think the Cotton Frauds Act would have been so unpopular with the Native community as it has been. In the Native State of Bhaunagar a very good system is in operation, by which, if cotton is found to be adulterated, it is seized. If it is in such bad condition that it could not be properly cleaned it is destroyed, but if it can be cleaned, it is ordered to be cleaned, and returned to the owner on payment of the cost of cleaning, plus a fine. To incorporate the amendment I now propose in the Bill, instead of the present section, would be to establish in Bombay a similar system to that prevailing in Bhaunagar ; and I think that its adoption would fully secure the object which the honourable member in charge of the Bill has in view, viz., to make the Act more efficient and less stringent.

The Honourable Mr. RAVENSCROFT :—I am very glad to hear on the independent and reliable testimony of the Honourable S. S. Bengali what were the means by which adulteration of cotton has been hitherto so successfully prevented in the Bhaunagar State. One of the strong points dwelt on by the Honourable Mr. Graham was that at Bhaunagar, or

where Act IX. of 1863 is not in operation, the cotton is as pure or as purer than where the Act is in force, and, of course, if he could have shown to the Council that there was no supervision of any kind there, and that the purity was entirely due to the relations between seller and buyer, that would have been a very strong argument against the Act. With reference to the amendment the Honourable Mr. S. S. Bengali has suggested, it is my desire and the desire of the Government to frame the Act so that it will press as lightly as possible on the trade, while at the same time the provisions of the law shall be carried out as efficiently as is consistent with a proper regard for the due administration of justice. I am not quite sure that Mr. Sorabji's amendment will effect this, but it may form a groundwork and a suggestion from which a suitable section may be framed.

The Honourable the ADVOCATE-GENERAL pointed out that it would not be fair to punish a man, by confiscation or otherwise, for having adulterated cotton in his possession, unless it was shown that it was adulterated with a fraudulent intent.

The Honourable SORABJI SHAPURJI BENGALI said that was exactly his intention. It would be an easy matter for any Magistrate to satisfy himself whether cotton had been adulterated with a fraudulent intention, and it would be the Magistrate's duty so to satisfy himself.

His Excellency the PRESIDENT said that under the proposed section a perfectly innocent man would be liable to have his cotton confiscated, and would have no remedy except by civil suit against the man who sold it to him, and who might be a man of straw.

The Honourable Mr. DONALD GRAHAM said that might happen to any merchant in Bombay, and any merchant might be taken up under the Act. The door was left open to every inspector who might wish to cause annoyance to do so.

The Honourable Mr. ROGERS thought the adoption of the Honourable S. S. Bengali's amendment and the incorporation of the section he had proposed would very much increase the annoyance suffered under the Act. It would lead to a far greater interference with trade than there was at present. Mr. Rogers proposed that the Council should decide on the principle whether the punishment prescribed should be of a penal nature, or be simply confiscation.

The Honourable Mr. DONALD GRAHAM thought the Honourable S. S. Bengali's object would be attained by merely striking out the clause about imprisonment from the present section, leaving only a fine as the punishment to be imposed.

The Honourable Mr. RAVENSCROFT thought that alteration would meet the objections urged against the section.

The Honourable Mr. BECHERDAS AMBAIDAS was in favour of the punishment taking the form of a fine.

After some further conversation, the Honourable Mr. RAVENSCROFT said he did not think it was a matter of very much importance, but he would prefer the retention of the fine.

The Honourable Mr. DONALD GRAHAM wished to remark, with reference to a statement made by the Honourable Mr. Ravenscroft, that whatever might be the case in Bhaunagar, very good cotton was brought from others of the Kattywar States, Wadhwan for instance, where no inspection was exercised at all.

The motion "that Section 13 be postponed with a view to the penalties thereby imposed being limited to confiscation of the adulterated cotton" was then put to the vote and the Council divided as below:—

*Ayes.*

- The Honourable J. GIBBS.
- The Honourable ADVOCATE GENERAL.
- The Honourable Major-General M. K. KENNEDY.
- The Honourable E. W. RAVENSCROFT.
- The Honourable Rao Saheb VISHNATH NARAYAN MANDLIK.
- The Honourable DONALD GRAHAM.
- The Honourable SORABJI SHAPURJI BENGALI.
- The Honourable Colonel W. C. ANDERSON.

*Noes.*

- The Honourable A. ROGERS.
- The Honourable Nacoda MAHOMED ALI ROGAY.
- The HONOURABLE Rao Saheb BECHERDAS AMBAIDAS.

Accordingly, it was decided that the system of confiscations should be adopted by a majority of 8 to 3. The framing of the section was left to the Honourable the Advocate General and the Honourable S. S. Bengali, to be submitted at the next sitting of Council.

In Section 14, at the suggestion of the Honourable Mr. Donald Graham, the word "knowingly" was inserted after the first word of the section.

The consideration of Section 17 was postponed, as probably requiring some alteration in accordance with the new form of Section 13.

In regard to Section 18, the Honourable Mr. ALI ROGAY said it threw an onus on the person charged which he thought should rest with the prosecution.

The Honourable Mr. GIBBS said it was sufficient to prove that the cotton was adulterated with intent to defraud, whoever might be the purchaser, without specifying a particular person.

The section was passed as drafted.

When Section 19 had been considered and passed, the Council adjourned, and the further consideration of the Bill was postponed till the 28th instant.

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

G. C. WHITWORTH,

Acting Under Secretary to Government.

*Bombay, 22nd February 1877.*

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

The Council met at Bombay on Wednesday the 28th February 1877, at noon.

*P R E S E N T :*

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, G.C.S.I., K.C.B.,  
Governor of Bombay, *Presiding.*

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE GENERAL.

The Honourable Major-General M. K. KENNEDY.

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

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

The Honourable Nacoda MAHOMED ALI ROGAY.

The Honourable DONALD GRAHAM.

The Honourable Rao Bahadur BECHERDAS AMBAIDAS, C.S.I.

The Honourable SORABJI SHAPURJI BENGALI.

The Honourable Colonel W. C. ANDERSON.

The Council resumed consideration in detail of Bill No. 1 of 1877 (" A Bill to amend the law for the prevention of adulteration of Cotton, and for the suppression of fraudulent practices in the Cotton Trade.")

Consideration of the Cotton  
Frauds Bill in detail resumed.

Section 20 having been read, the Honourable DONALD GRAHAM said :—I beg to propose that, in accordance with the suggestion contained in the memorial of the Chamber of Commerce, the word "one" should be substituted for the word "four" in the second line of this section. I may call attention to Lord Salisbury's letter of the 27th January, in which, quoting from the Chamber of Commerce Memorial, His Lordship desires His Excellency to consider whether the establishment can be placed on a less expensive footing, in which case some relief might be given to the trade. For some reason or other the details of the financial position of the department have not been given in the annual reports, but a short summary is given in the Bombay Administration Report for 1875-76. This reads as follows :—"The balance sheet of the Cotton Improvement Fund shows a balance in hand of Rs. 2,89,606 on the 1st July 1875. The receipts amounted to Rs. 4,17,423 and the expenditure to Rs. 1,28,817; the year closing with a balance of Rs. 2,89,606." Now at present the fee levied is two annas per bale. It is not very clear from this what the exact revenue is, but it appears to be between 1½ and 2 lakhs of rupees. If the fee were reduced to one anna per bale the revenue would be about half that amount, or three-quarters of a lakh of rupees annually; and this, I think, would be ample for working the Act,—that is, if the Bombay establishment was done away with, as I think it may well be. According to the last record in which details were



given—the Report for 1871-72—the Bombay department cost Rs. 61,000, and I think if that division was done away with, the fee of one anna per bale would be all that would be required for up-country expenses. Of course I quite admit there would be a difficulty in doing away with the Bombay department all at once; it would have to be a gradual process; but even so there seems to be a balance in hand of Rs. 2,89,606, which would last for a number of years and allow ample time for gradually abolishing the Bombay Inspectorships. The department in Bombay consists, according to this report, of one Inspector, one Assistant Inspector, and ten Sub-Inspectors, under an Inspector-in-Chief. I now move that “one anna” be substituted for the words “four annas” in the 20th Section. I shall have some further suggestions to make with regard to this section, but it will, perhaps, be more convenient to take this separately first.

The Honourable Mr. RAVENSCHOFF:—I am sorry that I cannot entirely concur in the Honourable Mr. Graham's proposal to reduce the maximum rate of fee from four annas to one anna, because the amount of revenue to be derived from levying the latter fee would not be sufficient to carry on the Act with the energy with which I think it should be carried on. At the same time I believe His Excellency the Governor in Council is not desirous of accumulating more funds by these fees than are sufficient to work the Act with energy, and, having had a consultation with His Excellency yesterday on the subject, I believe he will, in due course, state that he thinks the maximum rate of fee might be established at two annas. Of course that would not bind the Executive Government to adhere entirely to that sum, but His Excellency is of opinion that that should be the maximum fee fixed, and that it should be modified as the exigencies of the service require. With reference to what Mr. Graham said as to the advisability of removing the Bombay Inspectors in a body, that appears to me to be utterly out of the question. Bombay is the port from which cotton is chiefly shipped, and though it is true a large number of bales are now pressed up country, there are still numerous presses at work in Bombay where cotton-pressing goes on daily, from an early hour in the morning till late at night; and, if no supervision is exercised, there can be no question that a great deal of adulteration and deterioration must go on. To remove the surveillance from Bombay, therefore, and exercise it solely up country, is a proposal that I am sure the good sense of the Council will not allow them to sanction. The point noted by the Chamber of Commerce, that the establishment in Bombay is more expensive than it should be, has also been considered by His Excellency the President. I am not quite aware what he proposes to do on that point; but he will probably give the Council the benefit of his suggestions at a later period. On behalf of the Government I can only repeat what I said originally, that it is desired not to make any revenue out of this fund, but simply to collect sufficient money to carry out the law in the way that an Act always should be carried out, viz., efficiently and energetically. Therefore, if Mr. Graham will modify his amendment according to the suggestion that the maximum rate of fee should be fixed at two annas, I think the Council would be likely to agree to that without the trouble of a division; but if he insists on so low a maximum fee as one anna being fixed, I must oppose his amendment and take the sense of the Council upon it.

The Honourable Mr. GRAHAM:—I cannot accept that compromise, because I think a one-anna fee is ample. I do not think the establishment in Bombay is of any use. The Inspector-in-Chief, certainly, does little or nothing except write his Annual Report, which perhaps, might be as well done by one subordinate in Bombay. As for the other Inspect-

tors, any one who goes to a press-house can see for himself that, if frauds are to be carried on at all, they can just as well be carried on with one man there as if he was away. He cannot superintend all the different presses at the same time, and as they are all at work at the same time, as a preventive of adulteration I think he is practically useless.

The Honourable Mr. ROGERS :—Before the vote of the Council is taken on the proposed amendment, it had better be pointed out that the demand upon the fund is not only for the payment of the salaries of the officials, but their pensions, I believe, are also debited to it. Is not that the case ?

The Honourable Mr. RAVENSCROFT :—Yes, that is so ; and, further, the improvement of the growth of cotton is one of the objects of the Act.

The Honourable Mr. ROGERS :—And in addition to that, the Council must be aware of the great advisability, in cases of this kind, where the officers of a department are necessarily open to very great temptations, that they should have good pay. It would be the worst possible economy to reduce their pay in any way. With regard to the fee that is now levied, I think there has been a great deal too much made of the point. There are other exactions on the trade made up country, and if the trade would set itself against those exactions, I think they would derive greater benefit from their exertions than they will gain by trying to cut down the fee from two annas to one anna. The Honourable Mr. Graham and all dealers in cotton are, no doubt, aware, that up-country fees are exacted by the local merchants in various shapes, to an extent, I believe, far greater than the fee exacted by Government amounts to. I know that in former days in Dhollera, when I was an Assistant Magistrate there, the fees exacted in this way were something exorbitant. The Bannias and local dealers take these fees on the pretence of their being devoted to religious and charitable purposes. There was one exaction made in Dhollera called, I think, *Choongee*, in making which they used to snatch a handful of cotton, large or small, out of each bale, on pretence of serving their deities and keeping up various charities. To such an extent was this kind of thing carried, that Government were at last obliged to interfere and stop it by proclamation ; but I believe I am correct in stating that in Broach and other places much larger fees are exacted by the local dealers than Government propose to take.

The Honourable SORABJI SHAPURJI BENGALI :—I am inclined to support the Honourable Mr. Graham's amendment that the maximum fee be fixed at one anna instead of four annas. From the statement and calculations in the Chamber of Commerce's letter it appears that a fee of one anna per bale will yield Rs. 75,000 a year, and the extension of the fee to the cotton used in the country would produce Rs. 10,000, which would bring the total up to Rs. 85,000 ; and, if that is not enough to support the Cotton Department as at present organized, we have a large reserve to draw upon, which will last something like ten years.

The Honourable Mr. RAVENSCROFT :—I think the honourable member is under some misapprehension.

The Honourable SORABJI SHAPURJI BENGALI :—There is a balance of three lakhs, is there not ?

The Honourable Mr. RAVENSCROFT :—Nothing of the sort, barely one lakh.

The Honourable Mr. GRAHAM :—According to this report there is a balance of nearly three lakhs.

The Honourable Mr. RAVENSCROFT :—That is an old report.

The Honourable Mr. GRAHAM :—It is for 1875-76.

The Honourable Mr. RAVENSCROFT :—And this is 1877.

The Honourable SORABJI SHAPURJI BENGALI :—I should say it would be very advisable to fix the maximum fee to be levied at one anna per bale.

The Honourable Mr. RAVENSCROFT :—I omitted to mention, in the course of the remarks I made at the commencement of the discussion, that under this new Bill a portion of the funds may be devoted to experiments for the general improvement of cotton. Of course those experiments will be carried on with economy, but it is quite possible they may cost a great deal of money, though conducted in moderation; and, therefore, with the view of carrying out this object of the Act efficiently, it is absolutely necessary that there should be a slight margin; and if the fee is reduced to a maximum of one anna per bale, it will be barely possible to make both ends meet. Besides, as the Honourable Mr. Rogers has said, you must pay the Inspectors sufficiently to ensure their honesty, I hope the Council will by no means sanction the fixing of the maximum fee below two annas.

His Excellency the PRESIDENT :—Is it distinctly understood that the pensions of the officers of the department fall on this fund?

The Honourable Mr. RAVENSCROFT :—Yes.

The Honourable Mr. ROGERS :—At any rate what pension accrues after they enter the department does; they may have been in Government service before.

His Excellency the PRESIDENT :—Is there anything which places their pensions as a contingency upon this fund? Supposing this amendment to be carried, would their pensions be forfeited? What is their actual position?

The Honourable Mr. RAVENSCROFT :—The question has not been legally decided. When it was in contemplation about a year and a half ago to do away with the Cotton Department, it was laid down that the officers should be paid compensation from the Cotton Frauds Fund. I do not think the question has arisen yet of a cotton employé having taken a pension; but the Government of India have certainly laid down in their orders on the subject, that they would not hold themselves liable for these pensions, which would no doubt fall on the Cotton Frauds Fund.

His Excellency the PRESIDENT :—I think the Honourable Mr. Graham's object would be attained by his consenting to the maximum fee being fixed at two annas instead of four annas, accepting the assurance, as far as I can give it, that the Government have no intention of maintaining an establishment one atom larger than is necessary, either in point of salary or numbers. As far as the Chief Inspectorship is concerned, I think that that office may probably be dispensed with without interfering with the working of the Act. I hope it will be found possible, in a short time, to bring down the fee actually levied to one anna. Of course that would not remove Mr. Graham's paramount objection to the principle of the Act, and the interference with trade, but we have gone beyond discussing that now. I think it will be better to fix the maximum fee at two annas instead of four. I am sure the executive members of Government will give their support to any practical reduction of the actual fee levied.

The Honourable Mr. GIBBS :—We are bound to make the Act as inexpensive as possible that is a matter of paramount importance.

The Honourable Mr. GRAHAM :—When an establishment once exists, it is rather difficult to reduce it; and when it is its own particular business to reduce itself, it is generally not reduced at all. However, on the understanding that Government will keep the matter in view, and see that reductions are made, I will consent to two annas being substituted for four annas in the section, and will withdraw my amendment.

His Excellency the PRESIDENT :—You may rest assured that Government will not allow this establishment to cost a rupee more than is necessary.

The word “two” was accordingly substituted for “four” in the second line of the section.

The Honourable Mr. GRAHAM :—I think the last clause of this section (clause (b) of Section 20) should be omitted. As I said before, it would be a great pity to begin taxing the only English industry that has been established in Bombay; and, as I also said before, there is no efficient machinery for collecting this tax, which would be very inconvenient, and cause a great deal of annoyance. I do think it would be better to omit this clause, and I, therefore, propose that it be omitted.

The Honourable Mr. ROGERS :—I beg to support Mr. Graham’s amendment. I cannot imagine any sort of machinery that could be invented which would satisfactorily serve the purpose intended to be obtained by this section. It is meant to tax cotton that is used in this country, which comes into Bombay in all kinds of ways, not only from our own territory but from foreign territory. Take, for instance, Broach. Cotton that is meant for export and cotton to be used locally, both come in by the same roads from the Gaekwar’s territory. There are dozens of different roads, and it would be simply impossible to place a supervision over all of them. The only way in which this clause could be enforced, would be, as far as I can see, by forcing the managers of the local mills to pay the fees, and that would be a direct tax upon the trade itself.

The Honourable Mr. RAVENSCROFT :—When I suggested the other day that the tax on the exported bales fell on the exporter, it was asserted by those members of the Council who took an opposite view, that the tax really fell on the cultivator. Now, it is said that by placing a tax on the cotton manufactured in India, we are taxing the industry of the country; by which I understand it to be meant, that the tax will not fall on the cultivators, as in the case of the cotton exported from India, but on the manufactures. I do not see how that could be the case one way more than the other; and it appears to me to be fair that the millowners should not derive benefit from the establishment maintained for the prevention of frauds in cotton without paying for it. As it is, the exporter pays for the manufacturer’s benefit. I must oppose the amendment, and propose that the clause be retained.

The Honourable Mr. GRAHAM :—I think, perhaps, the Honourable Mr. Ravenscroft did not quite understand what I said the other day. What I said was, that the tax on the exported cotton fell on the producer, but that on the cotton used in the mills fell on the millowners; and for this reason, that the export trade is the main trade in Bombay, and the prices are regulated by it, and all taxes and charges are taken into its cost. With the mills it is quite different. They have to pay the exporters’ prices; and the practical effect of this clause would be, that they would have to pay the exporter’s price, whatever it is, as they do at present, and then have to pay the two-annas tax afterwards.

The Honourable MAHOMED ALI ROGAY:—The object of this Bill is, I believe, to ensure good cotton being sent to the European markets, and the cotton used for local purposes need not be included within its scope, because the millowners can protect themselves. I do not think it is necessary to tax the millowners. The agitators of the European cotton markets have procured this Bill to be forced upon the people, and if it is necessary to keep the cotton pure for them, the tax should be levied on that exported, but not on the local consumers.

The Honourable SORABJI SHAPURJI BENGALI:—I think the cotton used locally should be taxed as well as that exported; but when we look at the additional expenditure that will be entailed, and the machinery required to collect the fees, and compare that with the additional revenue it will secure, I do not think it will be advisable to put on the tax. I think it would be much better to omit this clause, and I agree with the amendment on that account.

His Excellency the PRESIDENT:—I think the main objection to the retention of this clause is the difficulty of collecting the money; because I agree that there is no reason why the people who buy the cotton to be manufactured here, should not pay for what is provided by this Act, as well as those who buy for export. It is true the matter has been pushed forward by the merchants and millowners in England, but the ostensible object of the legislation is to save all buyers of cotton from fraud; and assuming that to be correct, the millowners here are just as much protected as the exporters. It is clear the main question is how the money is to be got at, where it is to be paid, who is to pay it, &c. There is no provision for this in the Bill. Seeing that the exported cotton has hitherto paid apparently money enough for the whole, we had better, I think, omit the last clause, and leave the remainder of the section as it stands.

The Honourable Colonel ANDERSON thought it was just that all cotton should pay alike.

The Honourable Mr. GIBBS:—According to this clause the Government would have power to levy fees on the cotton locally used, if they thought it necessary. Of course, if they found that they could not levy the fee unless at an enormous expense, they would not do it.

His Excellency the PRESIDENT:—It seems to me the principle of the Bill requires that all cotton should be taxed alike. I do not know that the Liverpool and Manchester people have much to do with it. However, the Chamber of Commerce say they cannot believe it is seriously the intention of the Government to tax the cotton used in the cotton spinning mills of the presidency, and, therefore, we presume, those whom they represent, viz., the exporters, if there must be a tax at all, are willing to be the only people taxed. I do not think we are called upon to go beyond that.

The Honourable Mr. GRAHAM:—There is one thing I wish to explain. The Chambers of Commerce, as far as I understand, do not look at this question from a mere exporter's point of view. They argue on the broad ground of what is good for the general interests.

His Excellency the PRESIDENT:—But still the fact is the same, the fee must fall on the exporters, who are the Chamber.

The Honourable Mr. RAVENSCROFT:—It has been said that, as matter of equity, the cotton used in the local mills should be taxed as well as that exported.

The Honourable Mr. ROGERS :—I say it is not necessary, because a great deal of the cotton used in the local mills does not come into the hands of the department at all. It is taken to the mills in its raw state, and there ginned. It may never be put in bales, but may come in an open cart.

His Excellency the PRESIDENT :—But an Inspector could stop it then, if it was adulterated, surely ?

The Honourable Mr. ROGERS :—I think not, unless it was packed in bales.

His Excellency the PRESIDENT :—The Secretary of State wished the Act to be made more palatable, and this clause appears to introduce a provision which is very unpalatable.

The Honourable Mr. RAVENSCROFT :—Yes. I was not consulted when it was decided on, but as it was put in I thought it desirable that it should be passed. I have no very strong opinion on the subject, and am quite willing to have it struck out.

Clause (b) was then struck out, and, as a consequence of this amendment, Clause I in Section III was also struck out, as being unnecessary if the cotton used in the country mills was not to be taxed.

On Section 21 being read, the Honourable Mr. GRAHAM said :—I must propose an amendment with regard to this section. I do not object to cotton improvement, or to the improvement of any other article of commerce, but I do think it a mistake to keep up a special department for such a purpose. You might just as well have a special fund for the improvement of wheat, indigo, seeds, and everything else ; and there can be no doubt that special departments of this kind give rise to a great deal of irresponsible expenditure and waste. The Chamber of Commerce quote in their memorial a resolution of the Government of India in which they say :—“ It is no doubt an object to maintain a high standard in this article of produce (cotton), and to encourage it to acquire a good reputation in the English market ; but it has equally an object to secure and maintain a good reputation for many other articles of Indian production, such as tea, tobacco, indigo, jute, and silk. These and other articles have not, however, enjoyed the protection of a special commissioner, but are left to private enterprise, stimulated by the encouragement of the Local and Supreme Governments. There is no reason why cotton should now that the trade has found its normal level, continue to be treated exceptionally.” I think if there are to be improvements in cotton, they ought to be effected through the regular departments of the State, and that there should be no special provision for them here, and accordingly I move that this section be omitted.

The Honourable Mr. RAVENSCROFT :—I must oppose this amendment moved by the Honourable Mr. Graham. I do not think it likely that much money will be spent upon these improvements ; but occasions might arise when expenditure for such purposes would be necessary, and it is inconvenient either to be debarred from doing what is evidently a wise thing to do, or to do it in defiance of the law, and have, subsequently, to pass a special Act to legalize what has been done. It is not necessarily the case that no other trade or growth in this country is supervised to a certain extent. It must be known to all present that the opium trade is under very strict and very wise regulations, the main object in that case being, I presume, to preserve the very large Imperial revenue obtained from opium. It is to the interest of the country, and of the trade generally, that cotton should maintain the reputation it has now fortunately secured ; and as it was found

convenient on a former occasion to spend some money, at times, on improvements which have had a very advantageous effect on the cotton trade generally, I think there need be no objection to this section, and, therefore, I propose that it be retained.

The Honourable Colonel ANDERSON :—I may point out that cotton is subjected to supervision not in India alone, as every one who reads the Cotton Reports can see. I find the following on page 17 of the Report for 1872-73 :—“The following is an extract from a circular issued by the New Orleans Cotton Exchange with reference to last season’s produce and its condition :—‘At the close of the season we deem it appropriate to call the attention of the trade and of others interested in the culture and marketing of our great staple, to the evils which this, more than any other year, have made such great advances. We call attention to the fact, that in the Penal Code of nearly every Southern State provisions are made for the punishment of those who falsely and fraudulently pack cotton, so that not only does the packer lose heavily by detection from the depreciation in the value of his shipment—the price being regulated by the poorest quality in the bale—but renders himself liable to conviction for a felony, and consequent long imprisonment.’”

His Excellency the PRESIDENT :—Regarding the passage quoted by the Honourable Mr. Graham from the Resolution of the Government of India on this subject, I think it is very doubtful whether that does express a desire on the part of that Government not to spend money in such a manner as is here proposed. I understand the remark about other trades not having enjoyed the protection of a special commissioner, to mean, that they have not been protected by a system of inspection as in the case of cotton ; and their having been “stimulated by the encouragement of the Local and Supreme Governments” I take to mean, that they have been assisted by grants of money for the purpose of making experiments. How could they be encouraged except in that way ? They are not inspected ; and I should say the encouragement must be in the shape of monetary assistance to experimental enterprise.

The Honourable Mr. GRAHAM :—But they do not come under any special fund.

His Excellency the PRESIDENT :—The grants would have to come out of the general revenue. That evidently contemplates the expenditure of money in encouraging experiments.

The Honourable Mr. GRAHAM :—Yes, it is quite legitimate if it is done in that way through the Collectors and the regular departments of the State, but not through a special department. That is what I object to, as giving rise to irresponsible expenditure and waste ; because, practically, the expenditure is irresponsible.

The Honourable Mr. RAVENSCROFT :—All these experiments under the Cotton Frauds Fund have been carried on through the Commissioners and regular Inspectors, and not by special officers. If that is the only objection there is no ground for it. We may be perfectly sure that the money will be properly applied.

The Honourable Mr. GRAHAM :—As I had occasion to read the other day, the Inspector of Khandesh reported that there had been a great deal of waste in these experiments, and I think there is very little doubt that there has been.

The Honourable Colonel ANDERSON :—We have an indication in some of their correspondence of how the Chamber of Commerce would like to have experiments carried on. In the Cotton Administration Report for 1873-74, page 10, in reply to a letter from the Secretary to the Chamber of Commerce, the Assistant Commissioner of Akola,

amongst other points, consults the Committee of the Bombay Chamber as to whether it is desirable that the last named cotton—that is the Khandesh cotton—should find a footing in the Berars. In paragraph 3 he says :—“ The Resident of Hyderabad has taken up the subject very warmly, and authorized measures to be taken to prevent the extension of the cultivation of Khandesh cotton.” The Secretary of the Chamber replies, in the letter above referred to, in the following words :—“ I am directed to State that, in the opinion of the Committee, it would be nothing short of a calamity to the cotton trade of Western India to introduce into the Berars the old Khandesh cotton. This cotton was formerly known as the most worthless description exported from Bombay. It was in bad times unsaleable, and was mainly used by dealers to mix with and adulterate the far superior cotton of the Berars, until it was eradicated in 1865. Amraoti cotton—the name by which the cotton of the Berars is generally known—now holds so high a position in the home market, that it would be a serious evil to permit the possibility of allowing it to be mixed with the short, coarse-stapled Khandesh, and mixed it would undoubtedly be, if permitted to be grown. The Committee of the Chamber earnestly hope the Resident of Hyderabad will prevent the introduction of the old Khandesh cotton seed into the Berars, in the interests alike of the ryots and of the cotton trade of Western India.” There is a note attached, in which it is stated that “ the sowing of Waradi is prohibited under penalty of a fine,” and this fine is said to be “ leviable to the extent of Rs. 50.” That is the mode in which the Bombay Chamber of Commerce wish to see the cultivation of cotton stimulated in the interests of free trade.

The Honourable Mr. GRAHAM :—No doubt the Khandesh cotton is of very bad quality, and it would have been a calamity if Khandesh cotton had been allowed to be grown in the Berars.

His Excellency the PRESIDENT :—But your argument would be, that the merchants of Bombay would have the good sense not to buy the adulterated cotton, and then it would fall out of the market as a matter of course.

The Council then divided on the amendment that Section 21 be omitted, and the result was :—

| <i>Ayes.</i>   | <i>Noes.</i>                                |
|--|---|
| The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK. | The Honourable A. ROGERS.                   |
| The Honourable Nacoda MAHOMED ALI ROGAY.             | The Honourable J. GIBBS.                    |
| The Honourable DONALD GRAHAM.                        | The Honourable the ADVOCATE-GENERAL.        |
| The Honourable Rao Bahadur BECHERDAS AMBAIDAS.       | The Honourable Major-General M. K. KENNEDY. |
|  | The Honourable E. W. RAVENSCROFT.           |
|  | The Honourable SORABJI SHAPURJI BENGALI.    |
|  | The Honourable Colonel W. C. ANDERSON.      |

The Honourable SORABJI SHAPURJI BENGALI moved that the following section should be inserted in the Bill in lieu of the original Section 13 :—

“ If upon the hearing of the summons issued under Section 7 of this Act, a Magistrate or Court be satisfied that—

(a) any cotton seized and detained under the provisions of Section 6 of this Act has been fraudulently or dishonestly adulterated, or deteriorated, by mixing therewith seed, dirt, stones or other foreign matter, or



- (b) that such cotton is a mixture fraudulently, or dishonestly made of cleaned and uncleaned cotton (commonly called *kapás*), or of different varieties or qualities in one bale, or
- (c) that the weight of such cotton has been fraudulently or dishonestly increased, or attempted to be increased by exposing it to dew, or by any other means, or
- (d) that such cotton has been adulterated, mixed, or increased in weight with the fraudulent intent that it may be sold, or offered for sale, or compressed, or offered for compression—

The Magistrate or Court shall order—

that such cotton be confiscated and destroyed, or

that such cotton be confiscated and sold, or

that such cotton be cleaned by or under the direction of the Inspector of Cotton, and

that such Inspector do return such cotton, when so cleaned, to the person in whose possession the same was found, upon payment by him of the expenses of cleaning such cotton, together with such fine as such Magistrate or Court shall direct; and that in default of such payment such cotton be sold, and the proceeds thereof, after deducting such fine and the expenses of cleaning and sale, be paid to such person as aforesaid."

The Honourable Mr. SORABJI SHAPURJI BENGALI said:—This section is the same in principle as the one I submitted at the last meeting, but it has been drafted in proper form by the Honourable the Advocate-General.

The Honourable Mr. ROGERS:—May I ask if it is to be considered that the Council, by the vote of the last meeting, have agreed to the principle of this section, or whether that principle is still open to discussion?

His Excellency the PRESIDENT:—I think we agreed at the last meeting that the penalty to be imposed under the Act shall be the confiscation of the adulterated cotton.

The Honourable Mr. ROGERS:—Then those who are inclined to oppose this can only continue their opposition by opposing the different paragraphs as they come before the Council in detail. The Council is supposed to have confirmed the principle that there is to be no punishment of the individual except that of confiscation.

The Honourable Mr. GIBBS:—It was distinctly understood at the last meeting that the question was, whether we were to have fine or imprisonment, or merely confiscation; and confiscation was carried, in accordance with which the Advocate-General has re-drafted the section.

The Honourable Mr. GIBBS pointed out that the words "fraudulently and dishonestly" seemed hardly to be necessary in the section, except as regarded clause (c). If a Magistrate found paving stones in the middle of a bundle of cotton, he would naturally come to the conclusion that they were fraudulently put there.

The Honourable SORABJI SHAPURJI BENGALI:—Seed might be found in very small quantities.

The Honourable Colonel ANDERSON:—It is on record that 50 per cent. of sand, stones, and dirt was found in a bale of cotton.

The Honourable Mr. GRAHAM :—I think some provision should be added to protect the innocent holder of the cotton.

The Honourable the ADVOCATE-GENERAL :—That is done by Section 22.

The Honourable Mr. GRAHAM :—That merely gives a right of civil action, which may be a very poor compensation. A man may have his cotton taken away, and the person he bought it from may be anybody. He may not be able to recover anything, and, at any rate, he would have a great deal of trouble and expense.

The Honourable Colonel ANDERSON :—The effect will be, no doubt, to place a good deal of obstruction in the way of dealing with adulterated cotton, and that is one of the difficulties that would be much deplored in Bombay. I have heard merchants say, that dealing in adulterated cotton with discrimination is more profitable than trading with good cotton.

The Honourable Mr. ROGERS :—I object to the whole of the proposals connected with the substitution of simple confiscation for personal punishment; and if the Bill comes to a third reading, and the Council still insist upon maintaining this principle, I shall consider it my duty to oppose the Bill on this ground, that the whole principle of the cotton legislation has been changed. For the present I will say, with regard to these clauses, (a), (b), (c), and (d), that as they are put in here they will not be workable at all. Perhaps in one case in a thousand it may be possible for an Inspector to prove fraudulent mixing of cottons, or mixing of the staple with various other substances. The Inspector sees the cotton after it is pressed, or when it is being pressed; he is not there when the adulteration actually takes place, so it is impossible for him to prove it; and as far as that goes I think the whole proceeding is a farce—that is as far as palpable adulteration, visible to the eye, goes—and when cotton is damped in various ways, by exposing it to dew, &c., how is it possible to prove any fraudulent intent? In Guzerat, before cotton is cleaned, it is always put out in an open place. As for paragraph (d) I cannot understand it as it is worded at all. What fraudulent intent is there in offering anything for sale? Suppose a person says “Here is a bale of cotton,—I call it cotton, but half of it is seeds and dirt,”—there is no fraud. A man may say “that is bad cotton,” and the buyer can then take it at his own price. These sections will really be quite unworkable, and will amount to a farce, and I do not understand that it is our business to pass any law which will be unworkable. On this ground I object to all these sections as drafted, having already objected to the principle of the change in the scope of the legislation. There is the other objection, too, that the actual loss in connection with this confiscation will fall on the person—I may say the unhappy person in most cases—in whose hands the cotton may happen to be found. It is all very well to leave him his remedy in a civil court, but in reality that will be no protection whatever to him in nine cases out of ten. The adulteration may actually take place in the furthest corner of Kattywar; the cotton may pass through half a dozen different hands before it comes into the hands of the merchant in Bombay; it will be confiscated here, and the merchant who has purchased it at the sixth hand will suffer. He may know from whom he has purchased the cotton, but there may have been half a dozen men had it before that man, and it will be simply impossible to go back step by step to the person who has carried out the adulteration.

The Honourable SORABJI SHAPURJI BENGALI said that, in practical working, the second section in the existing Cotton Frauds Act could not be made use of at all, because a person must be found in the very act of adulterating the cotton before he could be

punished; and, therefore, the Courts had gone on to the third section, and had punished people who sold, or offered for sale, cotton that had been fraudulently or dishonestly adulterated. The alterations he proposed certainly made this part of the Bill very lenient as compared with the provisions in the existing Act.

The Honourable Mr. ROGERS :—As the law at present stands there is some sense in it. The person who actually commits the offence of adulteration is the one to be punished. It was considered that in the adulteration of cotton some process might be adopted which the provisions of the Criminal Code would not reach, and on that account it was found necessary to have some special legislation on the subject. But you abandon that, and do not punish the really guilty individual, even when you can find him out. You punish the person who happens to have the cotton in his possession, which I think is acting on a wrong principle altogether.

The Honourable Mr. GIBBS :—If the section is unworkable with confiscation as the penalty, it is equally unworkable with fine and imprisonment as the penalty. If the Magistrate is satisfied that cotton taken before him has been fraudulently and intentionally adulterated, he is to confiscate the cotton. I do not see the slightest difficulty in the matter. It seems to me a mere question of substituting confiscation for fine and imprisonment as the form of punishment.

The Honourable Mr. ROGERS :—But you make the punishment fall upon the innocent party.

The Honourable Mr. GRAHAM :—I think the old form is the simplest, and I do not see why it should not be adopted, merely substituting confiscation for fine and imprisonment.

The Honourable Colonel ANDERSON :—The old form has not worked well. By the new section adulterated cotton is made contraband, and if a person is found in possession of contraband cotton he is punished. That will have the effect, of course, of making all persons who buy cotton rather careful from whom they buy it and what they buy; and it is very desirable that they should be careful. It will, in fact, turn all purchasers into auxiliary inspectors of cotton.

The Honourable Mr. ROGERS :—On that principle you go in, not for protection of cotton, but for protection of trade, which the trade tell you they do not want.

The Honourable Colonel ANDERSON :—The object is to prevent adulterated cotton being sold, and to prevent cotton being adulterated.

The Honourable Mr. RAVENSCROFT :—Exactly the same principle applies to the Adulteration Acts in England. Probably the Council will remember a well-known case which occurred about two years ago. Some tea-dealers were convicted by a Magistrate for selling adulterated tea, and the conviction was maintained by the Queen's Bench on appeal, though it was proved the adulteration took place in China, that the appellants knew nothing about it, and that it could only be discovered by a process of analysis which it would be very difficult for them to follow. The Court very properly pointed out that there was a law for the prevention of adulteration in tea, and that if persons sold adulterated tea they must be open to conviction.

The Honourable Mr. ROGERS :—That case applied to an article of food. Persons who buy food are not supposed to be experts, and have not the means of analysing the tea or sugar that they purchase. They do not carry microscopes about with them. In the

cotton trade there are experts on both sides. The cultivator knows how to cheat, no doubt; and the merchant ought to be able to defend himself; and where that is so, I think the old principle *caveat emptor* should apply. In the other cases, where a man is not an expert and cannot be expected to test his tea or sugar on the spot, there is a very different principle involved.

The Honourable Mr. ROGAY agreed with the Honourable Mr. Rogers that a fine would be the most adequate punishment for offences under this Act.

The Honourable Colonel ANDERSON :—The question would be who should pay the fine. The person in possession would say—"I did not adulterate it," and you must fine the person who did.

The Honourable Mr. ROGERS :—That is the principle of the present law.

His Excellency the PRESIDENT :—The merchants will not buy bad cotton innocently with their eyes open; and if cotton is so bad that we do not want it to go to Europe for any purpose, I am quite in favour of confiscating it. Confiscation in such a case falls rightly on the man who has encouraged adulteration by buying the adulterated article. When competition becomes very active that may be done.

The Honourable Mr. GRAHAM :—That is assuming the object of this Act to be that no inferior cotton shall be allowed to leave the country.

His Excellency the PRESIDENT :—Yes, no cotton that is in a disgraceful condition.

The Honourable Mr. GRAHAM :—Inferior cotton has a great many uses in the markets of England and other parts of Europe; even the waste can be made into paper, &c.

His Excellency the PRESIDENT :—Then it may be sold as such.

The Honourable Major-General KENNEDY :—I think there is no doubt the Act will be made far more stringent, and at the same time more reasonable.

The Honourable Mr. ROGERS said the new section proposed by the Honourable Mr. Bengali, in addition to other objectionable characteristics it possessed, would give the Inspectors who had to work the Act a great deal too much power. They might think twice about bringing a summons against a person where the punishment was fine and imprisonment, but they would not think twice about seizing cotton for confiscation.

His Excellency the PRESIDENT :—In the other case there is no punishment provided for the man who holds out the temptation to adulterate by buying adulterated cotton; it all falls on the humbler class.

The Honourable the ADVOCATE-GENERAL proposed that clause (d) of the new section should be omitted, and it was struck out.

The amendment was then put to the vote, and the section proposed by the Honourable Mr. Bengali, *minus* clause (d), was accepted by 7 votes to 4; the division was as follows—

*Ayes.*

The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Maj.-Gen. M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable VISHVANATH NARAYAN MANDLIK.  
The Honourable SORAJI SHAPURJI BENGALI.  
The Honourable Colonel W. C. ANDERSON.

*Noes.*

The Honourable A. ROGERS.  
The Honourable MAHOMED ALI ROGAY.  
The Honourable D. GRAHAM.  
The Honourable BECHERDAS AMBAIDAS.

Section 6 was amended by the insertion of the following in lieu of the first clause—  
 “It shall be lawful for an Inspector of cotton to seize and detain any cotton which appears to him to be liable to confiscation under this Act, and to give the same into the custody of any police officer;” and also by striking out lines 12 and 13 in the second clause.

The Honourable SORABJI SHAPURJI BENGALI moved the insertion of the following additional section, to be placed between the original Sections 7 and 8:—“Every Inspector who shall seize and detain any cotton under this Act shall, within ten days from the date of such seizure and detention, apply for and obtain a summons from a Magistrate or Court, directed to the person in whose possession the same was found, and requiring him upon a day therein named to show cause why such cotton should not be confiscated. If such Inspector shall not apply for and obtain such summons within the time aforesaid, such cotton shall be returned to the person in whose possession the same was found, and shall not be liable to re-seizure or detention.”

The Honourable Mr. ROGERS:—I have several objections to urge against this section. First, with regard to the authority to whom the application should be made for enforcement of the provisions of the Act. The general term *Magistrate* may mean any Magistrate, even of the lowest class, and an ordinary *Mámlatdár* of a district who has third class magisterial power may be resorted to by an Inspector. This, combined with the fact that they may delay ten days before taking proceedings in the matter, puts immense power of annoyance into the hands of ordinary Inspectors; a power with which, I think, they should certainly not be entrusted. A merchant may have purchased cotton and made every arrangement to send it to Bombay and ship it off direct, and an Inspector may step in and be the cause of breaking his contract. I think the application should not be made to a Magistrate with less than first class powers, and that the time allowed to take proceedings should be much shorter.

The Honourable Mr. GIBBS considered that the application should not be made to any authority of less power than a second class Magistrate, and proposed that words should be added to the section to that effect, and also that the time allowed should be limited to seven days. He said that time would be required, because cases would occasionally arise in the districts in which it would be difficult to find a second or first class Magistrate.

After some conversation these suggestions were adopted, and the alterations having been made accordingly by substituting “seven” for “ten,” and by inserting the words “first or second class” before “Magistrate,” the section was passed.

The Honourable Colonel ANDERSON proposed that in lieu of the 18th Section the following should be inserted:—“It shall be no defence to any proceeding under this Act, that the cotton in question was purchased with the knowledge that it was liable to confiscation, or that no intent to defraud any particular person has been proved.” The intention is to prevent a combination between the seller and the purchaser to defeat the objects of the Act. It is very common now, in the case of a prosecution for adulteration of cotton, for the purchaser to come forward and say—“I am not defrauded in the least; I knew all about it when I purchased the cotton.” He gives evidence that he has not been dishonestly treated in any way, in the face of which the Magistrate cannot convict the seller of fraudulent adulteration. The purchaser is driven to do this by the pressure of the whole trade. If he did not screen the seller, no one would sell him cotton again; in the same way that if you prosecute a man for giving you short measure in selling you grass, no one else will sell you any grass. That kind of

combination is a very common thing in this country. This section makes the cotton the culprit, and the cotton cannot clear itself in any way if the Magistrate is satisfied that it is fraudulently adulterated. The person to whom it belongs may seek his remedy under the last section from the person from whom he bought it. The result, of course, will be that purchasers will be careful what they are about, much more so than at present. The object of this Bill is to protect a great branch of Indian trade; deterioration of the value of Indian cotton would be a great national loss.

The Honourable Mr. GRAHAM:—I do not know that I have any particular objection to the section as proposed, but I cannot help thinking its having been proposed shows we are drifting into deeper and deeper water. I cannot help thinking the whole is based on a wrong theory, and we are trying to make things fit into that theory. The whole of this legislation is based on an extraordinary and unnatural assumption, viz., that there is an unnatural tendency to adulterate cotton, which does not exist in any other trade; and, moreover, that there is an extraordinary tendency to adulterate cotton in the Bombay Presidency that does not exist in any of the other Presidencies, or in any other part of the world. Of course when we start from that we have to fit in other things to agree with it. It does seem to me a very extraordinary theory.

The vote was then taken on the Honourable Colonel Anderson's proposition. The Honourable V. N. Mandlik did not vote, and the result was that five were for and five against the adoption of the section. His Excellency the President gave his casting vote against the amendment, which was accordingly lost. The division was as follows:—

| <i>Ayes.</i>                                | <i>Noes.</i>                       |
|---|------------------------------------|
| The Honourable J. GIBBS.                    | The Honourable A. ROGERS.          |
| The Honourable the ADVOCATE-GENERAL.        | The Honourable E. W. RAVENSCROFT.  |
| The Honourable Major-General M. K. KENNEDY. | The Honourable MAHOMED ALI ROGAY.  |
| The Honourable SORABJI SHAPURJI BENGALL.    | The Honourable D. GRAHAM.          |
| The Honourable Colonel W. C. ANDERSON.      | The Honourable BECHERDAS AMBAIDAS. |
|   | HIS EXCELLENCY THE PRESIDENT.      |

On the motion of the Honourable Colonel ANDERSON, in Section 5 to the end of the second clause were added the words "or where the packing of cotton in *doctras* is being carried on."

In lieu of Section 22 the following was adopted:—"Nothing in this Act shall affect the civil rights of any person in any manner interested in any cotton confiscated or ordered to be cleaned and sold under the provisions of this Act; but every such person shall have the same right of action as if this Act had not been passed; and all fines, cleaning, and sale charges paid, and legal and other expenses and losses incurred and sustained, in consequence of the seizure and detention of such cotton, and consequent thereon, shall be part of the damages recoverable in such action."

The Council then adjourned till the 3rd of March 1877.

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

G. C. WHITWORTH,

Acting Under-Secretary to Government.

Bombay, 28th February 1877.

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

The Council met at Bombay on Saturday the 3rd March 1877, at noon.

*P R E S E N T :*

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, G.C.S.I., K.C.B.  
Governor of Bombay, *Presiding.*

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE GENERAL.

The Honourable Major-General M. K. KENNEDY.

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

The Honourable Nacoda MAHOMED ALI ROGAY.

The Honourable DONALD GRAHAM.

The Honourable Rao Bahadur BECHERDAS AMBAIDAS, C.S.I.

The Honourable SORABJI SHAPURJI BENGALI.

The Honourable Colonel W. C. ANDERSON.

The Council resumed consideration of Bill No. 1 of 1877 ("A Bill to amend the law  
Consideration of the Cotton for the prevention of adulteration of Cotton, and for the  
Frauds Bill resumed. suppression of fraudulent practices in the Cotton Trade.")

His Excellency the PRESIDENT drew attention to Section 14 as it now stood in the Act—the one substituted at the last meeting of the Council, on the motion of the Honourable Mr. Sorabji Shapurji Bengali, for the original penal section of the Bill. His Excellency said:—No doubt Mr. Bengali introduced the penalty of confiscation with the view of reducing the punishment to be inflicted under the Act, and so render it less stringent; but in one respect I think it is exceedingly doubtful whether it would have that effect, or whether it may not lead to greater pressure. Under the Act now in force—No. IX. of 1863—confiscation of the cotton can only take place after somebody has been convicted of fraudulently dealing with it. There is not, as in the present Bill, any provision for confiscation of the cotton merely because the cotton is found to be bad, but an intention to defraud a person must be proved; and probably confiscations now are very small in number, considering the difficulty of getting convictions against the actual defrauders. Under this Bill it will not be necessary to prove anything against anybody; but as I read the section, cotton may be brought into court by an Inspector who will only have to say to the Magistrate:—"If you look at this cotton you will find it has been adulterated, or deteriorated, or increased in weight, and you will be good enough to confiscate it";—whereupon, if the Magistrate should consider the cotton to have been so tampered with, he would confiscate it, and the proprietor would consequently lose his cotton. I do not say that is wrong or right, but unquestionably, as far as I can understand it, that is the practical effect of the Bill as it now stands.

The Honourable Mr. GIBBS :— I think the degrees of three punishments—if I may so call them—provided under the section, meet any case of hardship ; because, I presume, the confiscated cotton is not to be destroyed unless it is so bad that nothing can be done with it ; but if it is not altogether irreclaimable, it must be cleaned ; and that it is not to be sold unless under special circumstances. The ordinary course will be, that adulterated cotton will be ordered to be properly cleaned, and the pure cotton will be given up to the owner on payment of expenses and a small fine ; and if the object of the Act is to keep cotton pure, that seems to me to be a sensible way of getting rid of bad cotton, viz., by converting it, whenever it is found possible, into good. There are three different punishments provided for different degrees of offences, viz., the confiscation and destruction of the cotton, the confiscation and sale, and the confiscation and cleansing. I should say that the ordinary cases that will probably arise where cotton is adulterated by the addition of dirt, or paving stones, or some little eccentricity of that kind, the Magistrate will simply order it to be cleaned ; and, after charging the owner for cleaning it, and fining him according to the circumstances of the case, return it to him properly cleaned and deprived of the foreign substances which had formerly increased its bulk and weight. The cotton would be destroyed only when it was so bad as to be unsaleable ; and I presume the cotton would be ordered to be sold and the proceeds given to Government in cases only where a man was found to be constantly and habitually addicted to adulterating practices. It might occur that bad cotton was constantly being seized at one particular man's packing place, and that a Magistrate was constantly fining one particular man for sending out cotton increased in weight by exposure to dew, or by mixing it with seeds, &c., and I presume that in such cases the Magistrate might say—“ This man is constantly coming before me, and now I shall order his cotton to be confiscated and sold.” It seems to me that, by the exercise of these three degrees of punishment to meet various degrees of offences, you can ensure good cotton being shipped, which is the object of the Act ; and I think these are all very much milder forms of punishment than getting men and sending them to jail.

The Honourable SORABJI SHAPURJI BENGALI :—I intended this section to be applied in working much as the Honourable Mr. Gibbs has pointed out. In ordinary cases the cotton should only be seized and cleaned, and the pure article returned to the owner on payment of a fine and of the cleaning charges ; and the other two forms of punishment should be adopted only in extreme cases—such as that of a man repeatedly committing similar offences—when a Magistrate would be quite justified in confiscating his cotton entirely, and having it cleaned and sold. Generally, of course, Magistrates will adopt the much milder form of punishment. I think these provisions are calculated to attain the object of our legislation, which is to prevent adulterated cotton leaving the country.

His Excellency the PRESIDENT :—That is the primary object no doubt ; but I wish to point out that, as the Act is now framed, there is no obligation on an Inspector to convict any one of an intention to defraud. He has nothing to do but to satisfy a Magistrate that a certain quantity of cotton is in a certain condition, and the Magistrate has no business to go beyond that ; but if satisfied on that point he must confiscate the cotton ; and whether the confiscated cotton is destroyed, or sold, or returned cleaned on payment of the cost and a fine, the whole inconvenience and expense will fall upon the man who is found in possession of the cotton, and who may possibly have had nothing whatever to do with the fraud. It matters not to the Inspector who did it. As the old Act stands, the punish-



ment rests entirely on the man who actually committed the fraud; as the new Act stands, the whole loss falls on the man in whose possession the cotton happens to be found. I think the Council should clearly understand that.

The Honourable Mr. GRAHAM :—I thought at the time this new section was passed that the Council scarcely realized the great change they were making. As your Excellency has pointed out, the principle of this Bill is totally different from that of the old Act; in fact, it creates an entirely new class of criminal offence, and it does not define what that criminal offence is. I do not think any member of the Council could point out under this Act what is adulterated cotton; there is nothing to show what is adulterated cotton. Clause (a) of Section 14 says—“has been fraudulently, or dishonestly adulterated, or deteriorated by mixing therewith seed, dirt, stones, or other foreign matter.” Now all cotton which leaves this country has a certain amount of seed and dirt mixed with it, and who is to say what is the amount of seed and dirt which constitutes adulteration? Is it 1 per cent, or 20 per cent, or is it 50 per cent? There is nothing to define what is the amount which shall be considered to constitute adulteration. Then the next clause, (b), says—“that such cotton is a mixture fraudulently or dishonestly made of cleaned and uncleaned cotton (commonly called *kapás*),” or of different varieties or qualities in one bale; and it is notorious that cotton of different varieties is constantly mixed. In the Southern Maratha Country different varieties of cotton are grown side by side, and no one can separate them at the time of packing. It would be impossible to separate that cotton, and the different varieties must be packed together. Then as to the next clause, regarding the increase of the weight of cotton by exposing it to dew. All cotton is exposed to dew more or less, and who is to say what amount of exposure to dew, as also what amount of dirt, or seed being mixed with cotton, shall constitute adulteration under this Act? There is nothing whatever to define the percentage, and the matter is left entirely to the discretion of the Inspector and the Magistrate. Of course, it may be said that fraudulent or dishonest intent must be proved before the cotton can be confiscated; but in the meantime, while this process is being gone through, what protection has the merchant got? A case has been brought to my notice which occurred a few days ago, and which I may mention as showing the hardships and great injustice which may be caused under Acts of this description. A Native merchant had a quantity of cotton which was seized by an Inspector on the ground of its being adulterated, and on appeal to the Collector of the district the Inspector's action was upheld. The merchant came to Bombay, a distance of upwards of 200 miles, and took legal advice, with the result that a strong legal letter was despatched to the Collector, calling on him to give up the cotton, or an action would be instituted against him for Rs. 20,000 damages, and then the cotton was returned to the merchant immediately.

His Excellency the PRESIDENT :—When did that happen, and where?

The Honourable Mr. GRAHAM :—In the Sholápur District.

His Excellency the PRESIDENT :—Does the honourable member know what particular district it was? In these cases it is desirable to know exactly what officer is concerned.

The Honourable Mr. GRAHAM :—I do not know the details of the case; I only mention it as an instance of what happens constantly.

His Excellency the PRESIDENT :—I should think it is a very strong instance—if what the honourable member mentions is correct—and I should like some further information about it.

The Honourable Mr. GRAHAM :—Another instance was one in which a great deal of rain fell suddenly, and a number of bales of cotton that were not under cover consequently became wet. The Sub-Inspector of the district—who seems to have been a man of discretion—recommended that the wet portions should be removed, when the Head Inspector arrived, and, after using an amount of strong and violent language, insisted upon having the cotton seized. A reference was made to the Chief Inspector in Bombay, who—very properly as it turned out—decided according to the view of the Sub-Inspector ; but in the meantime obstruction and annoyance were caused. However, what I wish to point out is, that there is nothing to show what constitutes fraudulently adulterated cotton under this Act. A Magistrate has nothing to guide him. Under the old Act the prosecution goes against the individual who commits the fraud. According to this Bill any one is liable to have his cotton seized, because—as I pointed out—every bale of cotton that leaves this country has a certain amount of dirt and seed mixed in it ; and under Section 6 any Inspector who wishes to cause annoyance, may seize cotton and hold it for seven days, until he likes to make an application to a Magistrate ; and then comes the question of proving the fraudulent and dishonest intent.

The Honourable Mr. GIBBS :—A Magistrate cannot confiscate cotton and order it to be destroyed, or sold, or cleaned, unless he is satisfied that it has been fraudulently or dishonestly adulterated.

The Honourable Mr. GRAHAM :—And in the meantime how much time elapses ? Of course, if the Council are satisfied with the justice of that, I have no more to say.

The Honourable Mr. RAVENSCROFT :—The Honourable Mr. Graham's argument does not apply to this Bill any more than to the old Act.

His Excellency the PRESIDENT :—No, the whole change is in transferring the liability from the actual adulterator to the present possessor.

The Honourable SORABJI SHAPURJI BENGALI :—The old Act made the present possessor liable also, because it says—“ whoever fraudulently sells, or offers for sale, &c.”

His Excellency the PRESIDENT :—Yes ; but we cannot enforce anything under the old Act unless we obtain the conviction of the actual offender.

The Honourable SORABJI SHAPURJI BENGALI :—Not unless it is proved that a man offers the cotton for sale.

His Excellency the PRESIDENT :—It is not necessary to do that under this Bill ; cotton might be found anywhere, and it will be said “ this is cotton wilfully damaged,” and it would be liable to confiscation.

The Honourable Mr. ROGERS :—The Magistrate has only to say—“ I am of opinion that it has been fraudulently adulterated.” I tried very hard on a previous occasion to enunciate to the Council the views which your Excellency has to-day expressed, but I appear to have been misunderstood. I can foresee the Council will go far beyond their legitimate powers in declaring bad cotton contraband, and that is the whole object of the present Bill, so far as I can see.

The Honourable Mr. GIBBS :—That is the whole principle of the Bill.

The Honourable Mr. ROGERS :—Then I say, the Council, in passing an Act of that kind, go far beyond their powers. They have no business to interfere with trade in that way.

The Honourable Mr. GIBBS :—Cotton is the culprit. The principle of the Act is *Fiat justitia ruat cotton!*

The Honourable Mr. ROGAY :—The effect will be that the real culprit will escape, and he man who happens to have the cotton in his possession will be punished.

The Honourable Mr. GIBBS :—I have heard since the last meeting that in Bhaunagar and in Wadhwan, the political powers and the Darbar powers there have very much stricter views, and put more violent measures in force to prevent bad cotton leaving their territory than we have in any of the districts under this Act. According to the views of the opposers of this Bill it would, apparently, be better to have no Act at all, because in the Berars and in Kattywar, where no Act exists, good cotton is obtained. But we find the officers of such districts have very full powers, like the Chief Commissioner of Berar, who placed a fine of Rs. 50 at the request of the Chamber of Commerce on the growth of cotton of a certain description in that district; and in Bhaunagar and Wadhwan they have much more stringent rules to prevent cotton being adulterated than we have under this Act; and only the other day the Political Agent wrote up, requesting that instead of those rules the spirit of the present Act in Bombay might be introduced into Wadhwan.

His Excellency the PRESIDENT :—I think not in Wadhwan but in Gondal. In Wadhwan there is a very much simpler process in operation I believe. They have a transit duty of six rupees on every cart loaded with cotton passing through the State; and an order is published that if cotton is brought to the market near the railway-station to be examined and passed by officers appointed for the purpose, the tax upon it will be lowered to one shilling; so that a man may choose for himself whether he will pay six rupees, or have his cotton examined and pay only one shilling.

In answer to a question from His Excellency the President with regard to the power of returning cotton, or the value of cotton that might have been confiscated and sold under the order of a Magistrate,

The Honourable Mr. GIBBS said :—Of course, the Government would have full and perfect power to set any order of confiscation aside; because, if cotton were confiscated, it would be confiscated to the State, and the State could always give it up. Mr. Gibbs added :—In regard to the cases which the Honourable Donald Graham has alluded to, it is a great pity that the parties inconvenienced did not complain to Government. If the facts as stated here are correct, I think Government would take very severe notice of the conduct of the officials concerned. However, it is curious that men do sometimes suffer very great inconvenience, and they will not take the ordinary means by which they may get the injury redressed.

The Honourable Mr. RAVENSCROFT :—Is there any way in which your Excellency would wish to alter Section 14. It seems to me to be a very reasonable section as introduced by Mr. Shapurji Bengali. The sole object was to render the Act more lenient, and unless there is any good cause shown, I prefer that it should stand as it is.

The Honourable the ADVOCATE GENERAL :—Of course, a certain amount of fraudulent intent must be proved, the adulteration must be such that the fraudulent intention is apparent.

His Excellency the PRESIDENT :—Of course, that is in the Magistrate's discretion.

The Honourable DONALD GRAHAM :—To say what is adulterated cotton requires an intimate knowledge of cotton itself; and I do not suppose Magistrates, generally, have that intimate knowledge.

The Honourable the ADVOCATE-GENERAL :—No; but the Magistrates would have the evidence of experts as to the state of the cotton.

The Honourable Mr. GRAHAM :—Even with an expert it would be a matter of opinion.

The Honourable Colonel ANDERSON :—In some cases an expert would not be required. Suppose sand or stones were mixed with the cotton, an expert would not be required; but in other cases it might be well to have such evidence. The Magistrate has to satisfy himself, and in most cases a very moderate amount of ordinary intelligence would enable him to satisfy himself on the point.

The Honourable Mr. ROGERS :—A cotton merchant expressed an opinion to me the other day, that if this Section 14 were carried as it stands, the whole of the Coompta cotton crop might be seized and confiscated, because there is no doubt the whole of it is deliberately adulterated.

The Honourable Mr. RAVENSBOFT :—And yet the honourable member is anxious that the Act should be placed in abeyance.

The Honourable Mr. ROGERS :—People, when they buy the cotton, look to see whether it is adulterated or not, and pay accordingly. Because cotton is adulterated it does not follow that the holder of it intends to defraud any one.

His Excellency the PRESIDENT :—Of course if a man says—"I have this cotton for sale, it is mixed as you can see," there is no fraud.

The Honourable Mr. ROGERS :—I have been trying to impress that upon the Council.

The Honourable Mr. GRAHAM :—But even then an Inspector might seize the cotton as being adulterated, and if he satisfied a Magistrate that it was adulterated, it would be confiscated. There is nothing to define to what extent cotton must be adulterated to constitute a fraud. Is it meant that it must be traced back to the original seller?

His Excellency the PRESIDENT :—The Magistrate must be satisfied that the adulteration has been fraudulently done, and if the owner says it has not, he must try to convince the Magistrate of his view. Under the Bill as it stands, nothing could be done without the Magistrate being satisfied that the adulteration is of a fraudulent nature.

The Honourable Mr. GRAHAM :—If a percentage which would constitute adulteration was defined, there would be some reason in the section.

His Excellency the PRESIDENT :—How can the honourable member define it? There is no intention to convict if the cotton is not fraudulently adulterated. The punishment will fall, at any rate, upon the buyers, who buy with their eyes open. This is very fairly illustrated in the ginning of Dharwar cotton. Government were putting great pressure on the working of the particular gins required for Dharwar cotton, in order to have them kept in proper repair. There was a letter on the table a few days ago which came from a merchant at Dharwar, giving a very honest description of the reason for the gins being in bad order. The reason was that if the gins were in good order they cleaned the cotton very well, and if they were out of order they did not clean it so well, and the cotton was heavier. The ryots, knowing the cotton was in that condition, took it into Dharwar, and tendered it to the first merchant they met—say Mr. A.—and Mr. A., knowing perfectly

well what he was buying, gave the men their price, because he knew that if he did not they would go on to Mr. B., the next merchant, would purchase the cotton. The ryots preferred to have their gins in bad order because it was to their interest, and the same principle applies to adulteration: the growers of cotton say—"I can find buyers who will not ask me any questions;" and the constant practice of adulteration is the result.

The Honourable DONALD GRAHAM:—Yes, that is the case. No doubt as long as there are persons who will buy adulterated cotton, cotton will be adulterated. There is one thing I wish to point out. It is really a farce to suppose that 30 or 40 Inspectors distributed all over the Bombay Presidency can have any appreciable effect in stopping adulteration. A Bombay merchant who buys 30 or 40,000 bales has 6 or 8 Inspectors to examine that small quantity; and to examine the million and a quarter of bales exported from Bombay every year would require not 30 or 40, but 3,000 or 4,000 Inspectors. The present staff cannot superintend a fiftieth part of the cotton which is sent to market; it would be impossible. Therefore, I say the Act will, and can have no appreciable effect one way or the other. A case of adulteration may be discovered by them here and there; but, in the long run, the good or bad condition of cotton must depend on the buyers. As long as buyers will have adulterated cotton, cotton will be adulterated. But the tendency is towards a further improvement in the staple; that has been the case for a long time; it is still growing, and as far as we can see it is likely to increase. Of course, there are and always will be frauds in cotton, as in every other trade. When a dishonest man sees he can gain by selling adulterated cotton, he will do so, as he will defraud in other matters. I think it strange that it should be considered necessary to have exceptional legislation for cotton.

His Excellency the PRESIDENT:—In deference to the opinion of those who oppose the Act, there is only a very mild and small establishment maintained; we must trust in some measure to the self-interested improvement the honourable member has spoken of amongst the buyers. Were the establishment larger, it could not be maintained by the two-anna fee decided upon the other day.

The Honourable DONALD GRAHAM:—A good deal has been said about the Manchester and Liverpool Chambers of Commerce, who were stated to have recommended the Act strongly. I have the resolutions before me, showing that the Manchester Chamber resolved that they "believe the condition of the cotton imported from Bombay is materially improved," but they also believe this may be attributed in some measure "to the natural operations of trade, &c." The resolution continues:—"The directors are not prepared to recommend the repeal of the Act, but they hope the Bombay Government will be able to modify it," &c. The Liverpool Chamber of Commerce, in a letter to the Honourable Mr. Ravenscroft, say—"While admitting that the quality and condition of the cotton exported from Bombay has greatly improved, they refrain from offering any opinion as to what steps should be taken as to the modification of the Act itself, as that is a question belonging more particularly to the local bodies to decide." I do not think there is any very strong advocacy of legislative interference in these.

The Honourable Mr. RAVENSCROFT:—They both support it, and that is what I said; but I do not think it is a matter of very great moment.

The Honourable Mr. GRAHAM:—No; but great stress was laid upon it.

The Honourable Colonel ANDERSON:—In a leading article in the *Manchester Guardian* of the 27th November 1873 it is stated—"So salutary, indeed, has been the working of the

enactment in the opinion of the Sub-Committee" (of the Manchester Chamber of Commerce), that they expressed a strong desire to see it imitated in the United States, where practices of adulteration are said to have gained ground in proportion as they have gone out of fashion in India. As for the argument about the staff of Inspectors being small when compared to the very large number of bales exported, it should be remembered, that a very small number of policemen keep a very large population in order. The deterrent effect has to be considered. Crows are very numerous and troublesome in Bombay; you do not need to shoot them all to get rid of their presence about your bungalow; only shoot one or two, and there is a very strong moral effect produced among the remainder.

His Excellency the PRESIDENT:—I think the section might be altered to a certain extent. Clause (c) says "that the weight of such cotton fraudulently increased by exposing it to dew or by any other means." That might be struck out and the words "or increased in weight" inserted in clause (a).

The Honourable the ADVOCATE-GENERAL:—Yes; we need not define the process of increasing the weight.

The Honourable Mr. GIBBS:—The words "by exposing it to dew" were put in the old Act because that was found to be one of the most common means of increasing the weight. The result of leaving out these words, which have been included in every Act up to the present time, would be, that the Native dealers would think that was no longer an offence. If it is wished to shorten the Act the provision can be included in the first clause.

Clause (c) was then struck out; and the section was amended by the words "or increased in weight" being inserted after "deteriorated" in the second line of Clause (a), and by the addition of the words "by exposing to dew, or by any other means, or" after the last line of the same clause.

A further alteration was made by the insertion of the word "cleaned" after the word "confiscated" in the 14th line of the section.

His Excellency the PRESIDENT asked why the sections referring to the licensing of presses were introduced into this Act.

The Honourable Mr. ROGERS said the Collector might refuse a license to a press where bad cotton was habitually pressed, and it would also be useful to have the presses licensed so that the Inspectors would know where to go.

The Honourable SORABJI SHAPURJI BENGALI said it was to prevent presses being surreptitiously established for the purpose of pressing bad cotton.

His Excellency the PRESIDENT said there was no direction in the Act to prevent a licensed press-owner doing anything; and it seemed to him the sections were useless.

The Honourable Mr. RAVENSCROFT:—Certainly; their utility is not so great as formerly, but there is no objection to their remaining in the Act. It may be useful to know where particular bales have been pressed. I think these sections make the Act more perfect.

The Honourable Mr. ROGERS pointed out that the great difference between the old legislation and recent legislation rested on this point. In Regulations III of 1829 and XV of 1851 there was nothing said whatever about the presses; and those regulations were found to be so inoperative that the new form of legislation, forcing people to take

out licences for their presses, was adopted. It was understood that the licensees would press only good cotton, and that if they did otherwise their presses would be stopped.

The Honourable Mr. GRAHAM did not think there was any penalty on the owner of a press for pressing bad cotton. He would naturally press either bad cotton or good if he was not stopped. The Inspectors could go to a press and if they found bad cotton there, they could prevent its being pressed; but there was no penalty on the owner of the press.

After some further conversation it was decided that the sections should remain in the Act.

The Honourable MAHOMED ALI ROGAY asked for the opinion of the Advocate-General as to whether Section 19 was necessary, or whether it had not better be left out altogether.

The Honourable the ADVOCATE-GENERAL thought it was desirable that the section should remain.

At the suggestion of the Honourable Mr. GIBBS, after the word "cotton" in the third line of Section 6, were inserted the words "wherever the same may be, which he has reason to believe is," and the words "appears to him to be" were struck out.

The consideration of the Bill in detail having been concluded—

The Honourable Mr. ROGERS said:—As the proposal for the third reading is now before the Council, I beg, in accordance with the notice I gave at the last meeting, to say I cannot agree to it as the Bill at present stands. The principles on which my opposition is based have been repeated several times. We had the orders of the Secretary of State to modify the Act where its provisions were found to be too stringent, and *vice versa*. I do not think the Council has acted up to those orders at all; we have, on the contrary, introduced an entirely new principle. According to the old Act, when fraud was detected, the individual who committed the fraud was to be punished; and cotton could only be confiscated after conviction took place. The words of the old Act IX of 1863 are perfectly plain on the point. I will read the section. It says:—"All cotton which is adulterated, or deteriorated, or fraudulently mixed, or perceptibly increased in weight, and forming the subject of such conviction, shall be confiscated." According to the present Bill I do not see that any such conviction will be at all necessary. All that will be necessary will be for an Inspector to get a Magistrate to form an opinion that certain cotton has been adulterated with the intention of defrauding somebody or other, and that cotton will be immediately confiscated, or one of the minor punishments included under the 14th Section will be inflicted. The great change of principle consists in this, that whereas under the old law an individual committing a fraud is punished and his cotton confiscated, under the new law the cotton will be confiscated or cleaned, and so on, as laid down in Section 14, and the loss will fall entirely on the person in whose possession the cotton is found. It is true that he may, according to Section 23 of the Act, have his remedy in a Civil Court against the person who may have adulterated, and from whom he may have bought the cotton; but, as I have said before, the adulteration may have taken place in the 4th, 5th, or 6th hand before the cotton came into the hand of the present possessor, and it would be simply impossible for him to recover damages. I conceive that the old scope of the present Bill differs from that of the old legislation on the subject in this,—that as

the Honourable Colonel Anderson said the other day, it declares bad cotton contraband. It is the object of this legislation to prevent bad cotton getting into the market, and I do not think that in passing the Bill now before us we are at all carrying out the instructions of the Secretary of State. Moreover, I consider this Council, in proceeding on such a principle in legislating, are going far beyond their real province; that in matters of this kind the trade should certainly take care of itself. On these grounds I oppose the third reading of the Bill.

The Honourable Mr. GIBBS :—Then the honourable member in effect says there should be no legislation, and that the old Act should be repealed.

The Honourable Mr. GRAHAM :—I did not mean to oppose the third reading ; but as the Honourable Mr. Rogers is going to vote against it, I will vote with him. I have already explained my objections to the new principle that has been introduced, and I will not add more. I agree in the main with what the Honourable Mr. Rogers has said. I think there is a good deal of difference between this and the old Act, and I prefer the old Act as compared with this. I should like to say a word or two with reference to the motives of those who have voted against cotton legislation both in this Council and out of it. It is a great mistake, as I have already pointed out, to suppose that the merchants have any particular personal interest in the matter, that is, as regards the old Act and the form of the present Bill as originally introduced. Speaking for myself, as a merchant, I may say it was a matter of perfect indifference to me whether the Bill, as introduced, passed or not ; but I came forward as on a public question not only of great importance in itself, but as involving a principle which might be applied to any article of trade ; and I came forward feeling that, by reason of practical experience and training, I was entitled to express an opinion upon it; though, personally, it was a matter of utter indifference to me whether the Bill passed or not. This new Bill, as it stands now, is different, and I think it my duty to vote against it, and to oppose it in every way I can.

The Honourable Mr. RAVENSCROFT :—I did not intend to make any observations on the Bill at this stage ; but as the third reading has been opposed by the Honourable Mr. Rogers, and as the Honourable Mr. Graham has also made some remarks with reference to the general objections that have been urged against the Bill, and the action that has been taken by myself personally, I feel bound, in fairness to myself, to make a few observations. The general objections that have been taken to the Bill by those whom Mr. Graham so worthily represents are, that it is opposed to the principles of free trade; that the present Act has been entirely useless ; and that cotton has reached Bombay in a purer state from those districts where the Act has not been in operation, than from where it has been most rigorously enforced. To those three allegations, as I have said before, I offer my entire opposition. I maintain that the Act has done good ; and though I have been called upon to prove that assertion, I say that no proof is requisite at all. It is notorious that cotton has very much improved since the introduction of the Act ; and the merchants had the same opportunities by means of the railroads and telegraph, of improving cotton before 1863 as they have had since ; and, therefore, it is sufficient for me to prove that cotton has very much improved since 1863, which I think is universally admitted. The next point which has been urged is, that cotton comes down to Bombay as pure from Berar, Bhaunagar, Kattywar States, and other places where the Act is not in operation, as it is grown in the Bombay Presidency,



where the Act is in force. Of course, if that could be proved it would be a strong argument against the necessity of maintaining the Act; but, as I have repeatedly urged, in those districts where the Act is not in force a system of supervision is maintained, which I do not hesitate to say is very much stricter, and more conducive to the production of pure cotton, than any action that can be taken under Act IX of 1863. Bhaunagar was particularly spoken of as one of the places famous for its very pure cotton, and it was urged that in other parts where the Act is not in operation, there was as good cotton as could be obtained anywhere. These statements appear to have attracted the attention of Mr. Percival, and he writes to me from Sholapur volunteering the following information:—

“With reference to Mr. Bythell’s letter in the *Bombay Gazette*, I cannot help telling you that cotton at Bhaunagar is inspected with more care and more authority than at most British ports. If you wish for particulars, they can easily be obtained by asking the Joint Administrators for a return of the fines inflicted during last year.” Then as regards Wadhwan, I have been informed by those who have had knowledge of the supervision of cotton, that much the same sort of system exists there. That does away with what would, at first sight, appear to be a very strong argument of the opponents of the Bill. My friend, Colonel Anderson, at the last meeting of the Council, very properly quoted a letter from the Bombay Chamber of Commerce written in the year 1873, from which it appears that, through the Resident at Hyderabad, a system was introduced into Berar for the improvement of cotton and the prevention of adulteration, compared to which any steps that have been taken in this Presidency are a mere flea-bite. Perhaps my honourable friend Mr. Graham will explain—as he represents the Chamber of Commerce—how what is fair for one district is not fair for another, and how what is sauce for the Berar goose is not sauce for the Bombay gander. They do all they can to interfere with the liberty of the subject in the Berars which they know could not obtain in the Bombay Presidency; and then they are sufficiently inconsistent to come before this Council and urge that what we purpose to do is contrary to free trade. Perhaps if my friend Mr. Graham will explain under what circumstances that letter was written, he will confer a benefit on the members of the Council. My friend Mr. Becherdas Ambaidas has taken a very prominent part in urging the impropriety of the Cotton Frauds Act; and the translation of a paper dated April 1874 has been put into my hands, from which it appears that his *Munim*, who, I understand from him, is still in his service, headed a committee in Wadhwan in urging the Kárbhári of the Native Chief there to put in force a system of supervision compared to which the system of supervision in the Bombay Presidency is very lax. I am glad, at all events, that his conversion to his present views does not date very far back; perhaps he will be good enough to explain why, what is fair in Kattywar is unfair in other parts of British India. I do not know that there are any other points which require particular notice, or whether it is worth while my making any comment on a statement which I saw this morning in a leading article of one of the local journals, in which it was asserted that at the close of 1874, when I took short leave to England, I availed myself of the opportunity to agitate in favour of the maintenance of the Cotton Frauds Act, and eventually was sufficiently fortunate to induce Her Majesty’s Principal Secretary of State to overrule the opposition of the Commission which sat in 1874, and also the opposition of the Bombay Government. It is sufficient for me to say with regard to this, that at that time the Report of the Commission was not issued, neither was the decision of the Government of Bombay passed; so, of course, that disposes of the whole matter. It is not worth while my taking any further notice of the matter; but it is a subject of regret that a journal of repute, which is generally

conducted with great ability, should impair its usefulness and lower its character by the publication of such unfounded statements. With these remarks I beg to move that the Bill be read a third time.

The Honourable BECHERDAS AMBAIDAS :—The principle of this Bill is objectionable, as it prejudicially affects trade. Although the subject of improvement on an important staple was twice widely discussed at previous meetings, I hardly think that volumes of Acts, European Agency in the districts, and the action of the Joint Administration at Bhaunagar would be of very material advantage. I have already said, and now repeat, that it is simply a question between buyers and sellers, whose self-interest may be relied upon; and I beg to maintain this my opinion, and to give my reasons. Had the Cotton Frauds Department been effective, there would not have been the case of the ship *Aurora*, besides many cases of shipments of cotton bale-marked new, good Dhollera, &c., which turned out in Liverpool to be nothing but rubbish, only realizing 2*d.* per lb., while fair cotton was selling at 5*d.* per lb. I further say that *Laria* cotton—the growth of the Ahmedabad neighbourhood,—which is of the finest description, a strong and long staple, and very much liked in the home market, had for some time commanded a better price than Broach, and nearly as much as American, had it been respectable and not admixed with low cotton. Why should Ahmedabad mills buy Jambusar in Broach districts, and pay higher prices, in addition to commission charges and railway carriage, in preference to buying at the door where grown? I now point out that had the European Agency been the cause of improvement, why did the cotton sent by the agents from the respective districts turn out of different qualities and have to be thrown out of bargain by the arbitrators here? And why was the penalty inflicted upon the shipments of cotton which turned out different in class and character on arrival in Liverpool market? The Agency may by some be considered beneficial, but, in my idea, it is doing no material good even to the agents, since they have to pay higher prices than if cotton was allowed to come into Bombay market. This is indicated by the price quoted in the public journals, rates up country being against those here, which are again ruling above the level of the Liverpool markets. The question may be asked, why is this so? It is because contracts are entered into at home long before the seed is sown, say for January, February, March, &c., delivery. It is alleged that Bhaunagar cotton has been improved by the action of the Joint Administration. This I do not deny; but, at the same time, no less credit is due to Pálitána, where a superior quality of cotton is grown which sells at far better prices than Bhaunagar and close to that of Broach. Pálitána is an independent place, where there is no special supervision. In 1872 there was only a little difference—say Rs. 2 per candy—which offered no inducement for improvements; but now, when the difference is Rs. 1*5* and upwards per candy, a much better quality is brought to market. It is, therefore, evident that the price has much to do with improvements in the cultivation, excepting at extraordinary times. It especially depends upon the purchasers to insist upon and stick to receiving nothing but the respectable quality which they require, as they are the best judges of their own wants. Section 6, giving despotic power to the Inspector, is very vague; and if allowed to be passed in its present form it will leave to the mercy of an individual, the innocent buyers, whom he can seriously injure and annoy. Therefore, a check should be placed upon him similar to that in the last Salt Act. As to the opinion of my manager at Wadhwan, I did not know of it till I heard it at the last meeting. I cannot tell what was his reason. It might, perhaps, be through some one interested, as the Commission was sitting before that time. In making these observations I wish to say

that I have no feeling or prejudice in the matter, but merely mention my views for the consideration of the Council.

The Honourable DONALD GRAHAM :—The Honourable Mr. Ravenscroft has asked me if I can explain the reason why the letter of the Chamber of Commerce about the Berar cotton was written. I am not acquainted with the circumstances beyond the explanation of them to be found here ; but the letter seems to me perfectly reasonable. The Resident of Hyderabad seems to have shown that he had power to prevent the extension of the cultivation of Khandesh cotton in Berar, and he asked the opinion of the Chamber of Commerce about it, when the very natural reply was that, the Berar cotton was better as it was, and that the introduction of Khandesh cotton would be a great evil. The question of this Bill seems to me to be quite a different matter in principle. Perhaps, in respect of interference there may be something in common ; but it seems to me to be quite a different thing approving of the action of an able and responsible officer as this gentleman seems to have been, to establishing and supporting a department in which there is less responsibility, and the members of which are certainly men of less experience, and not of the same standing or responsible position. Some people say it was a kind of *coup d'etat* which was effected by Mr. Ashburner when Collector of Khandesh, and the Chamber of Commerce approved of the result of what he did. I do not know how he did it, but by exercising his authority, and he suddenly took away all the seed of Khandesh cotton and introduced Berar seed, which had a very good effect. As the result turned out, of course he deserved credit ; but he took the responsibility upon himself, and had it turned out otherwise he would have been held responsible. I think their former action is quite consistent with the position the Chamber of Commerce has now taken up.

The Honourable SOBABJI SHAPURJI BENGALI :—Before these discussions on the Act for the prevention of cotton frauds are concluded, I beg your Excellency's permission to say a word about what has been stated by those who oppose the passing of the Bill, that in framing this law we are acting against the principles of free trade. Being myself an advocate of free trade I feel rather hurt when told that I am acting against my principles ; but I do not think that in passing this Cotton Frauds Act we lay ourselves open to such a charge. Lord Salisbury, in one of his speeches at Manchester, laughed at the idea that our cotton legislation is against the principles of free trade ; and I think we might almost treat our opponents in the same way. For my own part, I believe that if all the circumstances of our cotton trade were placed before the best political economists in England, they would approve of all that we have been doing by way of legislation during the last three weeks. One of the best writers on political economy—John Stuart Mill—writing on another subject, says, that if a commodity be one “in the quality of which society has much at stake, the balance of advantages may be in favour of some mode and degree of intervention by the authorized representatives of the collected interests of the State.” I would place our cotton legislation in the same category as the Factory Act, or the Coal Miners' Act in England. In both cases free trade has been interfered with, strictly speaking, and the legislation has been pronounced justifiable ; and this is in England, where free trade is better understood than in any other part of the world. The Miners' Act, by limiting the days and hours of labour, I believe, reduced the producing capacity of every coal mine in the United Kingdom by about 10 per cent ; and that was an interference with free trade ; but it has been allowed and advocated by the greatest advocates of free trade policy. We levy an impost on cotton of 2 annas per bale to pay the expenses of

our cotton establishment, and I should be very glad, indeed, if even that little money would come from the Imperial Treasury; because, I am of opinion, that our export trade should be in every possible way free from imposts altogether. But when the answer is that the Imperial Exchequer will not provide the funds, I would rather have this small impost than have no legislation and no establishment; and, consequently, no safe-guard against the injurious consequences to the country occasioned by the actions of unscrupulous dealers.

The Honourable the ADVOCATE-GENERAL said there seemed to be some misapprehension with regard to the rights of an innocent purchaser and holder of adulterated cotton under the Bill. It seemed to be considered that he would have to go back to the primary adulterator of the cotton, but it would really be a case of vendee and vendor.

The Honourable Mr. ROGERS:—Then the immediate vendor might be a second innocent person, and he would have to go back to a third, and so on. I have a personal explanation to make in regard to my own connection with this business. It was remarked just now that I was in favour of having no legislation at all; that I thought the trade might take care of itself. I certainly am of that opinion; and in regard to the Bill now before us, my principle is, that I have no objection to legislation which punishes an individual who commits a fraud; but I do object to legislation in any shape which causes punishment in any form whatever to fall upon innocent persons.

The Honourable Colonel ANDERSON:—During the discussions upon this Bill the words “Protection” and “Free Trade,” in opposition to one another, have been made a kind of bugbear. The question is—What is Protection? I think it may be defined as protecting a trade in some article by placing obstacles in the way of competition in similar articles brought from a foreign country. Can this measure be described as one of that description? Cotton is one of the most valuable exports from Western India, and its value is settled by the price of American cotton, which is superior in its natural state, and is brought into condition for market by skilled labour and intelligence superior to what can be applied in a general way in this country; and, moreover, the Government of that country, it appears, does not refrain from making use of protective Acts against adulteration. The cotton of India is very heavily weighted in the face of such a competition; and if, by the ignorance or short-sightedness of the people, it becomes deteriorated in value, it will eventually lose the market and occasion a very heavy national loss. It is true the position of the exporting merchants is not so much affected by fluctuations in the price. Any increase in value will go almost entirely to the first producer; the merchant takes much the same profit whether the cotton is worth little or much, competition will drive profits as low as possible, and it does not really much matter to him whether he exports bad cotton or good; but it is matter which most materially affects the country, and any measure which will tend to increase the value of the exports from this country must be a legitimate subject for the consideration of Government. The legislation hitherto has been to a great extent ineffective from the extreme difficulty of proving fraudulent intention, and under the new form of this Bill, by the amendment introduced by the Honourable S. S. Bengali, this blot is removed.

His Excellency the PRESIDENT remarked that the necessity for proof of fraudulent intention was not removed.

The Honourable Colonel ANDERSON:—I should rather say the requirements of proof of fraudulent intention against any particular person is removed. The character of the Act

is changed, and the cotton—as I said a few days ago—becomes the culprit, and through the cotton the person by whom it is brought to its adulterated condition. The great blot of imprisonment in the old Act is removed, by which a respectable Native merchant might find himself wrongly imprisoned, and would have to suffer a loss of reputation, which would be a very serious thing. I do not say cases of false imprisonment would be likely, but still they might occur, and the chance is removed by this Bill. In that respect I believe the Act has been made less stringent; and in the making the cotton the culprit, and through that means indirectly reaching the person who adulterated it, I believe it has become more efficient. No doubt, at first, some buyers may be careless; they will not know exactly how the Act works; but gradually it will be found they will become more and more careful, and each successive buyer will probably take some kind of guarantee or indemnification from the person who sold it. No doubt, great differences of opinion exist as to the necessity for cotton legislation or not. In Bombay, I believe, the preponderance of opinion is against legislation in any form; but the same opinion does not exist entirely, I believe, in the cases of the heads of firms at home. In fact, I know in one case the head of the firm at home holds a very strong opinion about it. Up-country here, we find merchant after merchant giving opinions in favour of the Act. Mr. Cotton, of the firm of Messrs. Greaves, Cotton and Co., gives a strong opinion in its favour, which is quoted in the Report of 1872-73. Mr. Harrison, agent of Messrs. Greaves, Cotton and Company in Dhollera; Mr. Rob, agent of the Mofussil Company; seven Native owners of presses in Guzerat give similar opinions in detail: and from the Southern Maratha Country the only three European merchants in the district, Messrs. Robertson, Crystal and Noonan, all give strong opinions in favour of the Act. They may be wrong, and the other side may be wrong. At any rate it is a matter of opinion; and where such very great interests are concerned, it is a fair matter for Government to exercise their powers, hear the opinions of both sides, and judge between them.

The Council then divided on the motion that the Bill be read a third time, which was carried by 6 to 4, the division being;—

*Ayes.*

The Honourable J. GIBBS.  
 The Honourable the ADVOCATE-GENERAL.  
 The Honourable Major-General M. K. KENNEDY.  
 The Honourable E. W. RAVENSCHROFT.  
 The Honourable SOBARJI SHAPURJI BENGALL.  
 The Honourable Colonel W. C. ANDERSON.

*Noes.*

The Honourable A. ROGERS.  
 The Honourable MAHOMED ALI ROGAY.  
 The Honourable DONALD GRAHAM.  
 The Honourable BECHERDAS AMBAIDAS.

The Bill read a third time and passed.

The Bill was accordingly read a third time and passed.

The Council then adjourned.

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

G. C. WHITWORTH,

Acting Under Secretary to Government.

*Bombay, 3rd March 1877.*

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

The Council met at Poona on Monday the 11th June 1877, at noon.

*P R E S E N T :*

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

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE GENERAL.

The Honourable Major-General M. K. KENNEDY.

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

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

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable Rao Bahadur BECHERDAS AMBAIDAS, C.S.I.

The Honourable SOBABJEE SHAPURJI BENGALI.

The following papers were presented to the Council :—

- Papers presented to the Council.
1. Report of the Select Committee on the Bombay Land Revenue Code Bill.
  2. Report of the Select Committee on the Bill to amend Bombay Act IV. of 1868.
  3. Letter from the Collector of Ahmedabad, No. 476, dated 16th March 1877, stating that no amount is outstanding of fees for sanads issued, but that owners have declined to pay the sanad fees for 859 numbers; consequently the sanads have not been issued.
  4. Letter from the Secretary to the Government of India, Legislative Department, No. 582, dated 9th May 1877, returning, with the assent of His Excellency the Viceroy and Governor-General signified thereon, the authentic copy of the Bill to prohibit the practice of inoculation, and to make the vaccination of children in the City of Bombay compulsory.

His Excellency the PRESIDENT, on taking his seat, said :—As this is the first meeting of the Council under my own Presidency, I desire to offer a few very brief remarks upon the state of legislative business, and on the nature of the measures which it will be the duty of the Executive Government to submit for the consideration of the Council. In the first place, you must all regret that our honourable colleague, Mr. Graham, has been obliged by the press of business to tender his resignation, because he was eminently qualified to represent the European mercantile community of Bombay. We are endeavouring to find a worthy successor, and I hope within a very short time to find such a successor.

My remarks will divide themselves into three heads :—First, the Bills before the Council; secondly, the Bills prepared and awaiting the sanction of the Secretary of

State or of the Governor-General before introduction into the Council; and, thirdly, what may be called inchoate measures, or projects of law. The Bill immediately before the Council is, as honourable members will perceive from the notice paper, the Land Revenue Code Bill, in which is included the Bill to amend the City Survey Act of 1868. Now, this Land Revenue Code Bill, as honourable members will observe, contains upwards of 300 sections, and, I believe, incorporates the substance of no less than 21 former Acts of the Legislature; so it will be readily perceived to be an important and comprehensive measure. I believe its origination was due—and creditably due—to our absent friend, Mr. F. Chapman. During the preparation of the measure we have received much valuable advice from the Honourable the Chief Justice, and from the learned Judges of the High Court. It is to be regretted that one of our honourable colleagues who would be peculiarly qualified to give us advice during the passing of this Bill, if it is passed, viz., Colonel Anderson, is absent to-day: but I hope that, before the Bill advances much further, he will have returned from the important duties in which he is engaged in the interior. Now, this Bill has been referred, as honourable members will recollect, to a Select Committee consisting of those members of the Council who are peculiarly conversant with these affairs. It has been before the Committee for many, many months, and an elaborate report containing 80 paragraphs has been published. There is one paragraph, viz., the final one, on which I would desire to offer a brief remark; and before doing so, I will read the paragraph to the Council by way of recalling it to their recollection. The paragraph runs thus:—

“Two members of the Select Committee, the Honourable Rao Saheb Vishvanath Narayan Mandlik, and the Honourable Mahomed Ali Rogay, have not signed this report. The absence of their signatures does not denote any general dissent on their part from the various amendments which the Committee—for the most part with their concurrence—have made in the Bill; but these members have desired further time for consideration, after they have had an opportunity of seeing the whole Bill as amended reprinted; while the majority of the Committee are of opinion that the various points at issue have been so completely discussed in the numerous meetings of the Committee, that any further united deliberation will be useless; and that as the individual views of particular members on special points of difficulty can be best represented in separate minutes, which will lose none of their force by being published a little later than the general report, there is no good reason for delaying the publication of the Bill and the Committee's explanatory report any longer.”

Notwithstanding what is said in this paragraph which I have just read, I would venture to state to the Council that the Honourable Mover of the Bill, Mr. Rogers, is extremely anxious that it should be proceeded with. Mr. Rogers, as the Council are aware, is peculiarly cognisant of all Land Revenue matters. He has taken the greatest trouble in the preparation of this measure, and it is very important, from a public point of view, that, while he is still with us, we should avail ourselves as much as possible of his very competent and valuable assistance. I do not know exactly whether the Honourable Mr. Mandlik and the Honourable Mr. Rogay have any particular objections to any part of the measure; but if they have, I would venture to suggest to them that they should favour the Council now assembled, in full session, with an explicit statement of those objections. I can assure them that any objections they may put forward will receive our most attentive consideration. I cannot, of course, guarantee that the Council

will accept their suggestions; their suggestions may either be accepted, or modified, or rejected; but, at all events, by being placed before the Council once for all, a definite decision will be arrived at, which will, I trust, be accepted by the Government and by the dissenting members. A particular objection has been mentioned to me since I entered the Council room, which related to the fact that the report of the Special Committee and the Bill as finally settled by that Committee have not yet been translated. This translation is in progress, and will doubtless very soon appear. If the Honourable Mover, notwithstanding that, should be still of opinion that the Bill should be proceeded with in full committee of the Council, I would venture to express a hope that the honourable members will be pleased to accede to his wishes, because the Bill is a very long one, and one which cannot possibly be passed through a full committee of the Council without a certain amount of delay,—possibly a delay of some weeks or some months—during which time the translation will be duly made and published for the information of all native gentlemen who may be pleased to read it, though the progress of English education is so great in this Presidency that I apprehend most of the leading natives in all parts of it can read English just as well as any other language. However, if there is any technical difficulty in the matter, I would point out that that may be amply remedied during the course of the discussions which must necessarily take place in passing the Bill. Having regard to the extreme importance of the measure, I hope that no technical difficulty may be allowed to delay its being passed through the Council. If it shall please the Council to take up the Bill section by section now, and provisionally pass each section as it is approved, such provisional passing will not necessarily prevent or preclude the consideration of any objections that may be afterwards urged. Considerable experience in local legislation on the other side of India has convinced me that that is an excellent mode of expediting complicated business through a Council composed, as this Council is. It is found very convenient for local Councils to go through measures section by section, and to sanction them provisionally. A Bill so sanctioned provisionally is again published for general information, and if any valid objections should be urged, the fact of the Bill having been provisionally sanctioned is no bar to such objections being considered. Should these views which I have explained, and which, I believe, are the views of the Honourable Mover of the Bill, find favour with the Council, I hope the Honourable Mr. Mandlik and the Honourable Mr. Rogay will not object to taking the Bill into consideration, on the full understanding that any objections which they may be pleased to make shall be most fully considered. I will only repeat the expression of my hope that, whatever objections they may have, they will be pleased to set them explicitly, once for all, before the Council, so that the Council may definitely consider them.

Well, now, the second point in my programme relates to the Bills which have been prepared, and which are awaiting the sanction of the Secretary of State or the Governor-General before their introduction into this Council. There are two Bills for the better management of the *Abkari*, or excise revenue, in this Presidency; one relates to the Bombay City, and the other to the Bombay Presidency in general. As regards the Bombay City Bill, it will be in the recollection of the Council that at present we are collecting our excise revenue by means of a tax levied on the toddy trees, and that a number of private stills are scattered over the island. For this system it is proposed to substitute a *suddur* distillery with a still-head duty. That will have the advantage of enforcing a stricter system,—a system more profitable to the State, and perhaps fairer to those who are taxed. It will also enable the authorities to establish a uniformity between the City of Bombay and the sur-



rounding districts. I dare say the Council recollect the little town of Oorun, on the sea side, at the north part of the lesser Karinja Island, and the difficulties that have arisen on account of the difference of system of the *suddur* distillery at Oorun and the private stills and the toddy trees system in the City of Bombay. These difficulties are so well known to many members of the Council that I will not describe them. Besides the Bill for the city there is another Bill relating to the Presidency in general. I think it will be universally admitted that in these days of financial difficulties the best course we can adopt is to make the most of the old existing taxes of the country, amongst the oldest of which is, of course, the excise. We are advised that differences of system exist to-day, not only in every district in the Presidency, but it may be almost said in every town; and these differences of system lead to numerous complications, and, doubtless, also, amongst other things, to loss of revenue. It is hoped that by passing one good comprehensive measure into law we may be able to remove all these differences of system. Perhaps I ought to mention, for the satisfaction of any honourable member who may be interested in the Municipal affairs of Bombay, that in proposing these measures we duly bear in mind the considerable Municipal revenue which is derived by the Municipality from the excise duty in the city. The other measure which has been prepared and is about to be submitted to the Government of India, and for which we shall have to obtain the sanction of the Secretary of State before its introduction to the Council, relates to what are well known as the *Khotes* of the Ratnágiri district. The introduction of the Bombay survey system by the authority of Bombay Act I. of 1865, in the Ratnágiri district, led to a variety of disputes, some of which have been carried for settlement into courts of law. These difficulties caused a good deal of disturbance amongst the agricultural population of this great and flourishing district. We are endeavouring to bring some of these disputes to an amicable settlement; but we all know that the best way of giving a permanent and an enduring character to matters of this description, is to embody their results in a legislative enactment; and, therefore, though we hope to settle these disputes by an executive arrangement, still it is thought desirable that ultimate and final effect should be given by passing a law through this Council for that purpose. With the assistance of the very experienced Collector of the district, Mr. Arthur Crawford, a Bill has been prepared, and we hope, if the Secretary of State shall approve, before long to introduce that Bill into this Council.

The last heading to which I have to allude, No. 3 in my programme, relates to projects of law. Amongst these projects the first is the passing of a new Act for the Municipality of Bombay.

The Honourable Mr. GIBBS :—An Act to amend the present Act only.

His Excellency the President :—Very well, if you like to put it so; but I understand the case is this :—That at the present time the existing Bombay Municipal Act has expired, and the Municipality of Bombay would be going on without an Act were it not that the existing Act—the expired Act rather—has been extended for six months by notification. The first extension carried on the Act from the first of January to the middle of the year; and my predecessor, just before he left Bombay, issued a notification extending the operation of the Act for another six months; so that now the Municipality has, at all events, an Act to go upon until the 31st of December next. It seems to pertain to us, between the present time and the end of the year, to pass a new Act. My honourable colleague calls it an amending Act; let it be so designated.

The Honourable Mr. GIBBS:—I only called attention to that, Sir, because your predecessor was most careful to use that term, and objected to its being called a new Act.

His Excellency the PRESIDENT:—I shall be happy, then, to call it an amending Act; but I think my learned colleague on my right (the Advocate General) would say we were passing a new Act. The old Act has expired, though it has been extended at present by executive action. I presume there must be a section in the Act which authorizes the local Council to extend the time of its operation. We shall have to pass virtually a new Act, because, as I understand, there are many practical people connected with the Municipality who have a variety of reforms to propose: they call them reforms, and they, at all events, make suggestions, which suggestions we shall have to consider. This Bill is in the hands, partly of our excellent Secretary, partly also of the legal member of Council, Mr. Marriott, and subject to the general correction of our colleague, the Honourable Mr. Gibbs. I hope that they will be able before long to prepare a Draft Bill which, at an early meeting of this Council, may be brought into consideration. Well, then, it is generally known that the inspection of boilers and prime movers in Bombay, where manufactories are growing so fast, is causing a certain amount of friction and discontent. I do not undertake to say whether the complaints are well-founded or not; but it seems to be generally thought that a certain section of the existing Act should be repealed: either that, or that certain other sections should be added. I should not be surprised if it was the case, because precisely the same thing happened in Calcutta two years ago; and it seems natural to suppose that the same sort of practical difficulties that were felt there would sooner or later be experienced on this side. My next point is this:—It was pressed on my notice, when I visited Sind the other day, that some of the leases which have been granted for ten years to many of the landowners of that province are not such as fall within the sanction or authority of the Bombay Surveys Act of 1865; and inasmuch as other leaseholders are bound strictly under some section or other of that Act, that therefore it will be advisable to introduce a Bill for giving legal sanction to these leases. It will be said, on the other hand, that inasmuch as these leases are highly popular with all those who are concerned, there will be no difficulty or objection; that if there were objectors, a law would have to be made; but as there are no objectors it will not be necessary. I am not sure whether my honourable colleague on my right (the Advocate-General) will think that a very judicious course for an executive Government to take. There need be no difficulty in introducing a Bill to give lawful sanction to these leases. Though there may be no objectors at present, hereafter some objectors may spring up, and it may be as well to fortify ourselves by legal sanction now. Then I am advised by many counsellors that, before long, the various Hindu communities, who are concerned in the religious endowments in this part of India, will be asking for authority to appoint committees of management, partly with a view to giving such committees a formal status, and partly with a view to enforcing a responsibility for the good management of the trusts or religious endowments. This is a matter—as my honourable native colleagues know—with which the Government have absolutely no concern; it is entirely a question whether the religious communities concerned require measures of such a nature or not. I do not say that if they do ask for such a measure their request cannot be complied with; but, manifestly, the matter is such that if they do ask for any such arrangement to be made in a legislative enactment, it will be our duty to consider whether it will be admissible. The last topic I have to mention is one of finance. The Council are aware that we are now, in the course of our duties in connection with the famine, undertaking many useful works for the pre-

vention of future famines by means of artificial irrigation. These works are making most satisfactory progress under my honourable colleague opposite (Major-General Kennedy), and I hope they will continue to make such progress that we shall before long have extensive irrigation in the Deccan. If we do have such irrigation it will probably be necessary that we should have, for this Presidency, Canal Acts similar to those which have proved so useful to the northern and southern parts of India.

I need not trouble the Council further with any observations of a preliminary or prefatory character, beyond thanking the Council for the patience with which they have been good enough to listen to my brief exposition. I will now call upon the Honourable Mr. Rogers to speak to the motion before the Council.

The Honourable Mr. ROGERS:—With your Excellency's permission, I will ask the Council to allow me to invert the orders on the list, and to take the second of the two orders first. I propose that Bill No. 4 of 1876—a Bill to amend Act IV. of 1868—be withdrawn. The reason for bringing this Bill forward some time ago was, that there was then no prospect of carrying to a conclusion the Revenue Code Bill. Now that the latter Bill has progressed so far there will be no necessity for carrying through this small Bill, as its provisions will be included in the Code itself. Therefore, I beg to move that this Bill be withdrawn.

Bill withdrawn.

The Bill was accordingly withdrawn.

The Honourable Mr. ROGERS moved the second reading of Bill No. L of 1875—A Bill to consolidate and amend the law relating to Revenue Officers and the Land Revenue in the Presidency of Bombay. Mr. ROGERS said:—In your opening address Your Excellency has given a kind of history of this Bill; but I wish to say a few words more about it in order to show the Council and the public what has taken place. The Bill was first of all introduced by the Honourable Mr. Chapman on the 28th of January 1875. Simultaneously with this—or I am not sure that it may not have been before—the Bill as it was then framed was circulated throughout the Presidency to all the Revenue and Judicial Officers, and opinions were invited from them and others who were cognizant of the subjects that were included in the Bill. A vast quantity of opinions was collected, and those opinions have all been printed and have been placed before the Council in the interleaved copy of the Bill as it was first presented to the Council. When the Bill had been read a first time it was referred to a Select Committee. The Select Committee, after various consultations and sittings, in the first instance published a report on the first five chapters of the Code. That report was published I think in March 1876, together with the first five chapters to which it referred. Since then the Select Committee have been employed revising the remainder of the Bill, and their final report upon the subject has now been laid before the Council and read by the Secretary. His Excellency the President has expressed a hope that under all the circumstances of the case the preliminary objection that might be raised to the second reading of the Bill at present—that it has not been translated—may be waived, on the consideration that if the Council in full Committee go into it now in detail, before the Bill is finally passed, the country and the members of Council shall have the fullest opportunity for considering its provisions. I will now proceed to give a kind of abstract of what is meant to be enacted in this Code. The regulations it is proposed to repeal will be found in one of the schedules at the end of the present published report. Some few alter-

Mr. Rogers moves the withdrawal of Bill No. 4 of 1876; a Bill to amend Act IV. of 1868.

Mr. Rogers moves the second reading of the Revenue Code Bill.

ations will have to be made in this, which I will take occasion to refer to when we go into the matter in detail. The Acts which will have to be repealed are the whole of those containing the law now relating to the land-revenue in this Presidency. The Council are aware that the general system of land-revenue administration in this Presidency is what is called the *Ryotwari*; that is to say, the Government deal with individual cultivators of the soil and let out their lands to them directly. That has been the custom for many years; but since the old regulations bearing on this subject were passed, especially regulation No. 17 of 1827, a great many changes have taken place by the introduction of the revenue survey which was legalized by Act I. of 1865, the status of the ryot has been very considerably improved. Whereas formerly no ryot could say what his exact relations to the State was, Act I. of 1865 has conferred upon him what may be called a full proprietary title, that is to say, as long as he makes the required payment to the State, he may be considered the full proprietor of his land. He is able to mortgage or to sell it; and the benefits of any improvements that he makes in the land by means of his own capital and labour are fully secured to him. Government retain to themselves the right, at the end of certain guaranteed periods, to revise the rents that have been placed on the land; but they guarantee that, at the end of the period, any increased assessment that may be imposed shall be calculated, not on the value of improvements made by the capital of the tenants themselves, but on general consideration of improved communications, rise in the value of agricultural produce, and so on. When we have to deal with a vast mass of people all over the country it may be readily understood that great details are necessary in the laws which regulate the management of the land-revenue; and the Bill which is now before the Council is an attempt to codify the whole of the laws now existing and to bring them under one head. If the Council will refer to the Bill they will see that it is arranged in the following manner. First of all there is the preliminary chapter, which contains generally the definitions, and refers to Acts to be repealed, and matters of that kind. The second chapter refers to the constitutions and powers of stipendiary Revenue Officers by whom the detailed revenue management is carried out; and the third chapter refers to the hereditary officers. I may mention here that in some districts the revenue management is partly carried on by hereditary officers and partly by stipendiary. Throughout the Presidency, the management of the revenue, generally, is under the headman, or *patel* of the village; that is to say, though he has nothing to do with the settlement of the revenue, he is supposed to be the hereditary officer who assists the stipendiary officers in collecting the Government dues. Joined with him in some parts of the country there are also hereditary village accountants, who, conjointly with the *patel*, collect the land revenues and make up the final account. In other parts of the country this is managed by stipendiaries. The great distinction is that in the province of Guzerat the accountants are stipendiary, and in the Deccan and Khandesh they are hereditary. Some time ago, in 1874, this Council passed, after infinite trouble, a law to regulate the rights of service and succession of these hereditary officers. That Act has been embodied in the present Code almost word for word, and I presume that, with very slight exceptions, the Council will not be inclined to re-open anything that was done then. The next chapter of the Bill refers to the security to be furnished by Revenue Officers, and the liability of principal and surety. The next chapter refers to acts prohibited to Revenue Officers, and their punishment. Then we come to one of the most important subjects, in chapter 6, which relates to land and the liabilities of an estate and the holder in respect thereof. This has been sub-divided in the new draft prepared by the Select Committee under three different

heads ; chapter 6 refers to land, and land-revenue ; chapter 6a refers to the occupation of unalienated land and the rights of occupants ; and chapter 6b refers to superior and inferior holders. All these will require very careful consideration on the part of the Council when we go into them section by section, and I need do no more at present than allude to them. Chapter 8 refers to revenue surveys for the assessment of land and the partition of estates. This chapter embodies all the provisions of the present Act No. I. of 1865 under which the revenue survey settlements are administered. Very few alterations have been made, and what has been done has been done with the full sanction and approval of Colonel Anderson, than whom no better authority on the subject of survey settlements and their administration can be found in this Presidency. Chapter 9 is really almost a part of the same subject, referring to the settlement of boundaries and the construction and maintenance of boundary lines. Chapter 10 refers to the survey and assessment of lands within the sites of villages. This is the part of the Bill which has been substituted for the present Act IV. of 1863, which refers to the measurement of towns, what are called city surveys generally. I omitted to mention just now that since the Bill was first brought before the Council, chapter 7, which related to titles to exemption from the payment of land-revenue, that is to say, alienated land, has been omitted ; the reason for this being that the summary settlement, as it is called, of alienated lands throughout the Presidency, which was carried out under Acts XI. of 1852, II. of 1863, and VII. of 1863, has been completed. There may be a few remaining cases scattered over different collectorates and in the Panch Máhals, but with these few exceptions the settlement has been completed, and the lands are held on a perfect—it cannot be called Parliamentary—but Government title. Title deeds have been issued to the holders, and, therefore, there is no occasion for further legislation on the subject ; and on that account it was not considered necessary to re-introduce the whole of the provisions of these Acts into this Code, but merely to leave them standing as they are for the present, and when the necessity for them shall have passed away, which we hope will be in a very short time, an Act may be passed to repeal them altogether, as they will be no longer necessary to be retained on the Statute Book. The 11th chapter of the Bill referred to Local Funds. The Council are aware that what are called Local Funds consist of a certain percentage levied over and above the land-revenues, one anna in the rupee being levied under an Act of the Local Government. The Select Committee considered that this had really nothing to do with the general revenue administration of the country ; all the connection it has with it is simply that for every rupee of the land-revenue one anna more is collected for the purpose of Local Funds and local expenditure. On this account, that chapter was omitted. Chapter 12 is a most important chapter. Owing to the lapse of time a great many of the provisions of the old law under which the land-revenue and other revenue payments were realized have become obsolete, and not only this, but in consequence of the system adopted by Government to let the collection of land-revenue fall as lightly as possible on the ryots, advantage has been taken of it in such a way as really to interfere with the realization of the Government dues themselves. The Council are probably aware that in order to allow the ryots to have time to sell their agricultural produce in the open market, and the opportunity to get the best prices they can for their produce, and then subsequently pay the Government dues, instalments are fixed according to which the revenues are to be paid. It has been decided in a suit brought, I think, in the court of Surat, that land-revenue cannot be said to be due until the date of the first instalment fixed for payment, and the result has been in some cases most mischievous to the realization of Government dues. Before the date of the first

instalment, creditors of the ryots have come down upon their crops and have carried the produce away, the result being that when Government came to collect their dues they have found nothing from which to collect them. That is one great point, with regard to which we have found it absolutely necessary for the protection of the Government revenue to amend matters by this Bill. There are other minor provisions which will be noticed in due course when the chapter is before the Council. The remaining three chapters do not require any detailed notice. They refer to the procedure of Revenue Officers, appeals and revision, and miscellaneous matters. When these chapters are before the Council in detail it will be explained to them that cases that come before the Revenue Officers for decision have been divided into three different categories, in some of which the Revenue Officers will be required to make summary inquiries, while in others a more detailed form of inquiry will be necessary. Up to the present time the method of appealing from one revenue authority to another has not been settled. We propose in this Code to settle that also, so that everybody may know where and to whom he can carry an appeal. At this stage of the proceedings I do not propose to make any further observations, and will now conclude by moving the second reading of the Bill.

His Excellency the PRESIDENT :—Will any honourable member address the Council ?

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK :—I wish to make a few remarks. First I desire to thank your Excellency for the observations you have addressed to me and to my honourable colleague, Mr. Rogay, and for the assurance that in the matter which is directly before the Council to-day our views will receive the very best consideration ; but I think an explanation is due from me—I am speaking for myself—as to the reason why my minute of dissent from, or my adherence to, the final report of the majority of the Select Committee as it is published does not appear with the report itself. This report was prepared and sent to me about the 25th or 26th of April, and the Court Session being about to be closed, and as I had charge of very heavy Government work as acting Government pleader at that time in addition to my other duties and professional calls, and being also in a very bad state of health, I wrote to the Under-Secretary to say that it would be desirable, the Bill having been before us for a very long time and having been changed many times during its progress through the Select Committee, that I should have the whole revised Bill before me to consider it and to make up my mind either to agree to the Bill and the report of the Committee as a whole, or to signify my dissent from those portions of the Bill with which I disagreed. The Court having closed, I left at once on sick leave for Mahableshwar, so that really and truly the only time I may say that the Bill has been before me, in its complete form, and as finally re-arranged, is since my return to this place on the 4th of June. I may say for myself that although this Bill has been before us for the last two years, I have paid, within that seemingly long time, as much close and undivided attention to this very important project of law as its merits demand ; and, indeed, I can conceive no measure of greater importance than the codification of all the revenue laws of this Presidency that could come before us. But your Excellency will bear with me when I say that the very importance of this measure demands that before my decision could be laid before this Council or before the Select Committee, and published according to the statement in the 80th paragraph of the report, which was read by your Excellency, I should not only go over very carefully the Code as it now appears, but should compare it with the two different previous editions of it (for this is the third) and with the whole of the laws we are now trying to amend and codify. And I will here remind the members that, when this Bill was first introduced, an objection was raised, and at the con-

clusion of the first day's proceedings your Excellency's predecessor intimated to the Select Committee that it would be better to divide the Bill, if it could possibly be divided, into two portions, as one portion of the Bill had, strictly speaking, nothing to do with the codification of the revenue laws, and as the newly-introduced improvements were likely to cause some discussion, it would be well for the Committee to consider whether the Council ought not to make the measure strictly one of codification, leaving all foreign matter to be dealt with in a separate Bill." By way of illustration as to the new matters introduced; I will only mention one subject which was introduced into the Bill at the last but third meeting of the Select Committee, viz., an importation, as I was told, from the Land Revenue Code of British Burmah. That is embodied in Section 126 A which runs thus—"Every occupant's right is subject to the reservation in favour of Government of all mines and mineral products and of all buried treasure, with full liberty to work and search for the same, paying to the occupant only compensation for surface damage as estimated by the Collector." That word "occupant" there is merely a technical expression, which, since the Regulation XVII. of 1827, has been known simply to mean the person whose name authorizedly appears in the public papers as the man responsible for the payment of the revenues to Government. Having gone through—I cannot say two-thirds, but at least more than one half of the Code as now drafted—I find that the idea which this single section alone conveys is one which will cut at the root of private property in land. This new law is a law which is to regulate, and which will regulate, the relations of the different classes of landholders and owners of lands in this Presidency to the State. I think the idea that the above section and other sections like that naturally convey is, that the landholders in this Presidency have no rights except what may be called that of being occupancy tenants, or mere occupants. Now I beg leave to say that that is a wrong notion.

His Excellency the PRESIDENT:—That has been explained by the Honourable Mr. Rogers to-day to be a wrong notion.

The Honourable VISVANATH NARAYAN MANDLIK:—I thank your Excellency for the remark. The idea which I have derived from the speech of the honourable member in charge of the Bill is this—that Government lets its lands in this Presidency, and has been letting them since 1827 under a certain system, and that this present Bill now settles the law by which the lands are to be let and by which the revenue is to be derived. I may be wrong, but that is my impression, and the impression is now made somewhat more strong from the manner in which the terms "occupant" and "alienable" and "non-alienable" have been settled almost at the last stage of the Select Committee's proceedings. It is on that ground, and after the most anxious consideration of the matter, that I am about to ask only for a little more time to put down my remarks in a succinct form. I have not the slightest wish to delay the proceedings more than may be absolutely necessary, but this much I must say, and I will again allude to the new section which I have already referred to as an illustration. On going over the Burmah Land Revenue Act of 1876, I find that the only rights which occupants or holders of land in Burmah can have are laid down in section 6, clauses (a) to (d), which runs as follows:—

"No right of any description shall be deemed to have been or shall be acquired by any person over any land to which this part applies, except the following:—

- (a) rights created by any grant or lease made by or on behalf of the British Government;

- (b) rights acquired under sections twenty-seven and twenty-eight of the Indian Limitation Act, 1871 ;
- (c) rights created or originating in any of the modes hereinafter in that behalf specified ;
- (d) rights legally derived from any right mentioned in clauses (a), and (b), and (c) of this section."

It will be seen at once, without going into the history of Burmah regulations for the possession and enjoyment of land, that a law derived from that Code, under which the holders have a limited description of rights, cannot be a law which should be introduced at once and be made universally applicable to the Bombay Presidency. Here, land has been declared repeatedly, and recently in the Kanara Land case by the High Court and by their Lordships in the Privy Council, to be entirely private property under various denominations; and Regulation 17 of 1827 distinctly says, that there are certain tenures under which, if land has been held by a man for more than 60 years, Government have not even the right of levying a revenue on that land ; so that whenever land in this Presidency is *Watan*, or *Miras* or *Muli*, or *Suti* or *Dhara*, which are descriptions of *Miras* or *Dhara*, it is as much private property as any property in any part of the world can be, and all that Government has to do is to regulate the assessment of that land, which is the duty of the Executive Government under Regulation 17 ; and with which the Courts of law will not interfere. The Honourable Mr. Rogers said that under Act I. of 1865 the people had obtained a very valuable species of property. That, I beg leave to say, is not a correct statement of the law. It is not correct, because numerous prior decisions have established what is well understood to be the common law of the country, that the ryot shall not be disturbed in the occupation of his hereditary holding, which comes to him by right of inheritance, so long as he pays the Government revenue. That may not be so in the case of waste lands, or lands of which Government may be the immediate proprietor, and which may be let by contract or any other arrangement they please, but in the case of a man's ancestral property, derived by inheritance, it is so. ✓

The Honourable Mr. RAVENSCROFT :—Are you referring to alienated lands or to Government land ?

The Honourable Rao Sahab VISHVANATH NARAYAN MANDLIK :—I am referring to all lands. And that word alienated reminds me of the great amount of confusion in these revenue matters. "Alienation" means, ordinarily, alienation of the public revenue: that is laid down by Elphinstone, and Chaplin, and all the authorities, and is acknowledged by the courts. When any question of law has come up in reference to the Alienation Department, as it is called, it has been a question whether the revenue is alienated; and, as in a celebrated Tanna case reported in Vol. VI. of the High Court Reports, the courts have decided that the alienation is merely an alienation of the Government revenue, even if words like *kul bab kul kanun* are used, and it does not touch the soil. When alienations are spoken of, they are ordinarily simple alienations of the revenue, and the distinction between Government land and private land is a distinction well known even under the Bombay Survey Act of 1865 ; but this distinction is sought to be swept away, and there is no definition in the Bill of owner of land as distinguished from occupant of Government land, though that is a distinction clearly known up to the present time, and which ought to be preserved. There are other points of declaratory law, which are entirely new law, from which I and my honourable friend Mr. Rogay have signified our dissent during the progress of the Bill.



For example—there is one section which is particularly known as the tenant-right section, section 34, clause 2, which now, for the first time, changes the onus of proof in the case of disputes between landlords and tenants. The custom of the country has been declared to be the reverse of what is here laid down, by a series of decisions extending over the last 50 years. The burden now will be placed on the landlord to prove that his tenant is an annual tenant, or that he has not a perpetual right of occupancy. That is one of the new sections; and there are several other sections to which I and my honourable friend Mr. Rogay have the same objection in principle. As was noticed by your Excellency's predecessor, there is a certain amount of new law which it is sought to introduce into this Code, and as to that we differ in principle from the majority. These are a few of the points I wish to urge; the rest will have to be carefully drawn up. I trust I have only discharged my duty in drawing your Excellency's attention and the attention of the Council to the circumstance that we were not allowed sufficient time to note down our objections and have them published. The report contemplated that they should be published, and I must say I was surprised at its publication without the least notice.

His Excellency the PRESIDENT :—Does the Honourable Mr. Rogay desire to say any thing ?

The Honourable MAHOMED ALI ROGAY :—While thanking your Excellency for calling upon me to offer my explanation in regard to the non-signing of the Select Committee's report by me, I beg to offer

Mr. Rogay also protests against the Bill being read a second time.

a few observations, and trust they may meet with approval.

The Bill, as has been noticed by your Excellency, by the Honourable Mover, and by my friend the Honourable Rao Saheb, is of a most voluminous, a most important, and a most complicated description. It not only involves the broad principle generally advocated now-a-days of codification, but also new law, as has been so forcibly pointed out to your Excellency by my honourable friend the Rao Saheb, whose peculiar knowledge of the Indian laws and whose great interest in this question qualify him to offer an opinion. I, in common with my brother members of the Select Committee, made it a point always to attend the numerous meetings of the Select Committee; and as a layman having a limited knowledge of the law and of the changes which now-a-days the Legislative machine in India is constantly making, I tried my best to follow the proceedings of the Committee. I was mostly assisted by my friend the Honourable Rao Saheb, for whose opinion I have the highest respect, and who has valuable knowledge of revenue matters especially, being a self-made man, and having passed most part of his life in the revenue and other legal work. The first report of the Committee was made in the month of March, unanimously, but the second report was signed by the majority of the Select Committee, and published, without giving us time to signify our dissent, or to go carefully over the Code. The late Under-Secretary, Mr. Whitworth—I may be permitted to bring this fact to the notice of your Excellency—wrote to me a letter about the middle of April asking me to sign a certain report which he enclosed, and which was the report that has been published and circulated and is now before the Council. Such a voluminous and important matter as the Revenue Code I thought required most careful consideration, and I am under the impression that at the last meeting of the Select Committee it was understood that the report would be again discussed by them before it was published; but instead of that, it was circulated, and only the simple question was asked by the Secretary whether the members would signify "aye" or "nay" or say whether they

agreed or dissented. I wrote in reply that it was simply impossible for a man like me to contain in my head all that was in the Revenue Code; and I said that unless the whole Code was before me, with the old laws, and the new laws, such as the Burmah law which the Honourable Rao Saheb referred to, I could not say with conscientiousness whether I assented to the Bill as a whole, or differed from it. To my great surprise, I found a few days afterwards that the report was issued, signed by a majority of the members of the Select Committee, who seem to have thought that "Her Majesty's opposition," as we are termed, wanted to throw a needless obstacle in the way of the progress of the Bill. I must say that such was not the case. We had, as far as laid in our power, assisted our honourable colleagues to expedite the progress of the Bill. After the hot weather set in I had to go to Matheran, as everybody else does except those who cannot well go and the few who choose to remain in Bombay during this trying weather, and I had no time to go through the Bill.

His Excellency the PRESIDENT suggested that the honourable member might have looked through the Bill while staying at Matheran.

The Honourable MAHOMED ALI ROGAY:—I will just explain to your Excellency I should have been most glad to do so, but my friend the honourable Rao Saheb, with whom, jointly, I had worked, was absent at Mahableshtar, and I wished to consult him on several subjects. I never dreamed that the Council would be so soon called, because generally the first meeting in the Poona season is called in the month of July, and I was called to meet this Council without being allowed to go over the Bill, or to write my dissent. I must say in a matter of importance like this, sufficient time should be given both to the members of the Council and the public at large.

The honourable gentleman concluded by stating, that before the first reading of the Bill was passed, a pledge was given that, previous to the second reading being brought forward, the Bill and the report of the Select Committee should be translated and published, and time allowed for any objections that might present themselves to be brought forward. This had not been done, and he did not see how the Bill could be proceeded with.

The Honourable Mr. RAVENSCROFT said that about the middle of April last, the Secretary, Mr. Whitworth, showed him the correspondence with Mr. Rogay and Mr. Mandlik, and elicited his opinion as to the best course to adopt. In common with everyone else who had regretted the slow progress of this Bill, he (Mr. Ravenscroft) was anxious that no further delay should occur in bringing it forward; and before the excessive information which Mr. Rogay required could be obtained, it seemed to him that weeks or even months must elapse. This being the case, and knowing that His Excellency would wish to have the Bill brought forward at an early date, he thought, and Mr. Rogers also thought it would be best to submit the report to the public, and leave the Honourable Rao Saheb and Mr. Rogay to prepare and state their views, at the date most convenient to themselves. There was no desire at all to unduly press them or to prevent the public deriving the benefit of their views; but at the same time, considering that this Bill has been before the Council and the Select Committee for two years, and considering the very numerous discussions and the explanations that were offered on every occasion when they were demanded, he did think that during the vacation at Matheran or Mahableshtar such minutes might have been drawn up by his honourable colleagues as would have enabled the Council now to go on with the Bill. Perhaps if Mr. Mandlik and Mr. Rogay would be ready in a fixed time with their views, the Council might adjourn for a few days to give them opportunity.

The Honourable Mr. GIBBS:—I would beg to say a few words. Of course there is, strictly speaking, a little difficulty in the matter on account

Mr. Gibbs proposes that the Bill be taken as read *pro forma*, and that the Council proceed with its consideration in detail.

of the circumstances which the Honourable Mr. Rogay has alluded to, and which took place, I think, on the motion being made for the first reading of the Bill. Undoubtedly, it was an understood thing that the various reports of the Select Committee, with such portions of the Bill as they might refer to, should be translated and published for the benefit of the public; and the first report of the Select Committee, which dealt with the first five chapters of the Code and such portions of the definitions as applied to them, were, I believe, translated into the various languages of the Presidency, together with the five chapters so revised by the Select Committee, and published for general information. There are peculiar circumstances regarding this Code which I think perhaps my honourable native colleagues will take into consideration. This matter has been going on for a very long period, and we are about to lose the services of my honourable colleague who has had charge of the Bill for two years; and it would be really a very great drawback if we had not his services in seeing it through the Council if possible. The technical point is that the second report of the Select Committee, and that portion of the Bill to which it is attached ought to have been translated and published before we took it up; but I would ask the Council to consider whether, taking into account the great benefit which will accrue to the Council and the comparative ease with which the Bill will be passed through Committee if it is conducted by the gentleman who has had charge of it now for 2½ years,—whether it would not be better to set aside this, which may be called a purely technical objection? I think a means may be found by which the Code can be fully published to the people of the Presidency previous to its becoming law, and perhaps it may be so done, in such a manner that the public will be better off than they will be if merely the Bill as it is now amended by the Select Committee were published for general information. I can say myself from experience that it is at present particularly difficult to trace anything through the Code. There are at present sections 134*a, b, c, d*, and 118*a, b, c, d*, and chapters 6, 6*a* and 6*b*; and it would be very much better if all the sections and chapters followed in proper order, which will be the case after the Bill has been considered in detail by a Committee of the whole Council. What I would suggest, if the honourable members will agree, is that we take the Bill as read a second time *pro forma* to-day, and proceed with the consideration in detail. It is not likely to be got over very soon, and I believe I am right in saying that in the portion up to the end of chapter 5, which contains 105 sections, or more (for they are not regularly numbered), there is really no argument on any section; and while the Committee of the Council is going through this portion, I think our honourable colleagues who have to put their dissent in writing will have time to do so, and be prepared by the time we get to the disputed sections. I think Section 106 is about the first one to which the Honourable Rao Saheb has any particular objection. I would, therefore, suggest that, considering the benefit that will accrue to the Council by having the Honourable Mr. Rogers to conduct the Bill through Committee, this will be the best course for the Council, and eventually for the public; because, when the Bill is translated and laid before the public, they will have the Bill as carefully revised as it can be, and in the best form in which it can be put before them. There is a custom in this Council, which I believe was introduced by the late Governor, Sir Philip Wodehouse, that when a committee of the whole Council have come to the end of considering a Bill in detail, instead of considering the Bill finally passed, and standing over for the third reading, it is again brought up at the

next meeting, for further consideration in detail. The consequence is, that if in the meantime, after the Bill has been published, any objections suggest themselves, they can come before the Committee of the Council and be considered. His Excellency has told us that there is a similar plan in existence on the Bengal side, where they provisionally, as it were, pass Bills subject to any objections that may be brought up afterwards. The practice there and here appears to be very similar, and I would suggest that it would now be well to read the Bill a second time *pro formâ* and proceed to consider it in detail, on the clear understanding, that when the Committee of the whole Council have gone through the Bill it shall be translated and published as amended, and that members of Council and the public at large should have sufficient time to consider the Bill and make their objections to it previous to its coming again before the Council to be made law.

The Honourable MAHOMED ALI ROGAY asked permission to reply to Mr. Ravenscroft on the point of his correspondence with Mr. Whitworth.

His Excellency the PRESIDENT said he was not quite sure that it would be in order.

The Honourable VISVANATH NABAYAN MANDLIK :— I think personal explanations have always been accepted. I may be wrong.

The Honourable ALI ROGAY :—I offer it as a personal explanation.

His Excellency the PRESIDENT said he would rather deprecate this sort of question being raised, because it did not further the discussion.

The Honourable MAHOMED ALI ROGAY said he had not asked the Secretary for any more information than was before the Council, viz., the complete Code properly arranged, as finally decided by the Select Committee. He had not that information, and hence the delay and the absence of his signature from the report.

The Honourable the ADVOCATE GENERAL thought the difficulty of the non-translation might be avoided by reading the Bill *pro formâ* a second time, and proceeding to consider it in detail. The mode of procedure would be imperfect, but that could be easily remedied, and any subsequent objections or alterations that were suggested could be attended to. The Council would thus have the advantage of the Honourable Mr. Rogers' aid in the discussion of the Bill.

His Excellency the PRESIDENT :—What does the Honourable Mover say ?

The Honourable Mr. ROGERS :—That is the course I would recommend, that we should now proceed with the second reading *pro formâ*, and that the whole Council in Committee should go through the Bill; but that nothing we may now decide shall be considered final. Subsequently the whole can be translated and published, and the opinions of the public invited; and an opportunity would of course be given to members of Council and the public to make any objections that might present themselves. Then, when every one is satisfied, the Bill can go forward in the ordinary course.

The Honourable Mr. ROGAY was of opinion that this course would occasion too much trouble to the Council. They would have to go through the Bill more than once. He did not think the Bill could be passed through the Council while the Honourable Mover was still here, because the honourable member would leave India in a few weeks.

His Excellency the PRESIDENT considered that in the case of a measure of importance there could be no harm in going over the Bill twice. The Bill would probably be more satisfactorily laid before the native public after it had been discussed section by section in a Committee of the whole Council. The honourable members who objected to it

could state their objections to the Council explicitly, and the discussions would be published. There was probably no better way of securing general attention to a statement than by making it orally to the Council, when it would be reported in the *Government Gazette*, and probably published in the newspapers, European or Native. He would suggest that a speech made to the Council would perhaps be more likely to attract public attention than a minute.

After some further conversation, the Honourable VISHVANATH NARAYAN MANDLIK said he did not object to the course proposed, if the action was not held to be final; but if the Council were asked to pass the whole Code in principle, and afterwards be bound by the proceeding, he objected.

His Excellency the PRESIDENT said:—By all means, the honourable member might make any subsequent objections he pleased, and the Council would consider them. There was nothing particular in the second reading.

The Honourable Mr. GIBBS:—It is considered that the principle of the Bill is confirmed on the second reading being passed. If Rule 20 were suspended under Rule 42, the Council in Committee could consider the Bill in detail without proceeding to the second reading, and he moved that that course be followed.

Mr. Gibbs moves that Rule 20 be suspended, and the Bill considered in detail without proceeding to the second reading.

The Honourable ALI ROGAY:—Then how will the Council get over the pledge of January 1875?

The Honourable Mr. GIBBS explained that the Bill would be translated and published before the second reading.

The Honourable ALI ROGAY:—Well, if the Council do not object to go through the Bill twice, I have no objection.

The Honourable Mr. GIBBS said he believed the Council in Committee went three times through the Watandars' Bill.

The second reading of the Bill postponed and the Council proceeded with the consideration of the Bill in detail.

The course proposed by the Honourable Mr. Gibbs—to proceed with the consideration of the Bill in detail by the Committee of the whole Council, the second reading being postponed in the meantime—was agreed to, and the Council proceeded to consider the Bill in detail.

His Excellency the PRESIDENT suggested that the Council should commence with Chapter II. and exclude Chapter I. (containing the definitions), and the latter portion of the Bill (after Chapter VI.), referred to in the Select Committee's final report, until afterwards, so as to give the Honourable Mr. Mandlik and the Honourable Mr. Rogay further opportunity to consider them.

The Honourable Mr. ROGERS said he wished to say a few words regarding the first section of Chapter I. As the section stood, the operation of the Bill would be excluded from Sind and the Panch Máhals.

The Honourable Mr. GIBBS said that point had perhaps better be left over. The question of the Scheduled Districts was difficult to deal with.

The point was accordingly reserved for future discussion.

The Council then proceeded with the consideration of the Bill in detail, commencing with chapter 2.

At the suggestion of the Honourable Mover, Section 7 was amended by the insertion in the fourth line of the 2nd paragraph of the words "Máháls and" between the words "of" and "villages."

His Excellency the PRESIDENT:—I suppose it is quite understood that if any objection should occur to an honourable member after a section has been passed at this meeting it can be mentioned at the next sitting of the Council. I mean that honourable members are not tied down to a section as it may be passed now, because they do not see an objection at the present moment. At the next meeting of the Council the first thing to be done will be to ask honourable members if they have anything to mention regarding sections that may be provisionally passed at the present sitting.

With regard to Section 15, the Honourable Mr. MANDLIK said he had an amendment to propose to the proviso attached to it. He objected to the term "alienated villages" as it stood. There were certain classes of landowners who had special proprietary rights, and those rights were not observed by this section. He would propose that the term to be used should be "alienated or proprietary villages."

The Honourable Mr. ROGERS:—Do you mean by that to bring in the Khotes?

The Honourable Mr. MANDLIK:—I propose to bring in any one who can prove his right to the holding of a village. When we come to the Khote Act, it will be time enough for me to explain a number of misapprehensions that exist on that subject.

The Honourable Mr. ROGERS said there were villages that were neither alienated nor proprietary, but were merely leasehold.

At the suggestion of His Excellency the PRESIDENT, the decision of the point, wherever it might occur throughout the Bill, was reserved.

At the suggestion of His Excellency the PRESIDENT, the marginal note to Section 15A was altered from "and to be the penman of the village" to "and to prepare public writings."

Also at the suggestion of His Excellency the PRESIDENT, at the end of the 1st paragraph of Section 20, the words "in the *Government Gazette*" were added.

In reference to Section 27, the Honourable Mr. GIBBS explained that the words "which shall be passed after summary inquiry," in the 4th paragraph, had been added to the word of the existing law, because in the Code there were three classes of inquiry provided for, and this was necessary to make the section perfectly plain. Also the words "or order" had been inserted by the Select Committee in the eighth line of the 1st paragraph, because they were omitted in the original draft, and they were necessary to make the section complete.

With regard to Section 29, the Honourable VISHVANATH NARAYAN MANDLIK said difficulty was experienced in the practical working of this section in the existing Act. There were several cases now pending, especially from the Poona Collectorate, in which old attachments of *watans* were being contested by the Revenue Department, and it was not clear how this section applied. He had been about to make a reference as Government Pleader before he gave over charge. It would be useful to inquire how far the section was intended to affect *watans* which had been attached on old decrees, and where there was a sort of perpetual running attachment.

The Honourable the ADVOCATE GENERAL said that assuming the creditor to have attached a *watan* years ago, there were of course existing rights in the creditor's hands; and the question was—Whether the Council would think it right and proper that such existing rights should be interfered with,—Whether words should be introduced making the section retrospective, or whether it would be desirable to provide that it should not interfere with existing rights. The Council might add “provided nothing in this section shall interfere with any attachment existing.”

The Honourable VISHVANATH NARAYAN MANDLIK :—I think it is better that that should be done. I know considerable difficulty has arisen.

The Honourable Mr. RAVENSCROFT :—I do not think any addition is necessary. The High Courts have had cases before them, and have distinctly laid down that a law of this kind has no retrospective quality.

The Honourable Mr. GIBBS thought it was clear that the section referred to attachments after the passing of the Act.

The Honourable Mr. ROGERS :—The attachments require to be renewed every year, do they not ?

The Honourable VISHVANATH NARAYAN MANDLIK :—No, they do not require renewal every year.

The Honourable Mr. GIBBS :—The ordinary course in the mofussil is to attach a *watan* and to apply for the proceeds every year.

The Honourable Mr. GIBBS said the words of the section were “after the date of this Act coming into force.” It should be after the date of Act III. of 1874 coming into force, which was the 5th February 1875.

The section was amended by substituting the words “after the 5th February 1875” in the 11th line of the 1st paragraph, for the words “after the date of this Act coming into force.”

His Excellency the PRESIDENT said the section was clearly not retrospective.

The Honourable VISHVANATH NARAYAN MANDLIK :—But that has been contended.

His Excellency the PRESIDENT said :—If persons lent money on the security of the attachment of *watans* after this section had become law, it was clearly at their own risk; but it would really be very hard upon creditors who had lent money formerly on such security at the time when it was allowed by the courts, if they were deprived of the attachments by the present law.

The Honourable Mr. GIBBS thought it might fairly be left to the High Court. The matter was well argued out when the Watandars' Act was passed.

The Honourable VISHVANATH NARAYAN MANDLIK said he had brought the difficulty to the notice of the Council because he had met with it in the course of his duties as acting Government-Pleader.

His Excellency the PRESIDENT thought the section might be allowed to stand as framed, because there was not the shadow of a reason for saying it was retrospective.

The Honourable the ADVOCATE GENERAL said his idea was, that if the question was taken before the High Court, previously existing attachments would be removed.

The Honourable Mr. GIBBS said :—The High Court had ruled that no property was attachable until the money was due.

The question was then allowed to drop.

In regard to the 43rd section, the Honourable Mr. ROGERS said he had an amendment to propose. In the province of Guzerat there were certain individuals called *matadars*—people who by ancient custom had the right of signing the village records, and who were responsible for the accuracy of entries in the land registers. According to the terms of the existing law, there was some difficulty in recognizing these men as representative *watandars*, and it was very necessary that they should be so recognized. He proposed to insert between the 1st and 2nd paragraphs of this section the following proviso: “ Provided that the duties, if any, hitherto performed by members of *matadar watans*, other than the actual officiators for the time being, shall continue to be performed by them, subject, so far as may be, to the same responsibilities and penalties as attach under this Act, or any other law for the time being in force, to such officiators.” Mr. Rogers added that the distinction between the *matadars* and the heads of families would be that the *matadars* would be obliged to sign, and the heads of families would have the privilege; in one case it would be obligatory, and in the other permissive.

The Honourable VISHVANATH NARAYAN MANDLIK said the only objection was, that it would break through the rule at present observed.

The Honourable BECHERDAS AMBAIDAS said the *matadars* were responsible persons in villages in Guzerat, and he was in favour of the amendment.

The amendment was agreed to.

Section 43 was further amended by the substitution of the words “ Provided also that” for the word “ but ” in the 1st line of the 2nd paragraph.

The Honourable VISHVANATH NARAYAN MANDLIK said there was a difficulty in regard to Section 43. The High Court had determined that there were nine shareholders in a certain *watan* in the Poona district, leaving to the shareholders the right to select one of their number in rotation. The Collector of the district refused to recognize one of the nine branches, and said the High Court must define exactly the period to be served by each sharer.

The Honourable Mr. GIBBS said the section did not seem to him to require any alteration. According to it, the onus of arranging the order of rotation was clearly placed on the Collector.

The Honourable Mr. ROGERS said there had been some difficulty experienced in the working of Section 66 under the old Act, in regard to the appointment of deputies by Native Chiefs who were partners in *watans*.

It was agreed that the Honourable Mover should draft an amendment, and submit it to the Council at the future meeting.

The following was added as sub-paragraph (g) to Section 74 :—

“(g). The names of the members of *matadari watans* entitled to perform any duties under paragraph 2 of Section 43, and the nature of the duties to which they are entitled to perform, and the portion, if any, of the annual emoluments of the officiators fixed under the provisions of Section 38, which they are respectively to receive for the performance of such duties.”



In Section 77, for the words "In any case in which, after the coming of this Act into force" at the commencement of the section, was substituted the single word "when."

At the suggestion of the Honourable Mr. ROGERS, Section 86 was amended by the substitution of the word "what" for the words "that all," in the second line of the 1st paragraph, and by the excision of the words "of certain denominations" in the 3rd and 4th lines of the same paragraphs.

In regard to Section 103, the Honourable ALI ROGAY said it seemed very hard that a man should lose his *watan* in consequence of the misconduct of his substitute.

The Honourable Mr. GIBBS said the section had been carried after a great deal of discussion. It had the benefit of ancient custom. When the existing law was passed, it was very carefully considered, and the Council did not think it necessary to alter it. An offence must be a heavy one to come under this section, as it must be tried by the Court of Sessions.

His Excellency the PRESIDENT asked if the Honourable Mr. Rogay wished to make the law easier than it is at present.

The Honourable Mr. ROGAY said he did, and proposed to draft an amendment to be submitted at a future meeting.

When Chapter VI. was reached, the Honourable VISHVANATH NARAYAN MANDLIK said he wished to minute on the whole of it, and should wish to be allowed a day or two to look through it.

It was agreed that the 6th and 8th chapters should be reserved, and that Chapter IX. to Chapter XIV. should be next considered.

His Excellency the PRESIDENT then adjourned the Council.

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

JOHN NUGENT,

Under-Secretary to Government.

Poona, 11th June 1877.

*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 Tuesday the 12th June 1877, at noon.

*PRESENT:*

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

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE GENERAL.

The Honourable Major-General M. K. KENNEDY.

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

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

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable Rao Bahadur BECHERDAS AMBAIDAS, C.S.I.

The Honourable SOBABJI SHAPURJI BENGALI.

Consideration of the Land Revenue Code Bill resumed in detail. The Council resumed consideration of the Land Revenue Code Bill in detail, commencing at Chapter IX.

The Honourable VISHVANATH NARAYAN MANDLIK said he wished to remark that some of the sections in this chapter were discussed for the first time in the Select Committee, and now came up as re-arranged also for the first time, so that the work before the Council differed rather in character from what they had performed on the previous day. He mentioned this because he considered that in considering the sections now before the Council a good deal would have to be omitted or added, and much discussion might arise.

His Excellency the PRESIDENT said that though some sections might be new to the Council, they must have been often talked over in the Select Committee.

The Honourable VISHVANATH NARAYAN MANDLIK said a good deal of the chapter had been re-arranged since it was before the Committee, and there were some matters which he found came up only in the re-arrangement.

In regard to Section 201 the Honourable VISHVANATH NARAYAN MANDLIK said that—In the old law the terms used were "owner, occupant, or agent," whereas in the present section they were "holder, or person in occupation." He mentioned also that there was an important proviso in the old Act, which had now been left out, to the effect that "the determination of any boundary under this section shall not debar any one claiming a right in the land from any legal remedy he would otherwise have for dispossession." That was a very material provision, and he might mention that it was inserted in the Survey Act after very full discussion.

His Excellency the PRESIDENT :—Will the Honourable Mover kindly say why the proviso was omitted ?

The Honourable the ADVOCATE GENERAL said he believed it was in consequence of a decision of the High Court, the result of which was that, notwithstanding boundaries had been fixed in 1865, it was held that that was not binding on the villagers, but that they were at liberty, in due course, to dispute the correctness of the boundary settlement. It was now intended to make the settlement of the boundaries final, and that the parties shall not be allowed, after they are settled by the proper officer, to dispute their finality in a civil court ; and he thought the Council would be of opinion that it was very desirable there should be finality.

The Honourable VISHVANATH NARAYAN MANDLIK said there were two descriptions of boundaries. There were the village boundaries, which were formerly determined under Regulation X. of 1827. When the Survey Act of 1865 was first framed and passed, this Regulation X. of 1827 was repealed because it was then stated and the Council held that Regulation X. of 1827 prescribed a very cumbrous mode of procedure for the settlement of village boundaries, and that they might be much more speedily and satisfactorily settled by surveys. The decision of the High Court was in reference to disputes which might arise after the survey of a district was completed, not whilst the survey was going on, and it had no reference to boundaries as involving rights, but simply as boundaries.

His Excellency the PRESIDENT :—Can a boundary be a boundary if it does not involve rights ? What is a boundary if it does not involve rights—who cares about it ?

The Honourable VISHVANATH NARAYAN MANDLIK said :—By the Survey Act the Council had declared that all disputes as to village boundaries when decided by the survey should be final. He would presently read to the Council why that was done, and also why, in regard to field boundaries, the rights of individuals were saved, resort to the ordinary courts of law being allowed. In regard to fields there was a separate regulation.

The Honourable Mr. GIBBS :—Section 201, which the Council have now before them, refers to field boundaries, and not to village boundaries.

The Honourable VISHVANATH NARAYAN MANDLIK said :—Yes, and in regard to fields, he did not think it was intended to stop people from going to law at all. When the Survey Act was discussed by the Council, Sir William Mansfield suggested that a clause should be added to this particular section showing clearly that a ryot had redress by an action in regard to any boundary determined by the survey. It was agreed that a ryot could appeal to the court by the then existing law, but Sir William Mansfield considered that every ryot might not understand that to be the case, and he suggested that it should be specifically declared in the Act that the Superintendent of Survey's fixing of a boundary was not a finality. Then, again, the Honourable Mr. Ellis said distinctly that survey marks had nothing to do with private property. It was on Sir William Mansfield's proposition that the proviso he (Mr. Mandlik) now proposed to add to this section was included in the old Act. And when the Council came to consider Section 204A., which was a new section added by the Select Committee, and was not in the original draft, he would move that clause B. should be struck out. This clause, as at present drafted, would provide that the settlement of a boundary should be determinative "of the rights of the landowners on either side of the boundary fixed in respect of the land adjudged to appertain or not to appertain to their respective holdings ;" and except as regarded village boundaries, it was distinctly understood at the time of the survey that civil rights were to be preserved.

His Excellency the PRESIDENT:—Was it understood that the village boundaries determined private rights ?

The Honourable VISHVANATH NARAYAN MANDLIK said they were determined, because there had been a special tribunal for them before under the Elphinstone Code. That system was very cumbrous and did not work satisfactorily, and the Government determined when the Survey Act was passed that when a district was first surveyed the village boundaries should be finally settled. There was a clause in the Survey Act providing that the determination of village boundaries should be final. He would presently point out to the Council one or two decisions where villages had lost their seignior rights in regard to boundaries being made over to other villages ; but the cultivators still retained their fields, merely paying the revenues through one zemindar instead of another. The Honourable Mr. Mandlik concluded by reading the following extract from the Official Council Reports :—

“ The Honourable Mr. INVEARITY explained that the boundaries put up by the survey officers in no way affected title to the land. In explaining them, the survey officers made no inquiries regarding title. The survey marks were simply put up for survey purposes, and there was no reason whatever why the civil courts should have anything to say in regard to the placing of these marks.

“ The Honourable Mr. ELLIS thought it would be most inconvenient to allow an appeal to the civil court from the decision of the Superintendent of Survey. The civil courts had ample power to decree possession of land to its owner. The survey marks, however, had nothing to do with private property. The boundaries of a survey number might, or might not, be the boundaries of a private estate. They might comprise one or many estates, but had no necessary connection with the boundaries of such private property. They were simply placed for the purpose of mapping out the country ; each area included between certain boundary marks being an assessable item of village land paying revenue to the State.

His Excellency the PRESIDENT thought it should be clearly stated in the Bill that boundary marks did not affect private rights.

The Honourable Mr. FREE concurred with Mr. Ellis. He thought that in practice no difficulty would be felt. He was Judge at Dharwar when the survey was first introduced into that district. Cases constantly arose in which the boundaries settled by the survey officers intersected private estates. But occupants of land soon understood that their rights were in no way affected by the operations of the survey.

His Excellency Sir WILLIAM MANSFIELD said :—The real object of placing boundary marks should be distinctly recognized in the bill. He would propose the addition of the following proviso to Section XIV :—“ Provided that the determination of any boundary under this section shall not debar any one claiming any right in the land from any legal remedy he would otherwise have for dispossession.”

The section as thus amended was agreed to.”

The Honourable Mr. GIBBS asked whether the Honourable Rao Sahab wished to add anything to Section 201, or whether it would be sufficient to strike out clause b of 204 A.

The Honourable VISHVANATH NARAYAN MANDLIK said he wished to move that the proviso he had read should be added to the 201st section.

His Excellency the PRESIDENT:—Then will you make a substantive motion to that effect ?

The Honourable VISHVANATH NARAYAN MANDLIK :—If your Excellency pleases.

The Honourable the ADVOCATE GENERAL :—It seems perfectly fair.

The Honourable Mr. ROGERS :—As far as field boundaries are concerned, I have no objection to offer.

The Honourable Mr. GIBBS :—There is not the slightest doubt it ought to be added. They ought to be allowed to fight as much as they like in the civil courts.

The Honourable ALI ROGAY said :—The point seemed to have been fully discussed by Council before, and settled.

The Honourable Mr. GIBBS said that without the proviso the courts would probably interfere, and say they could not suppose it was intended to debar the people from going to law, but it would make the matter clearer if the proviso were added.

His Excellency the PRESIDENT :—But why has it not been put into the Bill before ?

The Honourable Mr. ROGERS :—Our attention was not drawn to it.

The Honourable Mr. GIBBS :—It was left out of the original draft.

His Excellency the PRESIDENT :—But there must have been a reason. It would be a great thing for the people and the peace of the country if the determination of field boundaries could be made final. Whether it may be advisable on other grounds to make an important change of this kind, I do not know ; but as regards the welfare of the people, with deference to my honourable friend, Mr. Mandlik, I think what he opposes would be far better for them than that they should be left to dispute. It may be said the survey inquiries were not sufficiently good, but, if so, why not make them good ? If it is said there must be some final settlement of disputes, then make provision that if, at the survey, a dispute becomes so strong that the survey people cannot settle it, it must be referred at once to a civil court. The object of a settlement is to set aside disputes and brawling, so that peace may be secured. Anything worse for the people in the villages than the sort of process my honourable friend (Mr. Mandlik) describes, cannot be imagined. You have now an elaborate process which settles boundaries—which my honourable friend says are mere boundaries and do not involve anything ; and there is no settlement at all. You incur trouble and expenses and harass the people for a settlement, which, after all, is no good, but only fixes mere boundaries without interfering with private rights.

The Honourable Mr. GIBBS :—There is no such thing as a record of rights in our survey.

His Excellency the PRESIDENT :—That may be as you please to call it, but in my humble opinion the Bombay Survey gives a record of rights in the highest possible sense. I think you don't do justice to it ; it is as fair a record of rights as any survey in India. I should say it is at least as good as, if not a great deal better than, any record of rights in some parts of India. It may be that disputes may arise about boundaries which may be a little beyond the judicial abilities of the survey men to decide, but the best course to meet such cases is to put in some provisional clause which shall compel the parties to bring them into court, and then they can be decided. But nothing is so bad for the people of India as having settlements which are not permanent—which just, as it were, touch the surface of dispute and do not settle it. The Government and the people have the trouble of the survey, and when it is completed they may go and fight the matter all over again.

The Honourable VISHVANATH NARAYAN MANDLIK :—With deference to what your Excellency has stated, what I say is this, that if the surveys were to be begun in this Presidency under the law which we may now enact, perhaps the survey officers as a body would be competent to perform the duties which would be expected of them under such a law. But the Honourable Mr. Ellis lays down most broadly that the survey marks were not intended to have anything to do with private property, and that is simply stating what I know to be the fact, and what the High Court itself stated to be the fact when it held in one of its decisions that survey marks did not determine private rights but afforded only valuable evidence to assist a decision. Sir Bartle Frere, when the Survey Act was discussed in the Council, stated that surveys had been going on for 30 years without any law to regulate them, and those surveys were legalized, so that they would hold good between the occupant and Government; but I submit that they could not be held to determine the rights of private persons. To pass a law now in 1877, by which old survey marks were made to define private rights, would be a piece of retrospective legislation which would be very objectionable.

His Excellency the PRESIDENT said he could not understand why the proviso had been omitted from the Bill. It must have been done intentionally, because when clause of Section 204A was inserted, this must have been in contemplation.

The Honourable Mr. ROGERS said :—The Select Committee did not consider very minutely the case of field boundaries, because, as a matter of fact, in the survey operation no disputes regarding field boundaries has ever been raised.

The Honourable Mr. ROGAY thought there was no doubt the majority of the Select Committee would agree to the insertion of the proviso, as proposed by the Honourable Rao Saheb.

His Excellency the PRESIDENT :—The determination of rights would refer to cases of settlements made after the passing of the present Bill. The Honourable Mr. Mandlik has objected to my proposition, or my argument, because the honourable member says it would affect settlements which were made upon the understanding that the decisions would be provisional and not final, and that the Council will not be prepared to give it such retrospective effect. My answer is that it would only affect field boundaries that may be settled after this Act is passed. Of course, the boundaries would then be settled with the knowledge that they were final, and any disputes that arose would be more carefully investigated. That system would be much better than the existing one. As to there having been no dispute about field boundaries, there must have been something of the kind, or else how came there to be a decision of the High Court on the point?

The Honourable VISHVANATH NARAYAN MANDLIK said :—The surveys of this Presidency were nearly all settled and completed, except in Sind and the Panch Máhals.

His Excellency the PRESIDENT :—Then, what is Colonel Anderson doing at present?

The Honourable Mr. GIBBS :—He is beginning again after the first 30 years in one or two talukas, or he is in Mysore.

The Honourable Mr. ROGERS said there was a fresh survey every year.

The Honourable VISHVANATH NARAYAN MANDLIK :—There is no fresh survey; there is only a revision of assessments.

The Honourable Mr. ROGERS :—But there may be a revision of boundaries as well.

His Excellency the PRESIDENT :—They must all be re-examined.

The Honourable MR. ROGERS :—There need not necessarily be a revision, but where any mistakes have occurred they can be remedied. There is a revision of field boundaries certainly. Under the old survey there were large fields which have been cut up into smaller ones.

The Honourable MR. GIBBS :—That does not affect the rights of private parties. I am afraid if we made the surveys final we should be introducing a new thing which was not intended by the authors of the Survey Act.

His Excellency the PRESIDENT :—Well, it is a very important matter. The more I think of it, the more important does it appear to me. Although the survey may have been once completed, it is only for a limited period. It takes 20 to 30 years to survey a Presidency, and by the time the last portion is completed the survey of the district commenced with will be just expiring, and will come under the new Act, and the revision can be commenced and will always go on. It is just like a tide. There will be fresh disputes constantly arising as land becomes more and more valuable; and that the settlements of boundaries should be made final, is a matter of great importance for the welfare of the country.

The Honourable VISHVANATH NARAYAN MANDLIK said this was a section to which objections were raised in the Select Committee, and he understood at the time that the honourable member in charge of the Bill would not object to saving private rights in regard to fields.

The Honourable MR. ROGERS :—I do not object, though I quite agree with His Excellency the President's observation that it would be advisable to have some finality.

The Honourable MR. RAVENSCROFT said that :—In point of fact, in 999 cases out of 1,000, there was finality already.

The Honourable MR. ROGERS :—Yes, in 999 cases out of 1,000 there never has been any dispute. There may be one or two isolated cases in which disputes have arisen. The inquiries are made so carefully before the boundaries are fixed, the patels, the village accountants, and everybody being present, that in 999 cases of 1,000 the decision is certain to be right.

His Excellency the PRESIDENT said :—There was still the one case in a thousand remaining, and where the settlements were so numerous, the number of disputes must be large.

The Honourable MR. ROGAY said that according to Mr. Rogers the people were satisfied with the decisions of the survey officers, and if they were satisfied, so much the better; but, at the same time, it might be as well to give them the option of appealing to the civil courts.

The Honourable MR. GIBBS said that Chapter IX. of the Code was merely meant to be the present Survey Act inserted.

His Excellency the PRESIDENT said that :—Whenever, during a debate, honourable members hit upon an important point which met their views, they brought it forward notwithstanding that it might have been omitted from a previous Act, and it was quite permissible for the executive Government to do the same. One very important point was to try and give finality to the survey. If it was said that the survey required a certain judicial element; then let that change be made. To secure finality in this matter would be a great thing for the people.

The Honourable Mr. GIBBS :—But if we have now got to the end of the surveys and one or two of the very early ones are being revised, any people who were dissatisfied must have ceased to be so, or they would have already come into court. So we are really arguing rather about a shadow.

His Excellency the PRESIDENT :—Pardon me. I am afraid I did not make myself perfectly clear to the Council. I thought I had made it quite clearly understood that the survey would always be going on. It is like “The king is dead; long live the king;” no sooner is one survey finished than another commences.

The Honourable Mr. GIBBS :—I understand it is merely a revision of the old survey, and that the boundaries already fixed will not be interfered with, unless due cause for interference is shown, and the boundaries of fields have not been settled.

His Excellency the PRESIDENT :—I understand Mr. Rogers to say that when the surveys are revised the boundaries are altered if necessary.

The Honourable Mr. ROGERS :—Yes, where it is found necessary they are altered.

The Honourable Mr. GIBBS :—Then the suggestion is to make a new law to say that the decisions of survey officers in disputes between private individuals as to the boundaries between their holdings shall be final. It has not been so hitherto.

His Excellency the PRESIDENT :—What I submit is that if honourable members opposite are entitled now to urge any improvement they may see fit, we are entitled to do that also.

The Honourable Mr. GIBBS :—It will be a new law. If we consider it as a new law to be now introduced, it comes before us in another manner; but if we consider that we are merely codifying the law, and part of the existing Act has slipped out from the code—

His Excellency the PRESIDENT :—But we are not merely codifying.

The Honourable Mr. GIBBS :—No, there is new law introduced, as in the case of the Burmah section and the *onus probandi* section; a good deal at the end is all new law.

His Excellency the PRESIDENT :—Well, it is a pity to lose the opportunity of considering this matter. I would not ask the Council to come to a decision at this sitting, but at a future sitting it should be considered whether we should not take opportunity to make these surveys final. The law would not be retrospective.

The Honourable the ADVOCATE GENERAL :—No, it would not be retrospective.

His Excellency the PRESIDENT :—That is a perfect answer to the Honourable Mr. Mandlik's objection. I think it would be unfair to give retrospectively a finality to survey proceedings which were not taken on the understanding that they were final, because so long as people believed their own private rights were not affected, they would not take the extreme trouble to see the boundaries settled properly that they would take if they clearly understood it was so, and that the decisions were final. That is the reason why the legislatures in all parts of India decline to give retrospective finality; but this argument falls to the ground if the finality is made prospective only. If the Council decide that the surveys shall in future be made final, the Advocate General might advise us to include clauses which would empower the survey officers to refer matters in dispute to a civil court. That has been often done on the other side of India. There may be cases in which the survey officers will find the settlement of boundaries involves some very awkward question. Or it might be said that if either party object to the boundary mark fixed by the survey



officer they must bring a civil suit within a stated time, and if they failed to do so then the decision would become final. In the case of a matter being referred to a civil court, the decision of that court would be final.

The Honourable MR. GIBBS :—I am quite prepared to consent to it as a new law.

His Excellency the PRESIDENT :—It is very desirable to have these matters brought to a final settlement at the time the survey is made. When questions of boundaries are now taken to a civil court, the court does not know what to do; the only way is for the judge to go to the spot and see for himself, and it is obvious what an advantage it would be to have the survey officers present at the inquiry, when every argument on both sides could be fairly inquired into. It is a golden opportunity to do a great good.

The Honourable VISHVANATH NARAYAN MANDLIK :—The law throughout has been, and has been worked, up to the present time, so that what the survey has determined has been only for the preparation of its own records, and the land proprietors, as amongst themselves, have always had the ordinary civil tribunals into which to carry their disputes as to proprietary titles; and in this Presidency, where our revenue courts have been almost finally done away with by Act II. of 1866, there is hardly any sort of machinery for deciding points of right as between the parties, except by resort to the civil courts. Even in possessory suits, the ordinary civil courts have concurrent jurisdiction with the Mám-lat-dárs, who are the only officers in the Revenue Department now who have cognizance of possessory suits.

His Excellency the PRESIDENT :—This would only carry finality so far as the rights of holders are affected by the boundaries. There may be many disputes about titles to land in which there is no boundary question at all. The honourable member speaks as if making the decision of boundary disputes final would affect the jurisdiction of the civil courts, to decide all cases regarding the title of land. I explain that it would not have that effect.

The Honourable VISHVANATH NARAYAN MANDLIK :—The proviso which I wish to have inserted states that “the determination of any boundary under this section shall not debar any one claiming any right in the land from any legal remedy he would otherwise have for dispossession.” That is all the question, and refers to the title of land; and the question before the High Court was precisely this. The term “boundary dispute,” as used in the Survey Act, means a contention between two neighbouring land proprietors. After the functions of the survey officers have ceased in a district, the Collector is the proper person to determine disputes as to boundaries; but where a landowner seeks to recover from the owner of neighbouring land, ground usurped or encroached upon by him, he must file a suit in a civil court. The determination of the Collector as to the proper position of the boundary-marks withdraws no rights of possession, although it affords valuable evidence as to the rights of the parties.

The Honourable the ADVOCATE GENERAL :—Would there be any difficulty in inserting a clause to the effect that the survey should be considered final unless disputed within five years after the passing of this Act, so as to give parties not satisfied with the present surveys an opportunity of raising the question within a limited period?

The Honourable VISHVANATH NARAYAN MANDLIK :—I do not speak of them as boundaries. No one can disturb the boundaries: but they do not interfere with the rights of private property.

The Honourable the ADVOCATE GENERAL :—But a man may say “ my neighbour has a piece of my land in his field,” and the question is whether there are still many of such disputed cases, or whether there will be no harm in saying the boundaries shall be final.

The Honourable VISHVANATH NARAYAN MANDLIK :—I know, as a matter of fact, that there are numerous disputes.

His Excellency the PRESIDENT :—The honourable member declares that there are many disputes.

The Honourable Mr. RAVENSCROFT :—There are cases, but in my experience they are very rare.

The Honourable Mr. ROGERS :—In my experience also.

The Honourable Mr. GIBBS :—Yes, the honourable member's experience is confined to Guzerat ; but I think as the Honourable Rao Saheb comes from Ratnágiri, the hot-bed of disputes of this nature, he will know more about them than anyone else.

The Honourable VISHVANATH NARAYAN MANDLIK :—It is always the case that there are many disputes in a country which is overcrowded, and where there is less land than the people require.

His Excellency the PRESIDENT :—Of course, the finality of the decision as to boundary marks would not affect the jurisdiction of the courts in cases where there is no boundary dispute at all,—where the question is whether a certain man is the right person to succeed, or anything of that kind. Private rights, in so far as the boundaries are concerned, only would be finally decided by the survey. My honourable friend appears to mix up the two things, which really are quite distinct. It is a very important matter, and suppose we reserve the point and let this section stand over.

This course was agreed to, and the consideration of the section was postponed.

The consideration of Section 204A, which has reference to the same point, was deferred also.

The Honourable VISHVANATH NARAYAN MANDLIK said that there was a limit to which some of the district officers had objected, and he had some remarks to offer on that point and connected with the Section 204A., which had been postponed.

His Excellency the PRESIDENT :—But it may be a good thing to have all the honourable members' observations and arguments stated together.

The Honourable VISHVANATH NARAYAN MANDLIK said he referred to opinions expressed by district officers in obedience to an order of Government, and which were noted on the second draft of the Bill.

His Excellency the PRESIDENT :—Were they communicated to the Council ?

The Honourable VISHVANATH NARAYAN MANDLIK :—They were communicated to the Council and laid before us.

His Excellency the PRESIDENT :—Will the honourable member quote them ?

The Honourable VISHVANATH NARAYAN MANDLIK :—If we are going to postpone the consideration, may I not do it at a future time ?

His Excellency the PRESIDENT :—Had you not better do it now ? Then we shall have all your remarks reported and shall be able to consider them. As I understand, we have only heard part of your argument. Why not have the whole of it at once ? It will then

be before the Council, and at the further consideration of the sections we shall be able to refer to it.

The Honourable VISHVANATH NARAYAN MANDLIK :—I do not now refer so much to a point on which I differ from the Select Committee, but rather to some remarks of the district officers on the record, to the effect that the finality of the proceedings should not be completed until a certain period has expired. Some officers are of opinion that the time should be undefined, and others consider that it should be two years or less.

His Excellency the PRESIDENT :—But it will be far better that the whole case should be before the Council. If we can have the benefit of the whole argument at once, it will be advantageous. Who said two years ?

The Honourable VISHVANATH NARAYAN MANDLIK :—Colonel Francis said two years, and Colonel Taverner said it should be extended or left undefined. What I would say is that it should be two years, but that in special cases it should be left open to the Government to direct that a dispute of this kind may, by special order, be opened after the two years have expired.

His Excellency the PRESIDENT :—Have you sufficiently read Colonel Francis' or Colonel Taverner's opinion ?

The Honourable VISHVANATH NARAYAN MANDLIK :—They are only summarized here ; I think the original letters must be in the Legislative Department.

The Honourable Mr. GIBBS :—Your Excellency is perhaps not aware that there were two or three drafts of the code put together by certain officers, and one was printed, and in the margin the opinions of the different officers were summarized. I think the majority of the Select Committee agreed with Colonel Taverner that the time should be left undefined.

His Excellency the PRESIDENT :—Do I understand that we have the whole of the Honourable Mr. Mandlik's opinion before us ?

The Honourable VISHVANATH NARAYAN MANDLIK :—Yes, upon this question.

His Excellency the PRESIDENT :—Then I understand you would like to render these cases disputable up to a period of two years ?

The Honourable VISHVANATH NARAYAN MANDLIK :—In regard to village boundaries.

His Excellency the President :—And in regard to field boundaries ?

The Honourable VISHVANATH NARAYAN MANDLIK :—In regard to field boundaries I should wish to have no finality at all. In other cases I think there should be no finality up to two years, and that thereafter, on due cause being shown, power may be left in the hands of the executive Government to re-open them if they see fit.

His Excellency the PRESIDENT :—Do these opinions of Colonel Francis and Colonel Taverner refer to village boundaries ?

The Honourable Mr. GIBBS :—To any boundaries.

The Honourable VISHVANATH NARAYAN MANDLIK :—I should like to have the letters themselves.

The Honourable Mr. ROGERS said :—The time was left undefined by the Select Committee on purpose. In Section 280, regarding appeals, it is left to the Governor and to "revenue officers not inferior in rank to a Collector or Superintendent of Survey."

There was no further discussion upon this point.

With regard to Section 205, the Honourable VISHVANATH NARAYAN MANDLIK said he objected to the omission of the word "owner." In the existing law the words were "owner or occupant," and here the term used was "landholders."

The Honourable Mr. ROGERS :—But does that interfere with any person's right at all?

The Honourable VISHVANATH NARAYAN MANDLIK :—Questions have been raised, and the High Court have declared the existence of proprietary rights in land as opposed to another class of lands, namely, Government lands, and, therefore, it is of the greatest importance that where the word "owner" occurs in the existing law, it should be retained.

The Honourable Mr. ROGERS :—"Holder" would include "owner."

The Honourable VISHVANATH NARAYAN MANDLIK :—It would, or it would not; but we have the word "owner" at present, and why not retain it?

His Excellency the PRESIDENT :—I think the section is all right. You see the word "holder" is defined by clause (20) of the Interpretation Section. That clause says :—

"'Holder' or 'landholder' signifies the person in whom a right to hold land is vested, whether solely on his own account, or wholly, or partly in trust for another person, or for a class of persons, or for the public. It includes a mortgagee vested with a right to possession."

The Honourable Mr. ROGERS :—The word "owner" has been deliberately omitted.

The Honourable VISHVANATH NARAYAN MANDLIK said :—The term "owners or occupants" appeared in the present Act, and had been used by the High Courts in their decisions, and he thought the words should be retained.

His Excellency the PRESIDENT :—What does the Honourable Mover say?

The Honourable Mr. ROGERS :—I say it makes no difference to the private rights of the parties at all. "Landholders" includes all owners.

The Honourable the ADVOCATE GENERAL :—As far as I understand, it does not interfere with any rights; but we merely use the word "landholders" instead of "owners or occupants."

His Excellency the PRESIDENT :—The object of the section is to compel the man in possession to keep up the boundary marks; and if you do not use the term "holders" there may possibly be some mistake as to whether he is the owner or occupant.

The Honourable VISHVANATH NARAYAN MANDLIK :—We might say "landholders or owners."

The Honourable Mr. GIBBS :—But "landholder" is described to include "owner," and we do not need to multiply words in the Act.

His Excellency the PRESIDENT :—If the honourable member has "owner" inserted, it will facilitate his argument when he comes to the definitions.

The Honourable VISHVANATH NARAYAN MANDLIK :—I do not want "owner" to be defined. It was not defined in the Survey Act, and it was used deliberately.

The Honourable Mr. ROGERS :—If it is used, it should be defined.

The Honourable VISHVANATH NARAYAN MANDLIK :—I have no objection to its being defined in any way the Council may think proper; but, if the Honourable Mover says it has been deliberately omitted, I beg to move that it be inserted.

The Honourable Mr. GIBBS :—There was a great argument whether we should use the same words in the Bill as in the existing law, and I think the Legal Remembrancer was asked to define “owner,” but preferred not to do so, it being rather difficult to define every kind of owner.

His Excellency the PRESIDENT asked the Honourable Mr. Mandlik whether he wished to divide the Council on the point. His Excellency stated that he should vote with the Honourable Mover of the Bill. If the honourable member liked, he would put the question to the Council.

The Honourable VISHVANATH NARAYAN MANDLIK said :—The Council has already reserved decision of a similar point in connection with another section, and perhaps this had better be deferred also.

The question was accordingly postponed, consideration of other sections in which the word “holder” is used being also deferred.

When Chapter X. was reached, the Honourable VISHVANATH NARAYAN MANDLIK said :—He might mention in regard to this chapter that it was a subject which was much discussed in—and upon which there had been considerable difference of opinion amongst the members of the Select Committee; and he had understood the city surveys to be agreed to, provided that—

His Excellency the PRESIDENT :—To which section do you refer ?

The Honourable VISHVANATH NARAYAN MANDLIK :—I am speaking of Chapter X. generally, because I think it will facilitate matters if I take up the subject at once and go through it so that it need not be taken up piecemeal afterwards. This subject came before the Select Committee for the first time as a new project of law to be introduced into this Code, because by a series of rulings by the judges both of the late Sudder Court and of the High Court it had been decided that Regulation XVII. of 1827 was not applicable to village sites and towns sites. The subject came before this Council first in 1868, and a law was passed (Act IV. of 1868) giving Government the power to make the revenue regulations applicable to towns and cities to which they wished these regulations to be extended, under certain restrictions. The tenth chapter now proposed to be included in this Code was a new project, and I was led to understand that although the law gave Government the power of extending the survey to all villages and towns in the Presidency, it would be worked in such a manner as not to inflict hardship upon the people concerned. I say this in reference to certain sections which we shall presently have to consider. In some towns the people have to pay certain fees, and then arrangements are made for the survey of their sites. The question was in regard to exemptions from the payment of land revenue, which question was determined by the Council in 1868 by limiting the period of enjoyment to five years, that is to say, if a landholder or “owner,” as I would call him, had been in possession of a house site for five years without paying anything, that fact was sufficient to entitle him and his holding to exemption from the payment of Government revenue on account of that site hereafter. As a compromise, seeing that it was intended for the benefit of the people to introduce the provisions of Act IV. of 1868 into all towns and villages, I assented; it being understood and agreed by the members of the Select Committee, with the exception of Mr. Rogers and Colonel Anderson only, that possession for five years was to entitle to exemption. By Chapter X. of the Bill as at present drafted, I now find that the Inam Acts are to be applied to the determination of such questions. Now these town and village sites have always been property of a very peculiar character,

and even the most advanced political economists have always made a distinction between a house site and any other kind of landed property, whether agricultural fields, or gardens, or any other description of property whatever. A house is something upon which a man lays out very large sums of money—perhaps in some cases out of proportion to his real means—but in so doing he makes a provision for himself and posterity to the best of his means and judgment. All these sites have been, as a matter of fact, up to this time, free from taxation throughout this Presidency. When the Select Committee came to consider this question, circulars were addressed to various Collectors inviting opinions, with the result that throughout the Maratha districts the Collectors reported in favour of the opinion I have always held, and which I then stated to the Select Committee, that this description of property had always been considered to belong to the people, and had been held free of taxation.

The Honourable Mr. ROGERS questioned the accuracy of the statement as to the Collectors' opinions.

The Honourable VISHVANATH NARAYAN MANDLIK said he had quoted from the summary of the opinions printed and laid before the Select Committee.

The Honourable Mr. ROGERS :—I do not agree to that summary as accurately representing the opinions of the Collectors.

The Honourable VISHVANATH NARAYAN MANDLIK :—I am merely alluding to the document that was laid before us. I am prepared to uphold, and I think to verify my opinion before a Committee of this Council or any other Committee that might be appointed by Government. I said then, and I say now, that in regard to these house sites, no attempt should be made to have any inquisitorial proceedings as to title; and all the provisions of the Act of 1868, if we are going to extend that Act throughout the Presidency, ought to be made applicable to the whole Presidency. If there was a reason why in 1868 the Council should adopt the limit of five years as the period of enjoyment to entitle a man to exemption from a tax on his house site in certain towns or cities to which the law was then applied, there is no reason why the same rule should not now be held to be applicable, as well as the other provisions of the Act, throughout the Presidency. No doubt the Honourable Mr. Rogers stated very strongly with regard to Guzerat that he was of opinion there was a different state of things there; and on that understanding a clause was introduced (which also has been removed from the present draft of the Bill) making a special provision in regard to the Guzerat districts. As regards the character of house property, it is held to be property of a very sacred description throughout this Presidency, and I have no doubt, throughout the rest of India also; but in the Maratha country particularly, *gharband*, or house site has never been taxed by the State, and I would request the Council to take this matter into very serious consideration. Why are we now to go beyond the law of 1868, when the question was deliberately discussed? And if surveys of certain large towns have been conducted satisfactorily under the Act of 1868, and there has been no complaint, why are we now to introduce the Inam Act of 1852 and the Summary Settlement Acts of 1863 for investigation into sites in all towns and villages? Proof of possession will have to extend over a period of 60 years; very difficult and intricate inquiries will have to be instituted, and for what? The effect will be to disturb the relations of Government with its subjects in a manner in which they ought not to be lightly disturbed. As the Government adopted a certain line of policy in 1868, that ought not now to be disturbed. I may say that I

assented to Chapter X. with a few exceptions, on the understanding that the five years' limit was to be preserved; but if that is to be omitted, I shall feel it my duty to oppose this chapter being included at all in the Revenue Code.

His Excellency the PRESIDENT:—May I ask the honourable member what he thinks the effect would be of applying the Inam Act and the Summary Settlement Acts to all towns and villages in this Presidency?

The Honourable VISHVANATH NARAYAN MANDLIK:—That whereas people have held these sites as private property undisturbed, Government will have to institute inquiries in every village and town, and people will have to prove 60 years' undisputed possession and produce title deeds where there may be none in existence.

His Excellency the PRESIDENT:—And what would be the effect?

The Honourable VISHVANATH NARAYAN MANDLIK:—They would have to pay an assessment on properties which have hitherto been free, and their title to which has not been questioned.

His Excellency the PRESIDENT:—Their title would not be questioned.

The Honourable VISHVANATH NARAYAN MANDLIK:—Their possession would be disturbed.

The Honourable Mr. GIBBS:—They would have to pay the assessment.

His Excellency the PRESIDENT:—But their possession would not be disturbed.

The Honourable Mr. GIBBS:—It would, unless they pay the assessment.

His Excellency the PRESIDENT:—Does the honourable member think that many people would be unable to prove their title?

The Honourable VISHVANATH NARAYAN MANDLIK:—Certainly, in many cases of simple people who have no idea of the procedure of courts of law, and where the whole inquiry would be one-sided.

His Excellency the PRESIDENT:—You think, then, that most of the village sites would be assessed to land revenue?

The Honourable VISHVANATH NARAYAN MANDLIK:—They will be liable to be unfairly assessed. The first result will be to cause a large amount of annoyance to the people and heavy expense to Government; Government will have to institute a sort of investigation and inquiry in all collectorates where they wish to extend this Revenue Code.

His Excellency the PRESIDENT:—I understand you to say that all who could not prove 60 years' possession would become liable to pay land tax on their *gurband*.

The Honourable VISHVANATH NARAYAN MANDLIK:—Yes.

His Excellency the PRESIDENT:—And do you think many people would be in that predicament?

The Honourable VISHVANATH NARAYAN MANDLIK:—I think it very likely.

His Excellency the PRESIDENT:—You think many people would be unable to prove 60 years' possession?

The Honourable VISHVANATH NARAYAN MANDLIK:—I think it would be very difficult.

His Excellency the PRESIDENT:—And therefore most of them would come under the land tax?

The Honourable VISHVANATH NARAYAN MANDLIK:—Yes, and previous to that they would be exposed to much trouble and annoyance.

His Excellency the PRESIDENT:—I am sorry to hear of the trouble in meeting the inquiry, and after the inquiry they would have to pay land tax.

The Honourable VISHVANATH NARAYAN MANDLIK:—Might, and very likely would.

The Honourable Mr. GIBBS:—I understood that in the Select Committee we came to a compromise. We agreed, I remember, to the five years' clause; and I am in favour of that now.

His Excellency the PRESIDENT:—Under this section there would be a large increase of the land-revenue.

The Honourable Mr. GIBBS:—I do not think it is worth the candle.

The Honourable SORABJEE SHAPURJI BENGALI:—One-fourth of the people of Bombay even, where there is more intelligence and enlightenment than in some parts, would not be able to prove their title.

His Excellency the PRESIDENT:—Oh! yes, they would all be able to prove 60 years' possession. As I understand it, they would almost to a man prove 60 years' possession. Why, all the land in the City of Bombay was given at least 150 years ago. A man might not prove his own possession for 60 years, but he could prove that he got his land from so and so, who in turn had it from so and so,—and so on.

The Honourable SORABJEE SHAPURJI BENGALI:—Many titles in Bombay are very uncertain.

His Excellency the PRESIDENT:—But any man in Bombay could prove that a particular site has been in his possession and in the hands of his predecessors for upwards of 60 years.

The Honourable Mr. RAVENSCROFT:—I have no doubt that the great majority of the house-owners in Bombay could.

The Honourable the ADVOCATE GENERAL said he did not think the Honourable Mr. Mandlik had quite stated all the circumstances of the case. A man must not only prove possession for 60 years, but that possession must be under a certain tenure.

The Honourable VISHVANATH NARAYAN MANDLIK:—Yes, that is one thing I forgot to mention. The possession must be proved to be under one of the particular tenures which entitle a man to claim exemption.

The Honourable the ADVOCATE GENERAL:—Yes, that is most material.

His Excellency the PRESIDENT:—I think the Honourable Mr. Mandlik ought to thank the Honourable the Advocate General for the suggestion, because that makes a great difference in his case. I think the people of Bombay could prove the 60 years' possession, but whether they could all prove the required tenure may be doubtful.

The Honourable VISHVANATH NARAYAN MANDLIK:—I know the register in the Collector's Office in Bombay is now so defective that very great difficulty is experienced in the Collector making transfers of property to people who purchase. I had an example in respect to some property which I purchased a few weeks ago, and which the Collector would not transfer to me until one or two other transfers were made.]

The Honourable Mr. ROGERS:—The Honourable Rao Saheb has made a great point that the Council in 1868 laid down that five years' possession should be a sufficient title to exemption in city surveys, and he accordingly wishes that period of limitation to be applied to village sites. I think if honourable members read through the report of the proceedings of the Council at that time (in 1868) they will find the word "villages" was not mentioned throughout the discussion. The fact is, that village lands and town lands have



always been held to be entirely different cases. I have insisted on the circumstances of Guzerat throughout, because I am particularly acquainted with that district; and since the opinions of the Collectors have been given, I equally insist on the circumstances of the whole of the Deccan and other parts of the country being very similar. I consider that what I have found to be the case in Guzerat is the case throughout the country, viz., that village sites entirely differ from town sites. The town sites are the private property of the owners, but village sites were originally given in connection with the cultivation of the land. A man coming to settle in a village had not only land given to him to cultivate, but also a site to build his house on: the one was connected with the other; and so far is this the case, that even now, in certain villages that are held on *quasi* proprietary titles in Guzerat, if a man leaves the village he surrenders his house, although he has built it with his own money. On that ground I say the proprietary title to village sites belongs, and has always belonged, to Government. As I said before, this view was not, as far as I am aware, laid before the Council in 1868. I am perfectly sure that had it been, and had the question been fairly argued, they would not have attempted to extend that Act to all villages in the way in which the Honourable Rao Saheb now proposes to do. Act IV. of 1868 was only meant to be enforced under special circumstances and with the special sanction of Government; it was not a measure proposed for universal adoption throughout the country. My object is to declare the proprietary title in village sites to be the property of Government. We do not mean to interfere with them in any way, and I see no necessity for carrying out the frightfully expensive inquiry which the Honourable Rao Saheb foreshadows at all. If it should be found necessary to extend Act IV. of 1868 to villages, or to substitute the powers of this Act, then an inquiry would take place; but as long as Government does not do this, things will remain precisely as they are, and all that the Honourable Rao Saheb has tried to frighten the Council with, all the terrible annoyance and expense the people will be put to, are simply matters of his own imagining. The other point which the Honourable the Advocate-General suggested is one of very great importance. According to the custom of this country, and according to the old laws, proof of a title to property does not merely consist in possession for a certain number of years, but that must be accompanied by a title derived from a tenure which is recognized to have existed. Now the only title which can be recognized to have existed with regard to village sites is the title in connection with the land the man cultivates, and therefore you might say that, as long as a man cultivates land in the village, he has a right to a site in the village to live upon. So far we should never think of disturbing his possession at all; but if he gives up the land, then, according to the custom of the country, he must give up the site too. Our custom is not to enforce this, we do not interfere to that extent, but it is merely a matter of grace,—I mean to say that we have the right,

The Honourable Mr. GIBBS:—That is in Guzerat, but it is not so necessarily in all parts; the Collectors say it is not. I am not prepared, for instance, to say it is the same in the Maratha Country.

The Honourable Mr. ROGERS:—I think the opinions of the Collectors will bear me out.

The Honourable Mr. GIBBS thought the summary of the opinions—signed by the Chief Secretary to Government—which was before the Council, was correct. It was quite correct enough for the purposes of the Council; and unless the Honourable Mr. Rogers had the experience of the Maratha Country that he had of Guzerat, he should hesitate to accept all the honourable gentleman had told the Council,

The Honourable Mr. ROGERS :—I may mention that when this Act went before the Government of India, they objected to the provision extending the five years' exemption to villages. They wrote—"It appears to the Government of India that, while it may involve no serious injustice to the State in large cities, it is questionable whether it could, without unnecessary and unjustifiable sacrifices of public interests, be applied to all villages," &c.

The Honourable VISHVANATH NARAYAN MANDLIK :—The whole chapter may be left out. I have no objection to that.

His Excellency the PRESIDENT :—Clearly, according to that, the five years' limit could not be inserted.

The Honourable VISHVANATH NARAYAN MANDLIK :—I do not know whether Mr. Rogers has concluded. I should wish to make a proposal, if necessary.

The Honourable Mr. ROGERS :—I have merely spoken to the general principle of the question.

The Honourable VISHVANATH NARAYAN MANDLIK :—The Government of India have called the whole of this an innovation.

His Excellency the PRESIDENT :—I think they object only to the five years' limit. What I mean to say is, the Government of India do not characterize the whole chapter as an innovation. They merely characterize the insertion of a single provision as novel.

The Honourable VISHVANATH NARAYAN MANDLIK :—The Government of India say this is a codification of an existing law. What I was going to state is, that in the existing law there is no such chapter as is now proposed to be inserted in this Code.

The Honourable Mr. GIBBS :—I understood Mr. Rogers to say that as far as villages are concerned it is new. As far as I understand it we are including in the Code the Act of 1868, *plus* the extending it to villages. The High Courts have held that this regulation does not apply to villages; and therefore we are going to make a new law. That is what the Government of India say; it is not a codification, it is a new law.

The Honourable VISHVANATH NARAYAN MANDLIK :—I wish to propose that the section be framed as it was agreed to by the Select Committee, except two members, and that the existing exemption may be continued.

The Honourable the ADVOCATE GENERAL :—The essential difference is this—that in the one case villages would be exempt that have not paid assessment within the last five years, and in the other case they would be assessed unless it could be proved that they have been held wholly or partly free, under a tenure recognized by the custom of the country, for 60 years.

The Honourable VISHVANATH NARAYAN MANDLIK said he wished to propose that the draft clause agreed to by the Select Committee and printed in a previous draft of the Bill should be inserted in place of the present Clause 208 *c*.

His Excellency the President asked for the clause proposed to be substituted, and the Honourable Mr. Gibbs handed to his Excellency a copy of a previous draft of the Bill in which the clause referred to by Mr. Mandlik was printed as agreed to at that time by the Select Committee.

His Excellency the PRESIDENT :—I venture to submit to the consideration of the Council that it is not usual to refer in open debate to what was settled in Committee, unless

it is embodied in the report before the Council. It is not quite regular to allude to discussions which may have taken place within a Committee. All that can be referred to in order is the report of the Committee, or to any dissents which may have been recorded. Otherwise, it is so very difficult to know where we are. I have gathered from Mr. Gibbs that there were previous discussions.

The Honourable Mr. GIBBS :—Yes, before that draft was printed. I never saw the clause in its present form before about the 15th of May.

His Excellency the PRESIDENT :—How is the Council in possession of these sections ?

The Honourable Mr. GIBBS :—They were prepared in the Select Committee.

His Excellency the PRESIDENT :—But not approved ?

The Honourable Mr. GIBBS :—They certainly were, and this clause was altered afterwards at a meeting at which I was not present. I am only trying to set the matter shortly before the Council.

His Excellency the PRESIDENT :—We are not supposed to know what motions before the Select Committee that were not adopted were. If I may borrow a phrase from the Court of Justice, they cannot strictly be put in as evidence as to what passed before the Committee.

The Honourable Mr. GIBBS :—I merely mention that I was not present when the section as here drafted was passed.

His Excellency the PRESIDENT :—It is not a question whether the honourable member was present or not. We go by the Select Committee report.

The Honourable Mr. GIBBS :—With the saving clause as regards my honourable friends Mr. Mandlik and Mr. Rogay.

His Excellency the PRESIDENT :—I mean the clause now proposed by Mr. Mandlik could not have been finally settled. I presume it must have been discussed, but it was not agreed to apparently. It is immaterial whether it was discussed or not. The material question is—What is the amendment to be proposed ?

The Honourable Mr. Mandlik submitted the following clauses to be substituted for the present Section 108 c :—

“Section 208 c. (171).—In villages, towns, and cities to which Bombay Act I. of 1865, or Bombay Act IV. of 1868 has not been applied, the existing exemption of such lands from payment of land-revenue shall be continued if they have been held wholly or partially exempt from the payment of land-revenue for a period of not less than five years before the passing of this Act.”

“Section 208 F. (172).—Nothing in Section 208 c shall be held to affect the right of Government whenever it may appear necessary to assess to the land-revenue the building sites in all villages, not being kusbas, in the districts now known as the districts of Ahmedabad, Kaira, Broach, Surat, and the Panch Māhāls.”

His Excellency the PRESIDENT :—I understand that the Honourable Mover objects.

The Honourable Mr. ROGERS :—Decidedly; and I support the section as it now stands.

His Excellency the PRESIDENT :—It is rather important; would the Council mind this point being reserved.

The Honourable Mr. GIBBS :—I presume it had better be according to the mode in which we are proceeding.

The Honourable the ADVOCATE GENERAL :—I suppose, if there is a division now, the Council will be bound by the result.

The decision of the question was postponed.

The Honourable Mr. ROGERS said he had several amendments to propose to Section 211, which were rendered necessary by the withdrawal of the Bill to amend Act IV. of 1868.

The Honourable VISHVANATH NARAYAN MANDLIK said he had an amendment to propose in reference to the same Bill, and in regard to the arrears of *sunud* fees.

The Honourable Mr. ROGERS said he first proposed to insert after the words "any town or city containing more than two thousand inhabitants," in the 5th line, the words "into which the Bombay Municipal Act has been introduced." He next proposed to omit the words from line 12 to the end of the first paragraph, and to insert instead a clause providing that the survey fee should be payable in any town or city in which (Bombay) Act IV. of 1868 was in force before the passing of this Act; public notice being issued by the Collectors within six months after the passing of this Act, and provided that in any such town or city no survey fee shall be leviable when fee has already been paid by the landholder for a *sunud* obtained by him under Section X., Act IV. of 1868.

Mr. ROGERS said :—That would provide for a notice being issued according to the Bill as agreed to by the Select Committee, in towns into which the Act had been introduced, so as to give the people opportunity to take up *sunuds*, and it would also oblige people to pay survey fees where they had not taken up their *sunuds*, in towns like Ahmedabad. This portion of the amendments referred to the subject of the Honourable Rao Saheb's objection.

The Honourable VISHVANATH NARAYAN MANDLIK said it was very difficult to grasp impromptu amendments introduced without any notice and without any time being allowed to consider them; but as far as this section was in the terms of the Bill which had been withdrawn, and provided for compelling the payment of *sunud* fees for *sunuds* prepared under Act IV. of 1868, he opposed it. And, with reference to the proceedings of the Select Committee to which the Honourable Mover of the Bill had alluded, he might remark that he and his honourable friend Mr. Becherdas Ambaidas had dissented; but there were five members, and they were only two, and in consequence they were in a minority. His objection to the section was that all revenue Acts, in so far as they were retrospective, were objectionable, and that property would be unfairly affected by passing an Act in the year 1877 which would make leviable a new charge under an Act which was passed in 1868.

The Honourable Mr. ROGERS :—That is with regard to giving a retrospective effect.

The Honourable VISHVANATH NARAYAN MANDLIK :—It would give a retrospective effect to the Act of 1868. I think there are very grave objections in all revenue measures to legalizing retrospective charges, and on that ground, considering it as an infringement of the first principles of law, I think this Council ought not to give its sanction to making the *sunuds* compulsory. If they were not compulsory before, they ought not to be made compulsory now. As to what may be done under a different state of things, that is

another matter. But to say that a certain thing which was illegal in 1868 is to be made legal in 1877, appears to me to clash with the first principles of jurisprudence.

The Honourable BECHERDAS AMBAIDAS:—As I made my minute concurring in the Honourable Rao Saheb's dissent from the view of the majority of the Select Committee some time ago, without saying any thing, I now beg to say that I oppose the section for making the *sunuds* compulsory, because it contains a provision for levying a new tax retrospectively. If a man gets a benefit he ought gladly to pay for it, but the city surveys were first introduced in opposition to the wishes of the people, and in many cases they were so conducted that the results obtained were erroneous. That is one of the reasons why people have refused to take *sunuds*; and I do not think it is either reasonable or politic to force them upon the people, against their own wishes, when the law of 1868 clearly left it to their choice whether to accept or refuse the new *sunuds*.

The Honourable Mr. ROGERS:—With regard to the remark of the Honourable Mr. Mandlik and the Honourable Mr. Becherdas, I beg to state that I think there can be no doubt whatever that, when the Act of 1868 was passed, the intention of the Legislature was to make the taking out of *sunuds* compulsory; but there was some flaw in the wording of the Act, and on cases being taken to the High Court, it was decided that according to the strict wording of the Act the taking out of *sunuds* was not compulsory. "A great deal of correspondence ensued," and it was finally settled by the Executive Government that in place of making the taking out of *sunuds* compulsory, there should be a survey fee levied where the Act was introduced, to assist Government in paying the expenses. As to Ahmedabad, in which town the Honourable Mr. Bechardas is particularly interested, I admit that to some extent there may have been mistakes in the measurements; but still they have been corrected; and where *sunuds* have been issued it has been after most careful inquiry. I do not see why, when Government are undertaking the expense of surveying Ahmedabad, and people can obtain accurate *sunuds*, they should not pay the survey fee the same as other people whose towns are surveyed.

His Excellency the PRESIDENT:—Does the Honourable Mr. Mandlik object to the levying of fees or the taking out of *sunuds*? If there is to be no charge, how is the survey to be made?

The Honourable VISHVANATH NARAYAN MANDLIK:—I do not object either to the *sunuds* or the payment of fees from the date at which it may now be legalized. What I object to is to the Act of 1877, making legal payments, which were not legal before.

His Excellency the PRESIDENT:—All that it is proposed to say is that if a man did not pay last year he must pay this year. There is nothing very wonderful in that. Supposing the Legislature intended to catch a man the year before last, and found the law not quite strong enough, they may make a fresh law which will catch him, if they are justified in levying a fee at all.

The Honourable VISHVANATH NARAYAN MANDLIK:—All I say is that the Legislature should not, by passing a retrospective law, make fees payable which were previously not payable for as far back as nine years. As for what the intention of the Legislature may have been in 1868, the Honourable Mr. Rogers knows that their intention must be judged from the Act.

The Honourable Mr. ROGERS:—It is proposed that notice should be given.

The Honourable VISHVANATH NARAYAN MANDLIK:—That does not mend the matter at all.

His Excellency the PRESIDENT :—Suppose an Act was passed with a flaw in it, and was amended the following year, and the fees made leviable then.

The Honourable VISHVANATH NARAYAN MANDLIK :—I should not object to that. The circumstances would be different.

His Excellency the PRESIDENT :—But the retrospective principle would be the same.

The Honourable VISHVANATH NARAYAN MANDLIK :—No. Take the case of Act XII. of 1863 being passed to make Act III. of 1863 retrospectively applicable. In that case it was well known there had been a mistake made, and it was rectified. The Act of 1868, however, makes it optional to take out *sunuds* or not; and a man may consider it a questionable benefit and refuse to pay the fees; and if he is justified by the law of 1868, I submit that nine years is a long time afterwards to alter the principle of the Legislature in that respect.

His Excellency the PRESIDENT :—If a survey of a city has been made with a view to benefit the people, all it amounts to is, that now they will be made liable to pay for the benefit. There is nothing contrary to the principles of jurisprudence in that. It might be said rather a long time intervenes between the mistake and the correction.

The Honourable Mr. Rogers :—In the case of Ahmedabad the survey was not even finished yet.

His Excellency the PRESIDENT :—I suppose if there is a survey of the city the people must pay for it. How does the Honourable Mr. Mandlik propose that it should be paid for?

The Honourable VISHVANATH NARAYAN MANDLIK :—I say if there is to be a survey instituted now under certain conditions, those conditions ought to be observed—but old laws ought not to be lightly altered in this manner. Supposing, for instance, an assessment was levied on certain lands, under certain rules, in 1850, surely it cannot be said that that may be altered by an enactment passed in 1877; and the principle is the same. What may be done in the case of Rs. 2 may be done in regard to Rs. 200; there is a fine of Rs. 5 made payable by each holder, and there may be 5,000 holders.

The Honourable Mr. ROGERS :—Do you call it a fine?

The Honourable VISHVANATH NARAYAN MANDLIK :—If it was introduced against my wish. All these things are to be judged by proper standards. A payment may not be a fine if I assent to it, but it may be a very heavy fine if I do not assent to it.

His Excellency the PRESIDENT :—You could not say every payment made without the assent of the payer is a fine. The majority of the Committee appear to have been in favour of this provision.

The Honourable VISHVANATH NARAYAN MANDLIK :—No doubt they are. What is a fine is well known to be merely a punishment for an invasion of the law, imposed by sovereign authority.

The Honourable the ADVOCATE GENERAL said :—The section in the existing Act was Section X., which provided that “the Collector, after inquiry, shall grant a *sunud* or *sunuds*,” and Government were advised that according to the wording of the section they could not issue *sunuds* save on the application of the holder, and therefore the *sunud*-fee could not be recoverable.

His Excellency the PRESIDENT suggested that the amendment had better be printed and circulated to each member, and the point reserved for decision at a future meeting.

This course was agreed to.

In regard to Section 212 the Honourable VISHVANATH NARAYAN MANDLIK said:—There was a decision of the High Court which stated that the fine therein provided, according to the wording of the existing Act, should only be levied in reference to Government lands under the Survey Act.

The Honourable Mr. GIBES:—If I understand the decision rightly, it is exactly contrary to what this section, as drafted, provides. If we do not accept the High Court's decision, then we may pass this section.

His Excellency the PRESIDENT:—The decision referred to, I suppose, is an exposition of the law as it stands. The Council are now framing a new law.

The Honourable VISHVANATH NARAYAN MANDLIK:—Codifying.

His Excellency the PRESIDENT:—Codifying and amending.

The Honourable VISHVANATH NARAYAN MANDLIK:—Yes, but if an amendment proposed derogates at all from the rights of private property—

His Excellency the PRESIDENT:—What I mean is, that this decision is not binding on the Legislature. We are not considering what the law is, but what the law ought to be. The functions of the High Court are more limited than in the case of the Council.

The Honourable Mr. ROGERS:—May I be allowed to observe that this section is Section 7 of Act IV. of 1868, as it at present stands.

The Honourable VISHVANATH NARAYAN MANDLIK said the point was in regard to the appropriation of private agricultural land; if it was the property of individuals, it was not liable to be punished by a fine.

His Excellency the PRESIDENT:—What is the alteration the Honourable Member wishes to have made?

The Honourable VISHVANATH NARAYAN MANDLIK:—I would insert the word "Government," so that the section may read—"if any *Government* land within the site of any village, town, or city," &c.

His Excellency the PRESIDENT:—I suppose if there is a cultivated field and a man chooses to build a house upon it, he must pay a certain assessment.

The Honourable VISHVANATH NARAYAN MANDLIK:—But according to this section he must pay something more than that.

His Excellency the PRESIDENT suggested that the Honourable Mr. Mandlik should draft an amendment, which should be printed and circulated, and discussed at a future meeting.

The point was accordingly reserved.

In regard to Section 212A, the Honourable Mr. ROGERS said:—It had been inserted for the purpose of giving some kind of effect to the settlement of titles to house property by the officers employed under Act IV. of 1868. It had been found that persons would not take out summonses for 6, 7, or 8 years, and would then suddenly come forward to dispute a settlement, having been engaged in preparing false evidence all that time.

The Honourable VISHVANATH NARAYAN MANDLIK said he did not object to the section, but he did not think any cases were brought to the notice of the Select Committee. He accepted it because there ought to be some limit to every litigation. He did not know, however, that any false cases had been set up under the Act.

The Honourable Mr. ROGERS :—There is the opportunity.

The section was passed.

The Honourable Mr. ROGERS said that Section 224A was the one he had particularly referred to when he mentioned that in one of the courts of Surat it was held that until an instalment became due the Government could not demand their revenue. The object of this section was to give Government the right to demand payment of their revenue notwithstanding that the instalments may not have fallen due.

There was no objection stated, and the section was passed.

The Honourable Mr. ROGERS stated that Section 224F was new, and had been inserted for the purpose of providing for cases, particularly in the Ahmedabad Collectorate, where sharers disputed amongst each other in such a way that the collection of the revenue could not be effected. The object was to give power to the Collector to attach a village, or share of a village, temporarily, for the collection of the revenue, without prejudice to the rights of individuals.

The section was passed.

The Honourable Mr. GIBBS, in reference to Section 237B, said here was a question whether the Bombay Revenue Jurisdiction Bill would affect this section.

His Excellency the PRESIDENT :—A note should be made of that point.

In regard to Section 237G, the Honourable VISHVANATH NARAYAN MANDLIK said he had raised an objection in the Select Committee in reference to the last clause of this section, that if a village was attached simply on account of arrears of revenue and the owners applied for restoration, according to the present practice, there was no reason why he should not, in addition to the surplus proceeds of one year have also the surplus of the previous years. The answer he had received was that it was the custom; and his reply to that was that such a custom would be "more honoured in the breach than in the observance." The Council were asked to pass a new law limiting the right of restoration to 12 years, whereas formerly a man could ask to be reinstated after 30 years; and if they were going to limit the right of restoration they might well consent to the return of the surplus, if any, of all the years of the attachment.

His Excellency the PRESIDENT :—What does the Honourable Mover say ?

The Honourable Mr. ROGERS :—It depends a good deal upon what tenures is considered free. If a tenure is considered proprietary, the holder would have a right to all the surplus receipts refunded.

His Excellency the PRESIDENT :—But does not this section as worded apply to all cases ?

The Honourable VISHVANATH NARAYAN MANDLIK :—Yes, Mr. Rogers' observations led me to make my remarks general, or I should at once have referred to Khoté villages; and though I may be an Inamdar as well as a Khoté, I am a British subject and have a right to protect the rights of other British subjects. The Government have been pleased to restore villages and the surplus proceeds even after 30 or 40 years' attachment, and what is the use of keeping such a solecism as this provision about the one year's proceeds if we are going to limit the right of restoration to 12 years.

His Excellency the PRESIDENT :—Could a man claim 50 years' arrears ?

The Honourable VISHVANATH NARAYAN MANDLIK :—I am told that Government, as a matter of grace, have returned such arrears.



His Excellency the PRESIDENT :—That must have been a great exercise of grace.

The Honourable Mr. ROGERS :—There are cases in dispute though.

The Honourable the ADVOCATE GENERAL :—I believe there was a decision by the High Court in the case of Khote villages in which Government withheld the arrears.

The Honourable VISHVANATH NARAYAN MANDLIK :—That was a judgment of Sir Joseph Arnould's against which a good deal might be said.

The Honourable the ADVOCATE GENERAL :—It has been before Sir Richard Couch and confirmed.

The Honourable VISHVANATH NARAYAN MANDLIK :—But we are not considering the case of the Khotes now.

The Honourable Mr. GIBBS :—No, this is a general law.

His Excellency the PRESIDENT :—This section applies, apparently, to all landholders, whether they are Khotes or not.

The Honourable Mr. ROGERS :—As it stands it merely leaves matters at the disposal of Government, and previous experience shows that Government are not disposed to deal hardly. In the great majority of cases the whole surplus proceeds have been given back, and I believe it is only in the case of Khote villages that the right is disputed.

The Honourable VISHVANATH NARAYAN MANDLIK :—I would beg leave to mention in reference to the class of landholders of whom I am nominally one, though I have comparatively very little pecuniary interest,—I mean the class of Khotes—that I think it behoves the members of this Council to consider, that when they have passed Acts to relieve the property of insolvent holders like those of Broach, Ahmedabad, and Sind, they should take into account those people who have brought the arid district of Ratnagiri, where there was not a high road until about 12 years ago connecting it with Tanna, to its present condition. These are the men whose claims are under the consideration of Government.

His Excellency the PRESIDENT :—Have there been great improvements in the cultivation of the Ratnagiri district ?

The Honourable VISHVANATH NARAYAN MANDLIK :—Yes, and those improvements have been due to the Khotes ; and if this section refers to a class of landholders such as the talukdars who have become insolvent, the Government should be indulgent to more deserving people.

His Excellency the PRESIDENT :—But the Khotes are not insolvent.

The Honourable VISHVANATH NARAYAN MANDLIK :—I should say that the man who holds himself solvent and respectable is more deserving of indulgence than one who has a halter round his neck.

The question then dropped.

In regard to Section 251, the Honourable VISHVANATH NARAYAN MANDLIK suggested that a clause should be inserted providing that sales should be registered. Cases were always turning up in one shape or another at the High Court.

The Honourable Mr. ROGERS :—At whose cost ? Some one would have to pay for the registration.

The Honourable VISHVANATH NARAYAN MANDLIK :—The purchaser should pay.

The Honourable Mr. ROGERS :—Has this Council power to insert a clause of that kind ? Would it not interfere with the Registration Act ?

The Honourable Mr. GIBBS :—We should only be obliging a person to take advantage of the Registration Act. The clause would not affect the Registration Act.

The Honourable the ADVOCATE GENERAL thought the section would be trenching on the Evidence Act and also on the Registration Act. He proposed that the words “and such certificate shall be conclusive evidence of a valid transfer of such occupancy or alienated holding,” which occurred at the end of the section, should be struck out; and then the law might be left to take its course.

His Excellency the PRESIDENT :—Yes, or our Act might be disallowed.

The amendment proposed by the Honourable the Advocate General was adopted, and the concluding portion of the section, after the word “refers,” in 13th line, was struck out.

The Honourable Mr. GIBBS said he believed the Select Committee had intended that before Section 264 there should be a subsidiary heading of “FORMAL INQUIRY” to catch the eye of those who might wish to know what a “formal inquiry” meant; and also that before Section 266 there should be another sub-heading of “SUMMARY INQUIRY.”

It was decided that these should be inserted.

The end of the Bill having been reached, the Honourable Mr. ROGERS said he had a suggestion to make with regard to Schedule A, containing the list of existing Acts to be repealed. Act XI. of 1852 ought not be included in the list. It was settled in the Select Committee that it had better not be interfered with, as there were so few settlements remaining to be carried out. He therefore proposed that it should be struck out of the list. He also proposed that in the case of Act I. of 1865, in addition to “the whole Act” there should be inserted “except Sections 37 and 38” which referred to the Khote villages, those villages being separately under consideration.

Act XI. of 1852 was accordingly struck out from Schedule A, and in the last column of this Schedule, opposite Act I. of 1865, and after the words “the whole Act,” were inserted the words “except Sections 37 and 38.”

The Honourable Mr. GIBBS :—We have now Chapters 6, 6-A, 6-B, and 8 to go through; and those chapters in which a great many objections occur.

The Honourable Mr. MANDLIK :—Yes, many sections have been embodied in this Code, especially in chapter 6, to which I object. They are entirely new law.

The Honourable the ADVOCATE GENERAL :—There is a good deal in chapter 6 which affects the site question, and will depend on its decision.

His Excellency the PRESIDENT :—Then the question is what are we to proceed with next. Would it be best to have the questions argued out about the definitions.

The Honourable VISHVANATH NARAYAN MANDLIK :—I should certainly propose an adjournment for at least a week.

His Excellency the PRESIDENT :—Would you mind telling me which are the sections of chapter 6 to which your objections apply. I understand the objection regarding occupants and owners, and also that referring to alienated lands.

The Honourable VISHVANATH NARAYAN MANDLIK said his objections would apply to Sections 106, 107, 110, 115, 117, 118 to 121, 119, 120, 120-A, 123, 123-A, 123-B, 123-D, 123-E, 124. He added that his objection to Section 124 was as to the appropriation of land for

the purposes of agriculture. His contention was that if a man was the owner of a piece of land he could do as he liked with it; if he was simply an occupant, he might be restricted in the terms which governed his occupancy.

His Excellency the PRESIDENT:—What is the exact point? Suppose a man builds a house upon cultivated land, the question then arises at what rate he is to pay for it.

The Honourable VISHVANATH NARAYAN MANDLIK:—He pays at the rate at which the land is assessed until it is altered at the next survey settlement, if the land is his property.

The Honourable Mr. ROGERS:—By rules that have been passed by the Executive Government, houses that have been built on Government land have an extra assessment put on them.

The Honourable Mr. GIBBS:—If it is Government land the assessment changes, but if the holder has a tenure which gives proprietorship he can do as he likes with his land without extra assessment.

His Excellency the PRESIDENT:—I understand the honourable gentleman to say that if the land is *miras* the owner can build upon it without paying extra; but if it is not *miras* he must pay extra.

The Honourable Mr. ROGERS:—I acknowledge that if we use the terms “alienated lands.”

The Honourable VISHVANATH NARAYAN MANDLIK:—And so we get round again to the question of alienations—If *miras* is private property.

The Honourable Mr. ROGERS:—There is no such thing as *miras* in the survey records. It is merged in some superior definition under Act I. of 1865.

The Honourable Mr. GIBBS:—It is not used in Guzerat, but in the Deccan it is. I have decided several cases.

The Honourable VISHVANATH NARAYAN MANDLIK:—I should like to see the definition in which it is merged.

The Honourable Mr. ROGERS:—We do not acknowledge *miras*. In our revenue books *miras* does not appear.

His Excellency the PRESIDENT:—Does the High Court use it? Are counsel called to order for using it?

The Honourable the ADVOCATE-GENERAL:—I am afraid counsel use it, and the Chief Justice has used it in his decisions.

The Honourable Mr. ROGERS:—The revenue records do not acknowledge it.

The Honourable VISHVANATH NARAYAN MANDLIK:—Then I am sorry for the revenue records. The custom of the country acknowledges it if the Revenue Department does not. I will read an extract from a recent High Court judgment:—“Although the lands of the plaintiff are rice lands, situate in Soonda, Payen Ghát (that part of Ankola known also as the Panch Máháls, where Munro has said that all rice lands belong to Government) and although the plaintiff has not produced any patta, sanad, or other document of title granting to him, or to the persons under whom he claims the proprietorship of the soil in any of the vargs in his possession, yet we think that the admission, contained in the Government books, that seventeen of those vargs are held by him on muli tenure, must be regarded as establishing in him the hereditary and transferable proprietorship in the soil of those 17 vargs. The Muli, the Mirasi, the Kamytchi, the Swasthyam and the Janmakari

tenure, are merely so many various names for the ancient proprietary right of the rayut in the soil recognized by Mr. Ellis of Madras, Mountstuart Elphinstone, Lord William Bentick, Professor H. H. Wilson, the Madras Board of Revenue, and other eminent authorities." I am sorry for the Revenue Department after that.

His Excellency the PRESIDENT said that old phrases were often superseded by new phrases, and observed that the section about tenants' rights appeared to be very well drafted.

The Honourable VISHVANATH NARAYAN MANDLIK:—Regarding its English I would say nothing, but as a piece of legislation it is of about as revolutionary a character as could well be imagined. I do not wish to be unparliamentary, because I understand the section was drafted by the learned judges of the Court in which I practise.

The Honourable Mr. MANDLIK further said that he objected to Section 178.

His Excellency the PRESIDENT suggested that chapter 8, with the exception of the 178th Section, might be taken as read, in order to narrow us much as possible the point to be reserved for a debate at a future meeting.

The Honourable Mr. GIBBS said:—The Select Committee went through chapter 8 as it now stood, with the exception of a very few alterations, chiefly verbal ones. It might be well to postpone its consideration to the next meeting, if Colonel Anderson was likely to be present.

His Excellency the PRESIDENT:—If there should be any point on which he wishes to say anything he can bring it forward specially, we shall not pass the sections now finally.

The Honourable Mr. ROGERS:—The chapter does not differ from Acts I. of 1865 and IV. of 1868.

The Honourable Mr. GIBBS:—But they have been chopped and changed about considerably.

His Excellency the PRESIDENT:—That is the work of the Select Committee. It is quite impossible that the Council can be responsible for every word of a Bill when it has been considered by a Committee. Every Legislature must trust to Committees to prepare the details.

The Honourable VISHVANATH NARAYAN MANDLIK:—That was done, but as I stated yesterday the draft of the Bill as finally arranged was not received by me in time to study it. I went through the 9th and 10th chapters for discussion in the Council to-day. I cannot pledge myself to any suggestions I may make now regarding the 6th and 8th chapters being final. I wish as far as possible to save time, and I think as Mr. Rogers says that chapter 8 contains only a few sections, it may as well be considered together with chapter 6.

His Excellency the PRESIDENT:—I think we might take chapter 8 now, reserving Section 178.

The Honourable Mr. ROGERS:—It may be easily done by taking Act I. of 1865 and comparing the sections as we go on.

His Excellency the PRESIDENT:—It really appears to me as if some honourable members consider the Council should act as a Special Committee, when we have the responsible signatures of a Special Committee before us.

The Honourable Mr. GIBBS :—It has been the custom rather to trust to the Committee of the whole Council. We went through the Watandars' Bill three times. In fact, your Excellency's predecessor had an idea that Select Committees were a mistake, and that all the work should be done in the Council.

His Excellency the PRESIDENT :—That may be a matter of opinion; but Select Committees are recognised by the law. It would be hard on an honourable member who has devoted his time and labour to going through a Bill over and over in Committee, to go through it again in the Council. When a number of sections have been carefully considered by a Select Committee and they have presented a responsible report with their signatures attached, I think it is hard to expect them to go through the whole work again. Besides, we in full Council are more likely to make some mistake. It is better to trust to two or three gentlemen in Committee.

Chapter 8 was then gone through; Sections 178, 182, 186, 188, 196 and 197B being postponed.

His Excellency the PRESIDENT :—We have now chapter 6 and chapter 1 remaining untouched. I understand almost the whole of chapter 6 involves new law.

The Honourable VISHVANATH NARAYAN MANDLIK :—It is new law.

His Excellency the PRESIDENT :—And I understand the Honourable Mr. Mandlik will prepare a minute and submit some amendments.

The Honourable VISHVANATH NARAYAN MANDLIK :—Am I to prepare for the next meeting the amendments I have taken note of to-day?

His Excellency the PRESIDENT :—Yes, and I would suggest that you should prepare what amendments you may propose to bring before us in respect of the definitions (chapter 1) and chapter 6. I presume we can only alter them by amendments.

The Honourable Mr. VISHVANATH NARAYAN MANDLIK :—Yes.

The Honourable Mr. GIBBS :—Are we to consider Chapter 6A., 6B., and 6C., and the definitions before we proceed to the amendments relating to that part of the Bill we have already gone through? The whole must be translated and published before the second reading.

His Excellency the PRESIDENT :—Yes, I am in no hurry about the second reading. What I wish to know is what the Honourable Mr. Manlik's objections are, and his reasons for them, and what are the amendments he proposes to move. And when he has written down what he has to say, and has drafted his amendments, I should like to hear any verbal remarks he may wish to make, and any remarks also from other honourable members. It is more particularly important that we should have before us Mr. Mandlik's objections and Mr. Rogers' replies; and then it will be for the Council to decide how far they can or cannot accede to either view.

The Honourable Mr. ROGERS :—The translation will have to go on.

The Honourable Mr. GIBBS :—It is going on; I was told yesterday it would take about a month to complete it.

The Honourable Mr. VISHVANATH NARAYAN MANDLIK :—I will be ready with my minute and as many amendments as I can prepare.

His Excellency the PRESIDENT:—I think it will be very advantageous to have Mr. Rogers' reply before he leaves us. It is very important to have both sides of the question stated, and then we can decide at leisure.

The Honourable VISHVANATH NARAYAN MANDLIK said he should like to name the following Friday week for the next meeting. He would do his best to have everything prepared before that time and would send it to the Secretary to be printed.

His Excellency the PRESIDENT:—Could not the honourable member tell us his views orally, in open debate of the Council?

The Honourable VISHVANATH NARAYAN MANDLIK:—I think it is difficult in the case of a technical measure like this.

His Excellency the PRESIDENT:—You could write your minute afterwards; but in the Council we do not go by minutes at all.

The Honourable VISHVANATH NARAYAN MANDLIK:—There is already a report of the majority of the Select Committee, and I should wish my minute to be as precise as possible, which can only be secured by writing it.

His Excellency the PRESIDENT:—But you could write it after; and strictly speaking the proceedings of this Council are oral.

The Honourable VISHVANATH NARAYAN MANDLIK:—What I wish to do is a piece of work that should have been done before. The Select Committee's report says that the minutes of the dissenting members will be recorded.

His Excellency the PRESIDENT:—But that does not debar you from making a full oral statement. I am sure that you are very capable of stating your arguments and objections forcibly and comprehensively in speech; you are not likely to miss any points, and it is very desirable that we should have what you wish to say before us as early as possible.

The Honourable VISHVANATH NARAYAN MANDLIK:—If it is to be done I trust it will be done with some care and some deference to this Council. I do not wish to sacrifice ten minutes more than may be absolutely necessary. I do not apprehend any snares in your Excellency's Council.

His Excellency the PRESIDENT informed the Honourable Mr. Mandlik that every assistance would be given to him by the Legal Remembrancer and the staff of the Council in drafting his amendments.

After some further conversation His Excellency the President adjourned the Council till Friday the 22nd instant.

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

J. NUGENT,

Under Secretary to Government.

Poona, 12th June 1877.

*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 22nd June 1877, at noon.

**P R E S E N T :**

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

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE-GENERAL.

The Honourable Major-General M. K. KENNEDY.

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

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

The Honourable Nacoda MAHOMED ALI ROGAY.

The Honourable Rao Bahadur BECHERDAS AMBAIDAS, C.S.I.

The Honourable SORABJI SHAPURJI BENGALI.

The Honourable Colonel W. C. ANDERSON.

The dissent of the Honourable VISHVANATH NARAYAN MANDLIK and the Honourable Nacoda MAHOMED ALI ROGAY, from the Report of the Select Committee on the Revenue Code Bill, was laid on the table.

His Excellency the PRESIDENT:—I understand the Council are now assembled for the purpose of proceeding with the consideration of the Revenue Code Bill in detail. The Honourable Mr. Mandlik has placed on the notice-paper a list of amendments, and I will now call upon the honourable and learned member to speak to the motions which stand in his name.

Consideration of Revenue Code Bill resumed in detail.

The first proposition on the list was:—"That it is not desirable that any new law affecting injuriously the private rights of the people should be introduced into this Code."

This, the Honourable Mr. MANDLIK said, he desired to postpone for the present, and to take it in connection with the amendment numbered 7 on the notice-paper.

The required permission having been accorded, the Honourable Mr. MANDLIK moved the second amendment, of which he had given notice, viz. :—that in place of definition 25, Section III., as drafted, the following should be adopted—"Occupant" is the person whose name is entered authorizedly in the survey papers, or other public accounts, as responsible to Government for payment of the assessment due upon any field or recognized share of a field." Mr. Mandlik said:—The present definition is "'occupant' signifies a holder of unalienated land; or, where there are more holders than one, the holder having the highest right in respect of any such land; or, where such highest right vests equally in more holders than one, any one of such holders." The definition which I propose to substitute for

this, is that used in Act I. of 1865, the present Survey Act, which, I submit, meets all requirements. After the passing of Regulation 17 of 1827, "occupant" was known to be pretty much as it was defined by the Survey Act of 1865, and the Survey Act has been worked throughout with this definition. The definition which the Bill now proposes to substitute, would create a great deal of doubt and uncertainty, by mixing the terms "alienated" and "unalienated" in matters where there is no necessity that they should be mixed; it unnecessarily creates a doubt where there has been none up to this time; and I think, therefore, that the definition I have submitted, and which has been taken bodily from the existing Survey Act, is the one which should be adopted in the Code.

His Excellency the PRESIDENT:—Will any honourable gentleman address the Council?

The Honourable BECHERDAS AMBAIDAS:—I beg to make a few observations. The object of the Bill before the Council is to consolidate all the existing laws of the last fifty years, or thereabout, and bring them into one Act, and also to amend and improve the existing law so as to promote the welfare of the people. It seemed, from the discussions that took place at the last two meetings of the Council, that there was a deviation of opinion on several parts of the wide Code, and several amendments are now to be proposed by the honourable gentleman in charge of the Bill, and by dissenting members of the Select Committee, which will either have to be settled by a compromise, or on which the Council will have to be divided, after discussion. I hope the Council will adopt some means to retain the word "owners," regarding land belonging to private individuals, wherever it occurs in the corresponding portions of the Acts now sought to be repealed. In regard to Chapter X. of the Bill, I would beg to remind honourable members, that Act IV. of 1868 was accepted as a compromise, as will be seen from the proceedings of the Council when that Act was discussed. I think it would be well to retain the words "owners or occupiers" in place of the terms used in the Bill as drafted.

The Honourable Mr. ROGAY asked what were the reasons for changing the definition. He thought there should be some weighty reasons to justify the change.

The Honourable the ADVOCATE-GENERAL:—I think the Honourable Mr. Mandlik's amendment is moved under a misapprehension. The Bill is not intended to define the rights of parties in respect of land, but to carry out the survey assessment. For that purpose, it seems to me, the Bill divides the whole land of the Presidency into two classes, viz., land subject to Government assessment, and land not subject to Government assessment, and this definition of "occupant," which is objected to, relates simply to land subject to the assessment. If the honourable and learned mover of the amendment will refer to the commencement of Section 3, which governs the whole of these definitions, he will find it stated that they are definitions simply for the purposes of the Act, and nothing else. The words are—"In this Act, unless there be something repugnant in the subject or context," and then come the definitions, which are simply for the purpose of carrying out the operation of the Act itself. There is no attempt to define rights, and the use of the word "occupant" in the Bill cannot, by any possibility, affect any rights whatever in land belonging to individuals. The definition is used simply for the purpose of working the Act, and to show what class of land is subject to assessment.

The Honourable Mr. ROGERS:—I oppose the amendment, and support the retention of the definition as at present drafted in the Bill. There was a great deal of discussion in the Select Committee as to these definitions, and it was finally decided to define "occupant"



as in paragraph 25 of the 3rd section, and "hereditary occupant" as in paragraph 25a; because it was found that the definition of "occupant" in Act. I. of 1865 was not sufficiently broad to include all persons who ought to be affected by the Act. As the definition is now drafted, the operation of the Act will extend to others than those who may be recorded as registered occupants, viz., to co-sharers and co-occupants. It is the definition of the Survey Act of 1865 extended; and the present form is not only more accurate, but the two definitions together are certainly more scientific. The whole of the Bill has been worded in accordance with these definitions. The definition of "occupant," as at present drafted, goes back to the original definition of "occupant" as contained in Regulation 17 of 1827, the words of which are—"The settlement of the assessment shall be made on the co-occupant of the land. When the land is held direct from Government, the cultivator is considered to be the occupant; but when not so held, the person recognized as having the highest right which intervenes between the Government and himself, is held to be the occupant." I think the Council will be of opinion that the definition at present contained in the Bill is more in accord with the original definition contained in Regulation 17 of 1827 than the definition given in the Survey Act of 1865; and I, therefore, oppose the amendment, and suggest that the definition should be maintained as at present drafted. I agree entirely with what the Honourable the Advocate-General said.

The Honourable Mr. MANDLIK:—The Honourable Mr. Rogers has stated that the definition of Regulation 17 of 1827 is now restored. My reply is that there was no such definition at all in Regulation 17 of 1827. That Regulation provided that the settlement of assessment should be made with the occupant of land (Regulation XVII., Section 3, Clause 1), and "occupant" was only defined in an indirect way. When the Survey Act of 1865 was passed, the provisions of Regulation 17 of 1827 were fully discussed, and the definition which was then drafted, and which is the present law, is the definition which I now wish to have continued in the new Act. It is not a definition which I have framed for the first time, but it is one which has stood the test of time and circumstances. As regards the remark of the learned Advocate-General, that the Act will not affect rights, but is simply a Survey Act, I should have at once accepted that remark with great pleasure; but a number of sections have been introduced for the first time,—subject, as the Honourable Mr. Chapman, who introduced the Bill, observed, to discussion in the Council—which are entirely new law, and positive law, which will regulate rights as between the Government and its subjects. I may mention Sections 105, 106, and 115, to which I have given notice of amendment. This being the case, although no doubt Section 3 says the definitions are for the purposes of the Act, still the Act is a Land Revenue Code for the whole Presidency, and it will undoubtedly, by changing the *onus of proof* in Section 106, affect the rights of the people in a very injurious way, which neither the Survey Act of 1865 nor Regulation 17 of 1827 had done. This Bill is not merely a codifying of the survey law; which would not have affected private rights. I submit, that both the direct and indirect effect of several provisions of this Bill will be in derogation of private rights, and, therefore, the definitions ought to be more carefully worded. "Occupant" was a well-known word both in Regulation 17 of 1827 and in the Survey Act of 1865; and I think the present Bill goes too far beyond those enactments. Scientific accuracy is not all that the Council ought to look to.

The amendment was then put by His Excellency the PRESIDENT to the vote, by show of hands, and was declared to be lost.

The Honourable Mr. MANDLIK wished to have the division recorded, and the votes were taken as follows:—

*Ayes*—4.

The Honourable Rao Saheb V. N.  
MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B.  
AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes*—7.

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Major-General M. K.  
KENNEDY.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK next moved that Definition 25a (Section 3), instead of as at present drafted, should run as follows:—"A 'survey occupant' is an occupant of land, assessed to the payment of land-revenue under the provisions of this Code." He said:—This refers to a separate portion of the Code, and, therefore, comes up as a separate amendment. The definition as drafted stands:—"Registered occupant" signifies a sole occupant, or the eldest or principal of several joint occupants, whose name is authorizedly entered in the Government records as holding unalienated land, whether in person or by his co-occupant tenant, agent, servant, or other legal representative." This definition of "registered occupant" is entirely a new definition, and the use of the term "unalienated land" simply ignores what the survey has done in regard to a large number of alienated villages. Scores of these villages have been surveyed and assessed throughout the different districts of the Presidency, and all those people who had been noted down in the survey records, by the survey officers, as occupants of lands in these surveyed villages, are known up to this time as occupants. The use of the new definition will make their tenure different from what it has been up to the present time; and yet, in Section 285a, which is a new section in the present draft, "occupants of alienated villages" are referred to as well. I think a great deal of unnecessary confusion will be created by the use of the new definition, and by the division between alienated lands and unalienated lands, which is not known in the survey, as conducted under the Act of 1865, except in regard to the defining of village boundaries, which is done in the case of alienated villages, in a particular manner. I think that the new procedure is utterly unnecessary, and that the definition of "registered occupant," which is now drafted for the first time, will enhance the confusion, and will also, in regard to the occupants of land in alienated villages, have the effect of making almost nugatory all that the survey has done in reference to numerous tenants and landholders in those villages. The definition which I proposed to substitute for that contained in the Bill, as drafted, I have adopted from the remarks of some revenue officers, which were summarized and printed with the second edition of the Code. I consider that all this Code has to provide for, is the assessment of land for purposes of revenue, and if we define "occupant" to mean all that for the purposes of the survey it is necessary that it should mean, we shall be giving the term "survey occupant" as wide a definition as need be.

The Honourable Mr. GIBBS:—These definitions were very fully and carefully discussed in the Select Committee, and the notion of the majority was that, what we had to do in this case was the same as we had to do with regard to the Watandars' Bill, viz., to invent a

person who was not known before. I believe I am right in saying that the Select Committee invented the "registered occupant," and they did so in order to simplify the Code from beginning to end. To make use of, "occupant" and "registered occupant," as in the present draft of the Bill, is the latest conclusion which the Select Committee arrived at. When the Code first came before us, the terms "occupant" and "survey occupant" were used, and as we wished to register some other persons than those who were on the Government books, we used a wider and more general definition, and invented "registered occupant" to take the place of "survey occupant." I would further remark that the two definitions (25 and 25a) hang together, and so long as one is kept the other must be retained.

The Honourable Mr. ROGERS :—After the last resolution of the Council, declining to adopt the Honourable Mr. Mandlik's amendment to Definition 25, the term "occupant" can no longer apply to holders of alienated land, and, therefore, the honourable and learned member's objection that the present definition (25a) will interfere with the rights of owners and occupants of land in alienated villages, which have been brought under the survey operation, falls to the ground. Even if that is not so, the matter is fully provided for in the last section of the Bill (285A). As the Honourable Mr. Gibbs has stated, the term "registered occupant" merely represents what was originally the "occupant" of the Survey Act of 1865, extended so as to include co-sharers and co-owners. This the existing Survey Act does not provide for, and, in consequence, certain difficulties have been experienced in the administration of the revenue. I think the definitions of "occupant" and "registered occupant," as drafted, will be found to provide for every single case; and the wording of the whole Bill has been changed from what it originally was, in order to suit these definitions.

The Honourable Mr. MANDLIK :—My objection to the definitions as now printed, and as drafted almost at the close of the Select Committee's labours, is, that the Government, by a resolution of 1874, themselves came to the conclusion that the word "occupant" meant a person whose name had been authorizedly entered in a village register or public document as the holder of land from Government. But the Council, having that before them, and having before them also all the definitions that were suggested by the different officers to whom the Code was referred, have taken the term "registered occupant" to mean co-owner, and various other things, which I think were included in the shorter definition. No doubt, my definition may not refer to alienated or unalienated villages; but I have done my best to include in the definition, which I have proposed, all that is contained in the idea of who a survey occupant ought to be, according to the information supplied by the district officers.

The Honourable Mr. GIBBS :—May I ask the honourable and learned member what the position of the Council would be supposing that, having rejected his amendment on the definition of "occupant" (paragraph 25), we now accepted his amendment on this definition (25 a) of a "registered occupant"? We should be rather in a difficulty, I think.

The Honourable Mr. MANDLIK :—I do not think so. A survey occupant is an occupant of land assessed under this Code: so that if the survey is not extended to alienated or Inam villages, this definition does not touch the people.

The amendment was then put to the vote, and was lost by 7 to 4, the order of voting being the same as on the previous motion, viz. :—

*Ayes*—4.

*Noes*—7.

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK next moved that, instead of definition 29 of Section 3, the following should be substituted :—“ ‘ Alienated land,’ means land owned or occupied by private individuals, exempt wholly or partially from the payment of land-revenue, or held under a grant or lease fixing the Government demand in perpetuity.” Mr. Mandlik said :—The definition, as drafted, attempts to define merely the word “ alienated,” which, in the Survey Act of 1865, is defined in reference to alienated villages. An “ alienated village ” is defined in that Act as follows :—“ An alienated village is a village held and managed by private individuals, exempt from payment of land revenue, &c.” As defined in the present Code the word “ alienated ” is applicable to land as well as villages. The idea created at once by this definition is, that if all land that is not alienated comes under the description of “ unalienated,” the man who has unalienated land has little, or nothing at all, save what he may have under the survey tenure. I have borrowed the definition which I now propose almost bodily from Act I. of 1865, taking out the word “ village ” and substituting the word “ land,” to meet the desire to make the definition more extensive, so as to signify all alienated lands as contradistinguished from those the revenues of which are not alienated. As I explained at the previous meeting of the Council, and also in my minute of dissent from the report of the Select Committee, alienation means, primarily, alienation of the Government revenue, and, therefore, when the term “ alienated ” is applied to lands, as it is throughout the Code, it should be so defined as not to create any ambiguity in regard to lands of another kind, to which the tenure of alienated lands does not extend. I submit, that the definition I propose to adopt is calculated to keep all that is wished for in the present definition, as drafted, and to make that clear which is at present ambiguous.

The Honourable the ADVOCATE-GENERAL :—The objection taken by Mr. Mandlik to definition 29 is similar in principle to his objection regarding the definition of “ occupant ; ” and it seems to me that the answer is the same, viz., that the definition does not attempt to define or declare rights. They, as far as the definition is concerned, are entirely beyond the scope of the Bill. The Bill does not pretend to define alienated lands at all. All that is defined is merely the word “ alienated,” as used for the purposes of the Act alone.

The Honourable Mr. ROGERS :—As the Honourable the Advocate-General has stated, there is no intention whatever in the Act to define alienated lands. What is defined is the adjective “ alienated,” as used in the Act. Nowhere in the Act are proprietary rights defined, and there is no intention to define them. I believe that the Honourable Mr. Mand-

lik's proposal is founded on the use that was made of the words "owner" and "proprietor" in the Survey Act (I. of 1865); but if that Act is examined closely, it will be seen that there was a reason there for defining what "owners" and "proprietary rights" meant. By the terms used in the present Bill we nowhere deny the existence of owners and proprietary rights, and see no reason why the definition, as the Select Committee have drafted it, should not be allowed to stand.

The Honourable Mr. MANDLIK :—No doubt, the definitions by themselves might signify very little, but it is when the term "alienated" is used in conjunction with other words that its signification becomes important. If the expression "alienated lands" were used and defined, as I maintain it ought to be used and defined, it would not have such a mischievous tendency as I say the use of the word "alienated" by itself in the definitions will have, when the word is used, as it is throughout the Code, admittedly, in conjunction with other words. No single word by itself could mean anything; but the signification of this word becomes important in its tendency to affect rights in different parts of the Code. In regard to the words "owner" and "ownership," referred to by the Honourable Mr. Rogers, there may be no denial of any rights; but a negative Act is much stronger than a positive one, because it pre-supposes a very large sphere of observation. There may be no negation of private rights in this Code; but the use of the term "alienated" in different portions of the Code, derogates from private rights. It is on that account that I submit my amendment for the vote of the Council.

On the vote being taken, the amendment was lost by 7 to 4, the order of voting being the same as on the previous motions, viz. :—

*Ayes*—4.

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes*—7.

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The next amendment moved by the Honourable Mr. MANDLIK was to Section 15, and was to the effect that, instead of the words "holders of alienated villages," which occur in the second clause of that section, the Council should substitute the words "superior holders." Mr. Mandlik said :—The reason why I wish this alteration to be made, is that it was admitted by, the honourable member in charge of the Bill, that there might be holders of other than alienated villages, who would have the right of appointing patels and village accountants. What the Council wish to do, I presume, is to save all existing rights; and the words "superior holders" are capable of meaning holders of alienated villages as well as unalienated villages. I submit, that the amendment is one which ought to commend itself to the favourable consideration of the Council.

The Honourable Mr. ROGERS admitted that there might be others than holders of alienated villages who ought to come within this provision, but he opposed Mr. Mandlik's amendment because he had an amendment of his own to propose, which, he thought, would

quite meet the objection. He suggested that, instead of adopting the words "superior holders," the section should be allowed to remain as drafted, with the exception that, after the words "holders of alienated villages," which occurred in the 17th and 18th lines of the sections, should be inserted the words "and others."

The Honourable Mr. MANDLIK requested the permission of the Council to alter his amendment, and to adopt the suggestion of the honourable mover. He then moved that the words "or others" should be inserted after the word "villages" in line 18 of the section, and that for the word "village," in line 20, should be substituted the words "alienated or other villages."

The amendment, as altered, was then put to the vote and carried.

The Honourable Mr. MANDLIK next moved that Section 84 should stand as follows:—  
"The provisions of this chapter shall apply to all villages, but not so as to affect the subsisting rights of superior holders." Mr. Mandlik said this was in the same category as the preceding amendment; all he wished was that any subsisting rights should be preserved.

The Honourable Mr. ROGERS agreed to the amendment, on condition that for the word "alienated" the words "any such" should be substituted.

The Honourable Mr. MANDLIK assented to this alteration, and the amendment, so altered, was adopted.

The Honourable Mr. MANDLIK next moved that Section 106 should be omitted. He said:—This section contains a declaration—an enactment of law, which has hitherto had no existence—and although some portions of it may be said to be of the nature of truisms, as declaring that property which does not belong to any private individual belongs to the State, still, as the section stands, it throws upon holders of land the *onus* of proving that the property in their possession legally belongs to them, and if they cannot accept the *onus* of showing by positive proof that the property is their own, it may be declared to be public property. I take leave to say that this is a provision of law which unduly throws on private property-holders the burden of showing that the property is their own. Hitherto, they had only to do that in the case of assessments on Inam property, which is a class of holdings well understood; but in this Code there are a number of questions of appropriations of land, of claims and disputes relative to lands formed by alluvion and diluvion, and of forest rights, which are being legislated upon for the first time in this part of India, and which throw—unduly, as I say—upon the holders of private property the burden of showing what they hold to be their own. No necessity for this law has been shown to the Council, and no cases where the public interest has suffered under the present law have been brought, either before the Council or the Select Committee. Until such cases are produced, and until the necessity for such a law is clearly proved, no such sweeping general provision ought to be enacted, and I, therefore, propose that Section 106 should be omitted.

The Honourable Mr. GIBBS:—Some additions have been made to this section by the Select Committee, but they were made in a very careful manner, and they really and truly cannot affect the private rights of any parties, because such rights are expressly preserved by another section. That all lands, wherever situated, which are not the property of individuals, are the property of Government, is a simple declaration of the law as it exists everywhere. I know that the Honourable Mr. Mandlik has a general objection to declaratory

sections, and considers that they are dangerous to the rights of private individuals ; but I do not think this section is liable to be injurious, as at present drafted. I may mention that the words "except as otherwise provided," were introduced in order to save some portions of the Municipal Act. If I thought the section injuriously affected private rights, I should be the first to object, but I do not think that is the case ; and I am of opinion that the section is a useful one to have in the Code, as a general declaration of the law as it really stands.

The Honourable the ADVOCATE-GENERAL said the section merely placed on the holder of property the *onus* of proving that it was his own and really belonged to him, in case of his right being questioned.

The Honourable Mr. ROGERS :—The Honourable Mr. Mandlik's objections have been answered already. I am glad to see the honourable gentleman has abandoned his intention of taking the first amendment on his list in connection with the present one, No. 7. I presume the Honourable Mr. Mandlik has arrived at the belief that no member of the Council would desire to introduce any law which would injuriously affect the private rights of individuals.

The Honourable Mr. MANDLIK said :—The *onus* of proof was changed, and instead of the Collector, who might claim any land as Government property, being obliged to prove the Government title, the holder had to prove his title ; until the holder could show that the land was his, it belonged to the State.

The Honourable the ADVOCATE-GENERAL said he might mention that the mere possession would give a title in itself, unless it could be shown to be utterly wrong.

The Honourable Mr. MANDLIK said it seemed to him that under this section a man would have to show something more than possession.

The amendment was then put to the vote, and lost by 7 to 4, the order of voting again being :—

*Ayes*—4.

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes*—7.

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

His Excellency the PRESIDENT said he must ask the Honourable Mr. Mandlik whether he intended to proceed with the first on his list of amendments, which stood on the notice-paper as follows :—“ That it is not desirable that any new law affecting injuriously the private right of the people should be introduced into this Code. ”

The Honourable Mr. MANDLIK said that after the vote taken on his amendment No. 7, which might really be said to be connected with No. 1, he thought it would be useless to trouble the Council with a second division. Section 106, his amendment regarding which

had just been negatived by the Council, was, in his humble opinion, an enactment which did affect injuriously private individual rights; and that it was new law was not questioned. The point had, however, virtually been decided by the Council, and he proposed now to leave No. 1 and go on to his amendment No. 8.

His Excellency the PRESIDENT:—Then, does the honourable member withdraw No. 1?

The Honourable Mr. MANDLIK:—I do not wish to withdraw it; I merely wish it to be allowed to drop. If Your Excellency is of opinion that I should be more in order in pressing for a division upon it, I will do so; but I prefer that it should be allowed to drop.

His Excellency the PRESIDENT said that this was not an amendment, because it did not bear on any section of the Bill. It was very unusual to put abstract propositions in the shape of resolutions.

After some conversation it was decided that the question should be allowed to drop.

The Honourable Mr. MANDLIK next proposed that Section 114 should be amended by inserting the word "Government" before the word "land," in the first line. He said he wished this to be done, because, in the case of proprietary lands, the use of the expression "permission to occupy" was a contradiction in terms. There could be no such permission in the case of lands which were held either by assignment, or by right of inheritance, or under any of the proprietary tenures.

The Honourable Mr. ROGERS thought no amendment of the section was required, because it was well known that no permission to occupy land that was not Government land was required at all.

The Honourable Mr. GIBBS:—Do I understand the honourable mover to say that, whether the word "Government" is inserted or not, the effect of the section is exactly the same?

The Honourable Mr. ROGERS:—Precisely, because no permission whatever is required to occupy alienated lands.

The Honourable Mr. MANDLIK said that was where his objection became patent. There were large classes of holdings which would not come within the definition of alienated lands, but were entirely private property, such as *miras* and other lands of the same description. If it was held, according to the section as drafted, that permission to occupy hereditary property, such as *miras* lands, would be requisite, the amendment he had proposed was very necessary.

The amendment, on being put to the vote, was lost by 7 to 4, the order of voting being:—

*Ayes*—4.

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes*—7.

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.



The Honourable Mr. MANDLIK next proposed, in regard to Section 115, either to omit the section as drafted, entirely, or to insert after the word "product," in the 9th line, the words "growing on Government land," and to strike out the words from "wherever" in the 9th line to "property" in line 12.

The Honourable Mr. ROGERS objected to this amendment for the same reasons as he had urged in opposition to the amendment Mr. Mandlik had proposed to Section 106. Section 115, as drafted, was a mere declaratory section, stating that, whatever, in the shape of "trees, brushwood, jungle, or other natural product" could not be proved to be the property of private individuals, was the property of the Crown. The private rights of individuals were reserved as the section stood.

The Honourable Mr. MANDLIK said he had already given most of his reasons for moving this amendment when speaking to Section 106, but he thought there was a particular reason why the *onus* of proof should not be placed, as was proposed to be done by this Section 115. In the case of property of this kind growing in the jungles, private proprietors were at a very great disadvantage in proving continuous possession.

The amendment was put to the vote, and was lost by 7 to 4. The order of voting was the same as on the previous motions, viz. :—

*Ayes—4.*

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK next moved that Section 118 should be amended by the insertion, after the word "enacted" in the 7th line, of the words "according to the established principles which govern the assessment of that description of land," and also by the insertion, after the word "wholly" in the same line, of the words "or partially." Mr. Mandlik said the principle was the same whether land was exempt wholly or partially from payment of revenue. The words of the first portion of the amendment he had taken from the Elphinstone Code of 1827, and he thought they ought to be retained.

The Honourable Mr. GIBBS said :—The reason why the words "or partially" had been left out was, that if land was only partially exempt, it was still liable to pay land-revenue to a certain extent, and must be assessed. That alteration had been made throughout the Code. The reason for omitting the words "according to the established principles, &c.," which occurred in Clause I., Section II., of Regulation 17 of 1827, was, that they had given rise to immense difficulty in determining what the established principles which governed the assessment of that particular description of land might be.

The Honourable Mr. ROGERS thought everybody must admit that, since 1827, the Council might be fairly expected to have derived some experience, and to know better how to define on what principles land-revenue should be assessed. Instead of leaving the

matter defined, the present Code laid down the established principles on which such revenue should be assessed. As to the insertion of the words "or partially," they would constitute a contradiction in terms.

The Honourable Mr. MANDLIK replied that the law of 1827 had stood the test of time, and no cases had been brought before the Select Committee to show any mischief that it had worked; and as regarded the words "or partially," it seemed to him that land which was partially exempt from the payment of land-revenue was, to the extent of that exemption, as good Inam land as land which paid nothing at all.

The amendment was put to the vote, and was lost by 7 votes to 4, the order of voting being the same as on the previous motions, viz. :—

*Ayes—4.*

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK next moved that Section 119 should be omitted. He said, this is new law, and it is very vague. I submit, that an hereditary landholder can do as he likes with his land, and provisions for levying a different revenue, according to the mode of appropriation, are not at all advisable. When land was first assessed, it would be assessed according to the class in which it was placed by the Survey Department, and that having been done, no further assessment of that land within the currency of the survey settlement has hitherto been contemplated by the law, and it ought not now to be introduced by the law, and it ought not now to be introduced by the Legislature. In regard to appropriation of land for building-sites (anticipating Chapter X.), the Legislature have already, in 1868, made certain provisions, and I think the Council ought to accept the Act of 1868 as the basis for operation as to assessments of that kind. In order that Section 119 should not clash with Chapter X., I consider that the whole of that section should be omitted. As regards the appropriation of Government lands, any rules which Government may make would be applicable, and would not require any particular legislative authority to legalize them; and as regards private lands, I think it is advisable, the Act not being intended for the creation or the extinction of any rights, that there should be no interference whatever.

The Honourable Mr. ROGERS :—I do not think that the provisions of the section are vague, but rather that the reverse is the case. These provisions have been introduced in order to show what particular kinds of land should be assessed to land-revenue, and the principle carried out has been partly derived from the old Regulation 17 of 1827, and partly from Act I. of 1865. In Regulation 17 of 1827 it is distinctly laid down that all lands applied to agricultural or other purposes shall be liable to a payment of land-revenue to Government, and the present section is an expansion of that principle. Then, in Act I. of 1865 it is distinctly laid down that if an occupant wished to appropriate the lands in his occupancy to any purposes different from agriculture, he should first obtain the per-

mission of the Collector. It is also laid down in the same Act that "all lands, cultivated or uncultivated, or whether hitherto assessed or not, shall be liable to assessment." Therefore, when the Honourable Mr. Mandlik says the Council would be creating a new law by adopting Section 119, I do not think that is quite correct.

The Honourable Mr. MANDLIK :—I do not think the honourable member is quite correct in stating that, according to the law as at present received, all lands to which Section 119, as drafted, relates, are assessable to land-revenue; because, the uniform rulings of the courts have been, that village sites are not subject to the provisions of Regulation 17 of 1827. This may be bad law, but it is established by a series of decisions extending over a period of fifty years; and I think I am entitled to say the provisions proposed to be introduced are new law. As to appropriations, I have no objection to occupancy lands being appropriated in any way Government may desire; but, as the section is worded, it is applicable to private lands. Unless that is intended, the section is vague, and if it is intended, I think the law is going too far.

The Honourable-Mr. ROGERS requested Mr. Mandlik to refer to Act X. of 1876.

The Honourable Mr MANDLIK added that, no doubt, Act X. of 1876 gave a retrospective operation to Regulation 17 of 1827; but if the Government of Bombay, who had the power of interpreting that Regulation, had thought that it related to the levying of land-revenue on village sites, they would have said so. For more than fifty years those who had the power of interpreting the Regulation had interpreted it in a different way. He had brought the matter forward because his attention had been drawn to the fact that the section, as drafted, was in contrast to a series of decisions extending over fifty years.

On the amendment being put to the vote, it was lost by 7 to 4, the order of voting again being :—

*Ayes—4.*

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK next moved that Section 120 should be amended by the insertion, after the word "wholly," in the first line, of the words "or partially," and by the substitution, for the present proviso, of the following :—"Provided that in the case of lands the liability of which to payment of land-revenue is subject to special conditions or restrictions, respect shall be had, in the fixing of the assessment and the levy of the revenue, to all rights legally subsisting, according to the nature of the said rights." Mr. Mandlik supported his proposal to insert the words "or partially" by the argument that, in cases where land was partially exempt from payment of land-revenue, there could be no question of assessment; and said he had merely altered the proviso so as to suit that amendment in the body of the section.

The Honourable Mr. ROGERS again urged that land which was only partially exempt from the payment of land-revenue, was still, to a certain extent, liable to payment ; and must, for the purpose of determining the amount payable, be assessed.

On being put to the vote the amendment was lost by 7 to 4, the order of voting being the same as on the previous motions, viz. :—

*Ayes—4.*

The Honourable Rao Saheb V. N. MANDLIK,  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K.  
KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK next moved that after the word "unoccupied," in line 2 of Section 123A, the word "Government" should be inserted, and also that after the word "any," in line 3 of Section 123B, the word "Government" should be inserted. The honourable member said he had already given his reasons for wishing to make the distinction clear between Government lands and private property, in speaking to previous amendments.

The Honourable Mr. GIBBS said he might mention that neither the drafter of the Bill nor the Select Committee had made use of the term "Government lands" throughout the Bill, and the object was a very reasonable one. It would have been necessary to define what Government lands were. The High Court had decided that Government lands were lands which were the property of Government ; but the term "Government lands," according to the revenue officers, meant simply lands that were liable to be assessed to the revenues of the State. If the term "Government lands" were used, there would have to be a very careful definition ; and he thought it was advisable that it should be avoided, and that the section should remain as drafted.

His Excellency the PRESIDENT :—There would have to be a definition contrary to the decision of the High Court, apparently.

The Honourable Mr. GIBBS :—Yes, I think it would be opening up a tremendous hornet's nest. The honourable gentleman added that Inam land was never supposed to be unoccupied.

The Honourable Mr. ROGERS said the section, as worded, could only refer to land liable to assessment.

The Honourable Mr. MANDLIK said that Mr. Gibbs' explanation strengthened his objections to the section if the revenue officers held that his land, because it was assessed to land-revenue, was therefore not his land, but Government land.

The Honourable Mr. GIBBS :—No, no.

His Excellency the PRESIDENT :—The Honourable Mr. Gibbs did not say so.

The Honourable Mr. MANDLIK:—I believe the Honourable Mr. Gibbs meant that all land is Government land which is liable to the payment of Government revenue. If that is so, the land of all private proprietors, not exempt from the payment of Government revenue, is Government land. That is a dilemma into which we should not be led if we distinguished the different classes of lands, as I wish to do by my amendment.

The Honourable Mr. GIBBS said that lands which paid assessment to Government were ordinarily called Government lands in the revenue system. It did not mean that the proprietary rights of any persons were affected in any way.

The Honourable the ADVOCATE-GENERAL thought that the portion of the section requiring that the permission of the Mámlatdár or Mahálkari should be obtained, in itself, met Mr. Mandlik's objection, because to suppose that those officers would give permission to occupy private lands would be an absurdity.

On the amendment being put to the vote, it was lost by 7 to 4, the order of voting being the same as on the previous motion, viz. :—

*Ayes—4.*

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK next moved that Section 124 should be amended by inserting the word "Government" before the word "land" in the first line, and by inserting the words "of such lands" after the word "occupant" in the 11th line. He submitted that this section enacted a law which might be sought to be enforced in regard to private lands, as well as what the High Court held, or would hold, to be strictly Government lands; and he maintained that in respect of private lands which were the property of individuals, though the Government had the right to levy an assessment on them, there should be no such restriction. In a recent Tanna case, in which it was sought to levy a fine on the owner of a cocoanut oart because he had built some houses on the land in his cocoanut oart, the High Court had held that the man had a right to build on his land, and that Government could only take the assessment. He did not see why such a right should now be infringed upon, and he therefore proposed to describe the lands subject to this section as Government lands.

The Honourable Mr. GIBBS drew attention to the fact that the next amendment on Mr. Mandlik's list proposed to strike out the word "registered" before "occupant" in Section 124b, and to substitute "said." Now, a registered occupant was defined, for the purposes of the Act, as the person whose name was entered in the survey records as liable to pay assessment to Government, and if that section were allowed to remain as it stood, it would be clear that Sections 124b and 124, both, applied only to Government lands in that sense.

The Honourable Mr. ROGERS said the section (124) had reference only to lands liable to pay Government assessment.

The Honourable Mr. MANDLIK said he wished to bring the Code into conformity with the law as it had been interpreted in the recent judgment which he had mentioned. He did not wish to have any novel law enacted; he merely wished to see a man left free to do as he liked with his own land, though it might be liable to payment of Government revenue. If he could not do so, his land might as well cease to be private property.

His Excellency the PRESIDENT:—You wish to give him a better tenure than he enjoys under the present law.

The Honourable Mr. MANDLIK:—I think the present law, as it is interpreted by the High Court, should be retained.

On the amendment being put to the vote, it was lost by 7 to 4, the order of voting being:—

*Ayes—4.*

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. BOGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The next amendment on the Honourable Mr. MANDLIK's list, viz., That the word "said" be substituted for "registered" in line 6 of Section 124*b*, was allowed to drop, as falling within the vote just taken.

The Honourable Mr. MANDLIK next moved that Section 126*a* should be omitted. He said:—This section was not included in the first draft of the Code, when it was circulated for the opinions of the different revenue officers in the Presidency, and it was not in the Code as drafted when submitted to the Select Committee for report. It is a new provision, which we have presented to us from the Land Revenue Act for British Burmah. Now, I submit, that the circumstances of British Burmah and this Presidency are entirely different. Landed property here is held by landholders of various classes and denominations, who have ancient rights which they have inherited from their ancestors, and which have been the subjects of sale and mortgage. People have been in possession of their lands from time immemorial, and by Regulation 5 of 1827, Section 1, they had enjoyed them as proprietors for more than thirty years; and that being the case, the enactment of the new provision, contained in this section, is entirely in subversion of the private rights of the people. There have been no facts placed before the Council or the Select Committee which warrant the making of this new law; and I think it would be dangerous to allow such a law a place in an Act which neither creates new rights, nor professes to curtail any existing rights. This is a very dangerous provision, and the Council ought to be extremely careful how they accept it. I know, as a fact, that proprietors of land in this Presidency do at present possess valuable rights. There may be none as regards buried treasure, or

gold and silver mines; but people quarry on their private lands, and use the product as they please; and, at any rate, there has not been the power given, hitherto, which is here laid down so broadly, in the provision that any Government officer shall be at full liberty to go about anybody's land in search for any kind of minerals, and make geological experiments, "paying to the occupant only compensation for surface damage, as estimated by the Collector." There is nothing to secure private interests, and I think the interests of the British Government demand that such a provision shall not be passed.

His Excellency the PRESIDENT asked if the Honourable Mr. Mandlik considered that the material obtained by quarrying, came within the term mineral products.

The Honourable Mr. MANDLIK said he referred to the sinking of mines for taking out different kinds of stone. Sometimes iron was obtained, and that would be prevented by the section. The mineralogical resources of this part of India had not been very minutely inquired into, but in some parts the people had found iron.

The Honourable Mr. GIBBS said that iron was found and worked at Mahableshtur to this day. Mr. Gibbs added, that it would be necessary to strike out the words "and all buried treasure" from the section, because the Government of India were about to pass an Act with regard to treasure-trove throughout the country.

His Excellency the PRESIDENT remarked that he thought the products of quarrying would not include minerals ordinarily:

The Honourable Mr. MANDLIK said that if the section were passed as drafted, a man could not do anything he liked on his own land, for extracting minerals, as he could do at present. It was a very sweeping provision also, and there was no definition of "mines and mineral products."

His Excellency the PRESIDENT suggested that such a definition would probably be found in any book of elementary science.

The Honourable Mr. MANDLIK said he was told the other day by members of the Council that the word "owner" would have to be defined, if it were used, and there was no better known word than that.

The Honourable Mr. GIBBS said there was one point which occurred to him regarding the section, as drafted. Was it merely prospective? Supposing a man had owned an estate for the last sixty years; would it apply to that?

The Honourable the ADVOCATE-GENERAL:—The effect, no doubt, would be to operate against such rights.

The Honourable Mr. GIBBS:—They are saved in the Burmah Act, but are not saved by this section. It seems to me that the section ought to be very carefully considered before it is passed.

The Honourable Mr. ROGERS said it might be well to postpone the consideration of the section with regard to Mr. Gibbs' remark. As to what Mr. Mandlik had said, it was not likely that a geological surveyor would go scratching up ground all over the country to find minerals. If iron were found, the smelting of it would be so fearfully expensive a process that there would be no market.

The consideration of the question was then postponed till the next sitting.

The Honourable Mr. MANDLIK next proposed to add the following clause to Section 136 :—“ Every such hereditary patel or accountant shall be bound to receive, and account to the said superior holder, for all sums paid to, or recovered by him on account of the said superior holder ; and on his or their failure to do the same, the superior holder shall be entitled to recover his dues direct from the inferior holders.” Mr. Mandlik said misunderstandings might arise between the hereditary patels or accountants and the superior holders, and he wished to add this clause to meet such difficulties.

The Honourable Mr. ROGERS proposed to accept the amendment if Mr. Mandlik would consent to insert the words “ with the previous consent of the Collector,” after the words “ the superior holder,” and before the words “ shall be entitled,” in the latter part of the clause.

The Honourable Mr. MANDLIK consented to the alteration, and the amendment was adopted.

The Honourable Mr. MANDLIK next proposed to substitute the following for the present Section 178, viz.,—“ It shall be lawful for the Governor in Council, whenever such a measure may appear to him expedient, to direct the extension of a survey to any part of the Presidency, with a view to the settlement of the land-revenue, and to the record and preservation of proprietary and other rights connected with the soil ; and such survey shall be called a revenue survey.” The honourable gentleman said he had taken this section very nearly bodily from Act I. of 1865. The section drafted in the Bill was too vague, and he thought it was opposed to the present practice. It had always been the custom, whenever contracts in reference to assessments or leases were made, to say that “ this contract shall hold good until the next survey of the country.”

The Honourable Colonel ANDERSON saw no objection whatever to the section, as drafted.

The Honourable Mr. ROGERS said he did not quite understand the objection. There was a slight variation in the wording of the section and the amendment, in consequence of the word “ proprietary” appearing in the latter ; but he thought it was a distinction without much difference.

The Honourable Mr. MANDLIK said that whatever was settled about the lands he had referred to, was settled in comparison with the condition of neighbouring lands at the time of the district survey.

The amendment, on being put to the vote, was lost by 7 to 4, the order of voting again being :—

*Ayes—4.*

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS  
The Honourable S. S. BENGALI.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY,  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K.  
KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.



The Honourable Mr. MANDLIK next moved, in regard to Section 180, that instead of the words "holders of land and other persons interested therein" should be inserted the words "owners or occupants." He said that the words he wished to have used were those which appeared in Act I. of 1865. He did not think that the term "holders of land and other persons interested therein" could be said to be very scientific; and it certainly did not go so far as the words "owners or occupants," for which it had been substituted in transferring the section to the present Code. He saw no reason why the old term "owners or occupants" should be so replaced.

The Honourable Mr. ROGERS said it appeared to him that the definition of the word "holder" quite met the objections urged by Mr. Mandlik, and that there was not the slightest necessity for any amendment.

On the amendment being put to the vote, it was lost by 7 to 4, the order of voting again being :—

*Ayes—4.*

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK next moved that instead of the words "not wholly exempt," in lines 7 and 8 of Section 181, there should be substituted the words "neither wholly nor partially exempt." He said that where land was exempt, even partially, there could be no discretion exercised on the part of the revenue officers in fixing the assessment, as it would be already determined.

The Honourable Mr. GIBBS supposed that if land was exempt to the extent of, say, half the assessment, it would still have to be assessed.

The Honourable Mr. ROGERS :—The assessment would be fixed on the whole, and then half would be deducted.

The Honourable Mr. GIBBS :—The survey officers would still have to assess and value such land, and then deduct whatever the amount of exemption might be.

The Honourable Mr. ROGERS :—Yes.

The Honourable Colonel ANDERSON suggested the consideration of the section should be postponed. As drafted, it would clearly preclude the assessment of all lands that were wholly exempt, and though they might be exempt from payment, it was necessary to assess them.

The question was accordingly postponed till the next sitting.

The Honourable Mr. MANDLIK next moved that clauses (b) and (c) of Section 183 should be struck out, and that the section should stand thus :—"Nothing in the last preceding section shall be held to prevent a revised assessment being fixed with reference

to any improvement effected at the cost of Government." The honourable gentleman said:—The clauses I propose to strike out are "(b), with reference to the value of any natural advantage, when the improvement effected from private capital and resources consists only in having created the means of utilizing such advantage, or (c), with reference to any improvement which is the result only of the ordinary operations of husbandry." I submit that these clauses would place capitalists at a great disadvantage, because, if a man spent private capital and resources, he can only do so in order to utilize some natural agency, and the amount of the improvement due to each would be incommensurable. I do not know what would be the survey gauge by which the difference could be estimated, and I would prefer to see private capitalists encouraged to utilize every natural agency possible, in order that the operations of agriculture may be promoted. As to improvement arising from the ordinary operations of husbandry, it is only fair that the cultivator should reap the advantage of them; and if the Government bring about any improvement by making canals, or by some other agency, it is proper that such improvement should pay its quota to the public revenue.

The Honourable Colonel ANDERSON:—The first part of the section, viz., that which Mr. Mandlik proposes to retain, refers to improvements effected solely at the cost of Government, as in the case of irrigation works, made roads, &c. Then, as an instance of improvement effected by private capital and resources only by utilizing natural advantages:—suppose a stream runs beside a field: that stream is public property; and if the ryot cultivating the field dams up the stream, and turns the water into his field by the custom of the country from all time, the improvement in the field effected by such means is subject to assessment. As to the question of improvements effected by the ordinary operations of industry, such operation will, in time—insensibly, I may say—bring about a better quality of soil, because sub-soil which would otherwise become indurated, benefits by the operations which enable the surface-soil to hold water. Direct improvements, caused by digging wells, &c., at the expenses of the cultivator, are held free from assessment.

The Honourable Mr. BENGALI asked whether the assessments could be revised in respect of the improvements referred to in the section, within the period of thirty years from the last survey.

The Honourable Colonel ANDERSON:—No, certainly not. They can be revised at the end of the thirty years.

The Honourable Mr. ROGERS said he had nothing to add to what Colonel Anderson had stated, except that he entirely agreed with him.

The Honourable Mr. MANDLIK:—The argument as to the ordinary operations of industry would apply only to cases where a man took to the cultivation of land which had previously lain fallow; and I submit, that the use of Government water would come within the section as I propose that it should stand; as in that case, the improvement would be effected—if not directly at the cost of Government, directly from the property of Government. My argument refers to cases in which a man might spend private capital in bunding his own fields and in turning water. Besides, difficulties might arise by a stream overflowing during the rains, and bringing from the mountains and other fields fresh soil, which might be deposited and tend to the improvement of the land. I should not object to the section were it differently worded; but as it is at present drafted, all kinds of difficult

questions would be raised, which ought to be left free. Capital ought to be attracted as much as possible towards the cultivation of land, and I think it would be advisable to stop at clause (a) and leave out (b) and (c).

The Honourable Mr. GIBBS said clause (c) was meant chiefly to apply to poor land which was not assessed at first, but which afterwards came to be assessed when improved by cultivation.

On the amendment being put to the vote, it was lost by 8 to 3, the order of voting being :—

*Ayes*—3.

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.

*Noes*—8.

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable S. S. BENGALI.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK next moved that the following clause should be added to Section 199, viz. :—“ The determination of the village boundaries thus made shall be final, as regards the rights of holders of the two villages.” The honourable gentleman said : I wished to save the rights of the persons in actual occupation of the land. This amendment is part and parcel of that which I have given notice of in regard to Section 204A. All that is contemplated by the Act of 1865 and by the Regulation of 1827 is the determination of village boundaries, and the holders of fields are left undisturbed—except so far as it is decided whether they should pay rent to one superior holder or to another. All I wish is, that matters should be left as they at present stand.

The Honourable Mr. GIBBS suggested that Mr. Mandlik's amendments 28, 29 (b), and 30, might all be taken together.

The Honourable Mr. MANDLIK :—I have no objection, as they merely involve the same point in regard to different sections, viz., Sections 199, 201, and 204A. To Section 201 I wish the following proviso to be added :—“ Provided that the determination of any boundary under this section shall not debar any one claiming any right in the land from any legal remedy he would otherwise have for dispossession ;” and I wish to have Section 204A omitted altogether. As I stated at the last sitting of the Council, when these sections were discussed in 1865, the proviso I now propose to add to Section 204A was unanimously adopted ; it being distinctly stated by Sir Barrow Ellis, and other members of the Council at that time, that it was not intended finally to determine the rights to fields by the proceedings of the survey officers. If the other amendments should meet with the approbation of the Council, it will naturally follow that Section 204 will be omitted.

The Honourable the ADVOCATE-GENERAL stated that if the Council accepted Mr. Mandlik's amendments, they would be running directly counter to the Government of India's Bombay Revenue Jurisdiction Act, Section 4.

The Honourable Colonel ANDERSON :—If any holder of a field feels himself injured by the fixing of his boundaries, he has the option of a series of appeals. He can go to the superior Survey Officers, the Collector, the Revenue Commissioner, and the Government. And every pains are taken to get hold of the real boundaries. It is just as easy for the survey officers to measure the real boundaries as false ones; and the appeals against the boundaries as finally arranged are really *nil*. I had never heard of a case during ten years' work.

The Honourable Mr. MANDLIK considered that the Bombay Revenue Jurisdiction Act referred to the fixing of boundaries as boundaries, and not as determining private rights.

The Honourable Mr. ROGERS drew Mr. Mandlik's attention to Section 5 of the Bombay Revenue Jurisdiction Act, to the effect that, nothing in Section 4, clause (g) shall be held to prevent the civil courts from entertaining suits, being other than suits, against Government.

The Honourable Mr. GIBBS said the question was—Whether the Council had power to discuss the amendment? If the point had been decided by the Imperial Legislature, they could not interfere.

The Honourable Mr. ROGAY asked if the Bombay Revenue Jurisdiction Act was not under suspension.

The Honourable Mr. GIBBS :—No, it is law now.

The Honourable Mr. ROGAY :—Has not the Secretary of State vetoed or suspended it?

The Honourable Mr. GIBBS :—He has not vetoed it, and he has no power to suspend it: it is in operation at the present time.

The Honourable Colonel ANDERSON said he should not have the slightest objection to the old law if there was some limit as to time.

The Honourable Mr. MANDLIK said he should not object to that.

The Honourable Mr. ROGERS :—There can be little doubt as to the intention of the Imperial Government in framing the Bombay Revenue Jurisdiction Act, because the very words the Honourable Mr. Mandlik now wishes to re-enact, are expressly repealed in the schedule to that Act. The proviso to Section 14 of Act I. of 1862 is specially repealed.

The Honourable the ADVOCATE-GENERAL said that undoubtedly, in his opinion, as the amendment stood, it would clash with clause (g) of Section 4 of the Bombay Revenue Jurisdiction Act.

The Honourable Mr. MANDLIK said as the proviso had been specially omitted from the Bombay Revenue Jurisdiction Act, he would not press his amendments as regarded Section 201, but he still pressed the amendments to Sections 199 and 204A.

The amendment referring to Section 201 was then withdrawn, and the amendments to Sections 199 and 204A were put to the vote, and lost by 7 to 4, the order of voting being :—

*Ayes—4.*

*Noes—7.*

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK said he had given notice of his intention to move another amendment to Section 201, to the effect that instead of the words "holder or person in occupation," in lines 6 and 7, the words "owner or occupant" should be inserted.

The Honourable Mr. ROGERS objected for the same reasons that he had advanced in opposition to amendments of precisely the same character already decided upon.

On being put to the vote the amendment was lost by 7 to 4, the order of voting again being :—

*Ayes—4.*

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALL.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

At this point the Council adjourned till Saturday the 23rd of June 1877.

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

JOHN NUGENT,  
Under Secretary to Government.

Poona, 22nd June 1877.

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

The Council met at Poona on Saturday, the 23rd June 1877, at noon.

**P R E S E N T :**

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

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE-GENERAL.

The Honourable Major-General M. K. KENNEDY.

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

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

The Honourable Nacoda MAHOMED ALI ROGAY.

The Honourable Rao Bahadur BECHERDAS AMBAIDAS, C.S.I.

The Honourable SORAJI SHAFURJI BENGALI.

The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK's amendments were proceeded with. The honourable gentleman said :—Amendments numbered 32, 33, 34, 35, and 36, on the notice-paper, all relate to Chapter X., and it will save time if the Council will permit me to move them together. When this chapter was first introduced into the Bill, the Honourable

Consideration of the Revenue Code Bill resumed in detail.

Mr. Chapman, who then had charge of it, proposed to adopt a limit of five years as the length of possession to entitle the holder of land to exemption from the payment of land-revenue. Mr. Chapman said the only new part of the chapter was contained in Sections 162 to 179 (as they were then numbered), which related to claims to uncultivated land in villages, towns, and cities; and it would be observed that five years' occupation from the passing of the Bill would give a prescriptive title; and added, that he did not imagine any objection could be taken to that on the score of liberality. I have inquired into this subject since the Bill came before the Select Committee, and I find that the people, at least the *Nurwadars* and *Baghdars*, have been reported by Government officers to be proprietors of their sites, as much as other proprietors of private lands in other parts of the country. The contention that Government has no connection with the land of the country, which I have advocated, is strengthened by a variety of testimony, to which I alluded at a previous sitting of the Council, when this point was discussed. The only material of a somewhat contrary nature that was placed before the Select Committee was in the shape of reports from some of the Collectors in Guzerat. When the whole of this subject was considered, and well considered, by the Council in 1868, they came to the unanimous conclusion, on the recommendation of the Honourable Mr. Ellis, that five years' possession was to be the limit to entitle a man to exemption. No strong evidence to the

contrary has yet come before us, and I would request the Council, in a matter of this kind, if it were necessary, to stretch a point in favour of rights of long duration, and not to disturb what has never hitherto been disturbed, at least during the currency of the British *raj*. I may observe that the honourable member in charge of the Bill had himself at one time come to a different conclusion in regard to the connection of Government with land in this part of the country. For, in one of his earlier reports he, the Honourable Mr. Rogers, says:—"It is an obvious fact that the property of the State, as long as it exists in the shape of a tax upon rent, is a mere anxiety upon capital invested, which can only be made reproductive at all when there is a surplus of income over expenditure. The State is not in the position of the landlord who can improve his lands, and thus increase his rent, and any attempt to increase the amount of the State tax upon rent, in consequence of the improvements carried out with its cultivator's capital, must, of course, tend to discourage improvement, and thus re-act to its own disadvantage, in checking the general increase of wealth, and the consequent ability of its subjects to bear taxation." The honourable gentleman then formally moved the following amendments, viz.:—"That Section 208-A be omitted;"

"That Section 208-B, stand as follows:—"In towns and cities to which Bombay Act I. of 1865 or IV. of 1868 has been applied, the existing exemption of lands which have not hitherto been used for purposes of agriculture only from payment of land-revenue shall be continued: 1st.—If such lands are situated in any town or city where there has been in former years a survey, which Government recognize for the purpose of this section, and are shown in the maps or other records of such survey as being held wholly or partially exempt from the payment of land-revenue; 2nd.—If such lands have been held wholly or partially exempt from the payment of land-revenue for a period of not less than five years before the application of Bombay Act I. of 1865 or IV. of 1868 to such town or city; 3rd.—If such lands, for whatever period held, have been held wholly or partially exempt from payment of land-revenue under a deed of grant or of confirmation issued by an officer whom Government recognize as having been competent to issue such deed;"

"That Section 208-C stand as follows:—"In villages, towns, and cities to which Bombay Act I. of 1865 or Bombay Act IV. of 1868 has not been applied, the existing exemption of such lands from payment of land-revenue shall be continued if they have been held wholly or partially exempt from the payment of land-revenue for a period of not less than five years before the passing of this Act;"

"That in Section 208-D, line 5, instead of the word 'summary' be inserted the word 'formal,' and that the remaining words of the section, after the word 'inquiry' in the same line, be omitted;"

"That Section 208-E be omitted."

The Honourable Mr. RŌGAY:—I beg, Your Excellency, to support the amendments proposed by my friend, the Honourable Mr. Mandlik. These amendments involve the question of village sites, which Mr. Mandlik has so forcibly shown, and I believe to the satisfaction of the Council, to be private property. It is evident that in 1861 the arguments now urged by the Honourable Rao Saheb were considered to be good ones, and a limit of five years was then liberally fixed as the term of possession to obtain prescriptive rights. I think that it has never been intended by the Survey Act to settle the titles of private property, but that the Act is only intended to map out the country, to facilitate the collection of the revenue. Having the fact of the passing of the Act of 1868 and the discussions that

took place in the Council at that time before our eyes, I do not think it would be right to make either retrospective or prospective the law, as enacted in this Chapter X., as at present drafted. I think retrospective laws never ought to be passed, unless there are very grave special reasons. They have been condemned by Legislatures; and Lord Macaulay, commenting on the laws of the 18th century, has written that "retrospective laws are very mischievous and a curse to the people." I, therefore, submit that it is against the principle of revenue jurisprudence to pass a retrospective law. I have no doubt that any law, whether retrospective or prospective, if it is a Government measure, will be passed through this Council, as the Council is composed chiefly of members of the Executive Government who support a Government measure, whether they like it or not, because they are bound to support it. The divisions on the amendments proposed at the sitting yesterday, showed that the Council were voting as on a party-question, the European members voting on one side, and the natives on the other. The latter are in a minority, and may anticipate defeat always; and knowing that it is their duty to bring to the notice of His Excellency the President and the other honourable members of the Council what their opinions are, because, directly and indirectly, they and their poor countrymen will be the sufferers, if injurious laws are passed through this Council.

The Honourable Mr. ROGERS:—I do not now propose to reply to the arguments urged against this chapter. I have no doubt that a great many, if not all, could be very easily refuted; but at present I merely propose that the sections, as drafted, should be passed provisionally, in order that they may go before the country, and the officials throughout the Presidency, and that a full discussion may be raised. At present the Council's hands are tied.

The Honourable Mr. GIBBS said:—The Legislative Department referred a matter to the Government of India recently, regarding the Mamlatdars' Courts Bill, and an answer was returned, stating that it was irregular, and that the reference should have been made by the Executive Government.

The Honourable Mr. ROGAY asked if the honourable member preferred to leave this matter in the hands of the Executive Government.

The Honourable Mr. GIBBS:—At present we are bound by the orders of the Government of India.

The Honourable Mr. ROGAY thought that to postpone the consideration of this matter, or to pass the sections provisionally, was not so desirable a course as to decide the point at once.

The Honourable Mr. BENGALI:—I am of the same opinion. The honourable mover of the Bill gave the Council what, I think, was his chief reason why the chapter has been framed as it stands, when he said the house-sites in villages went along with the land to be cultivated. That may be right in the case of some villages, but I cannot imagine the whole of India being without villages, and the people applying to the Government for land to settle upon. The tillers of the soil must have lived in the country, and have been possessed of village-sites long before any settled government had existed. The enactment of law proposed in this 10th chapter is a complete innovation. Whoever started the idea of calling all the village-sites Government land, and of getting revenue out of them at some future date, probably considered it was a very happy thought, but I am not of that opinion. The effect would be to take away from the people their *gharband*, as the Honourable Rao



Saheb said at a former meeting of the Council, and that would be regarded as rather contrary to the friendly policy of the Government entertained towards the poorer classes of this country.

The Honourable Mr. MANDLIK said that if the amendments he had proposed were passed provisionally, he should have no objection to the course suggested by Mr. Rogers being followed. All that he proposed was in the same spirit in which the original Act of 1868 was passed, and, speaking for himself, he did not see that any evidence had been produced on which the Government of India could now adopt a different policy.

The Honourable Colonel ANDERSON :—It would be a very conclusive point to show that there is no proprietary right in village sites. There are constantly to be met with throughout the country what are called *be chirágh* villages, or villages that have been deserted, some recently, and some formerly, either because the site has proved unhealthy, or on account of decrease of population, and the amalgamation of two villages, or for some other reason; and no one ever heard of a claim being made to an atom of land in a *be chirágh* village. If there is any claim to such land extending beyond the mere use of it while occupied as house-sites, such claims must have been made. And, besides, it by no means follows that because there may be a proprietary right, the property is free from taxation. In Native States a house-tax—a tax on the *gharband*—is a universal impost,

The Honourable Mr. BENGALI :—In villages ?

The Honourable Colonel ANDERSON :—Yes, in villages. In Mysore it is a very considerable item of revenue; it exists in Kolhápur and Jamkhandi; and I believe that it is the custom throughout every one of the Southern Maratha States. I believe it has disappeared from Bombay in consequence of the policy of 1844; but, according to the custom of the country everywhere, it is the commonest tax of all the taxes that are levied. I may mention another point with reference to a proprietary right to a particular house-site. If a man is allowed to squat in a village, and his house falls down, he will, no doubt, be allowed to rebuild it, but if he should not choose to rebuild it, he cannot put in a claim to the ground on which it stood. That is the case in villages, though, of course, circumstances may be different in large cities. Nothing like proprietary rights in village house-sites has existed in former times, and any attempt to put it forward now is an innovation.

The Honourable Mr. MANDLIK :—I do not desire to say anything about Native States; analogies of that kind might be drawn both ways. In a matter where there is so little in common between British subjects and the subjects of the Native States, I think I may be excused if I decline to enter into that portion of the arguments adduced by the Honourable Colonel Anderson. In reference to the honourable member's statements about village-sites, however, I beg to refer the Council to the conclusive replies as to *mirasdars*, and their holdings and lands, which were collected by the Honourable Mountstuart Elphinstone, and published in one of the four volumes of selections from the India House, and to the documentary evidence collected by one of the Collectors of Poona, Captain Henry Dundas Robertson. Besides, to go no farther than recent reports, I have in my hand Mr. W. G. Pedder's report on the Kaira Collectorate, in which he says :—“In these districts the usual form of the village community was the second or democratic one. Each village was originally founded by a family, or association of families, of the cultivating castes—Rajpoots, Koonbees, Boras, or Bhattelas, all apparently belonging to kindred tribes. These people, with their servants and ‘balis,’ fixed the village-site, dug the well and tank, planted the groves, built the village temple, and thus exercised rights of possession. They then induced

artizans to settle in their village, who were the servants of the community, and to whom they gave houses, bits of land rent-free, grain-cesses, &c.; other cultivators, mostly of inferior castes, were in process of time attracted to the village, and the proprietary body permitted them to cultivate such land as they did not want themselves, but gave them no proprietary rights;" and further on in the same report Mr. Pedder says:—"Most revenue officers, European and Native, seem to believe that nurwadars and bhagdars are the descendants of some one person, who, at some remote period, farmed the Government revenues of the village; that this person's descendants divided the lease among them; that they are not necessarily owners of the land, but merely receive, in return for collecting it from the cultivators, a certain portion of the revenue. Even the late settlement officer, drawing (I know not why, for none such exists,) a distinction between bhagdari and nurwa villages, seems to speak of bhagdars as hereditary lease-holders, 'usually the patels.' Nothing can be more unfounded than this belief. I have shown, I hope, that the nurwa and bhagdars are merely the old proprietary cultivators, and the system only a mode of sharing the Government demands. They never received, or claimed to receive, any portion of what in native revenue language is called the 'raj-bhag' of the produce, but only the 'kheroo-bhag.' If this point seems doubtful, let me refer to paragraph 17, where I have shown that, at the commencement of our rule in Broach, the bhagdars paid the revenue by 'kultur buttai.'"

The argument regarding *be chiragh* sites, branches into an entirely different subject. Wherever there is no proprietor to own any particular land, no doubt the sovereign is the proprietor; and I have no objection to the disposal of such sites being regulated by Government in any manner they please.

The amendments, on being put to the vote collectively, were lost by 7 to 4, the order of voting being:—

*Ayes—4.*

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK had given notice of his intention to move four amendments to Sections 212, 230, 237-G. and 283, all relating to the insertion of the word "Government" and the omission of the word "alienated," as describing certain lands to be affected by those sections. The honourable gentleman now said that, after the divisions that had taken place already, he did not wish to press these amendments, and they were accordingly withdrawn.

The Honourable Mr. MANDLIK next moved, collectively, four amendments to Sections 107, 118-A, 123-D. and 123-E, and relating to the question of the assessment of lands formed by alluvion or diluvion. The amendments were: to Section 107—"(a) Omit the following clause in lines 10 and 11 of paragraph 1 of this section, viz.—'If it attaches itself to alienated land.'

(b) Omit the following from lines 20 and 21 of paragraph 2:—'And if the portion on either side adjoin alienated land.'

(c) Substitute the following for paragraph 3 :—

\* But the last two rules shall not apply to any new land which may attach itself to an alienated holding, if the area of such alienated holding has been at any time fixed, and recorded in any sanad or grant granted to the holder by competent authority.

(d) Omit paragraphs 4 and 5 of this section.

(e) Omit paragraph 7 of this section.”

To Section 118-A.—“ That the whole section be omitted ;”

To Section 123-D.—“ That the whole section be omitted ;”

And to Section 123-E.—“ That the whole section be omitted.”

The Honourable Mr. MANDLIK said :—These sections, as drafted, make a distinction between holdings that are exempt from payment of land revenue and holdings that are not exempt, and I fail to see why one class of holdings should be treated in respect of land formed by alluvion or diluvion more favourably than another. Clause 1 of Section 107 says that “ land formed on the shore of the sea or on a bank of a river or creek by the gradual accretion of particles, or by the water gradually receding, shall, if it attaches itself to alienated land, be deemed to be an increment to the holding to which it attaches itself, and shall vest in the holder of the said land, subject to the same conditions and restrictions in respect of his tenure thereof as are applicable to his original estate ;” whereas, according to Section 123-D, “ When it appears to the Collector that the occupancy of land which has been formed by alluvion or by dereliction of a river or of the sea, and which vests under Section 107 in Government, may, with due regard to the interests of the public revenue, be disposed of in perpetuity, he shall, in the case of land, such as is described in Clause 4 of Section 107, offer the prior right of occupancy to the holder of the alienated land to which the said land is attached, or which it adjoins, and in the case of any other land shall offer such right to the occupant, if any, of the unalienated land to which the said land is attached, or which it adjoins.” Then come rules as to how much the holder is to get for nothing, and how much he is to pay for. The Council will observe that, if a man loses all his land, he does not get anything—he cannot expect to be re-imbursed, because he has sustained a loss by the operation of natural causes. If there is an accession to his land by such causes, no doubt the State is entitled to levy an additional tax ; but, I submit, that if an alienated landholder is allowed an advantage, the landholder who pays revenue to Government ought to have the same advantage. Moreover, a man ought not to be expected to pay on such an addition to his land if it amounts to more than one-fourth, or one-tenth, or some such proportion. If islands are thrown up in a river or in the sea they belong to Government, and with such cases I do not wish to interfere, but they are a different class of property entirely to land formed on the banks of rivers and on the sea-shore, &c. What I wish to urge is, that the holders of all lands, whether alienated or not, should be treated in the same way as regards accessions to their lands that are due to the operation of natural causes.

The Honourable Mr. ROGAY :—I beg to support my honourable friend’s proposition and I am of opinion that the arguments he has advanced are so conclusive that they cannot be denied. I cannot understand the reason of the framers of the Bill for making a distinction in this respect between alienated and unalienated lands. At Mahim, some thousands

of square yards of land have been washed away, and the people had to suffer, and if they should get any fresh lands by natural causes, I think they ought to reap the advantage of the increment, as they have had to sustain the losses by encroachments. I admit, that as the area of the ground increases, the State has a right to levy increased dues; but I do not see any reason for making a distinction between alienated and unalienated lands. I cannot vote for the sections, as drafted, and I have much pleasure in supporting Mr. Mandlik's amendments.

The Honourable the ADVOCATE-GENERAL said:—It appears to me that the distinction which has been made in the Bill between the holders of alienated and unalienated lands is perfectly just. An alienated landholder holds his land exempt from the payment of land-revenue, and the result is that, except as regards the surveyed portion, all access of land that he may obtain by alluvion is also exempt; but, on the other hand, in the case of a holder who holds his land subject to assessment, the land which may become attached by alluvion is also subject to assessment. He holds the accrued land on the same terms upon which he holds his other land, and by Section 123 it is provided that he shall have the option of taking the accrued land subject to assessment, or of refusing to take it. The result, as far as I can see, is that, in the case of land attaching by alluvion to alienated holdings, the accrued land is held as alienated land, and in the case of such land attaching to unalienated holdings, it is placed on the same footing as the original holding, viz., subject to assessment—a prior option being given to the holder either to take it on such terms or to refuse it.

His Excellency the PRESIDENT asked if the washing away of land at Mahim, alluded to by the Honourable Mr. Rogay, had occurred within the last thirty years.

The Honourable Mr. ROGAY said the land was being washed away still, every year.

The Honourable Mr. BENGALI said that during the last four or five years a great deal had been washed away.

The Honourable Mr. ROGERS:—I oppose the amendments on the same ground as that stated by the Honourable the Advocate-General, and I also wish to explain exactly how the sections, as drafted, will work. Alienated land is defined, for the purposes of this Act, to mean land the right of levying revenue on which has been transferred from Government to other powers; and in the case of such lands, any increment up to one-fourth of the original holding will be handed over to the alienated holder; but in the case of unalienated lands, any increment can only be enjoyed by the person in possession of the original land, provided that assessment be paid to Government. I think the amendments that have been proposed would have the effect of giving over the new land to the holder of Government land, on the same terms that the original land may be held, but that would scarcely be fair. It might be that the original land would be of a poor quality, and assessed accordingly, and that the new land would be of a much richer and better character, and of far greater value; and it is, therefore, laid down that the assessment shall be revised, and the new land assessed according to its natural capabilities.

The Honourable Mr. MANDLIK contended that the new land should go to the holder of the original land to which it became attached, whether alienated or unalienated, on the same terms upon which the original land was held.

The amendments were then put to the vote, and lost by 7 to 4, the order of voting again being :—

*Ayes—4.*

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK next moved that Section 126-A should be omitted. He said he had already said all he wished to say regarding this section, except to call attention to the fact that, even the Burmah Act, from which the section was taken, provided for twenty years' holding, constituting an exemption from the operation of this law. He thought it was a very objectionable law, and trusted the Council would not incorporate it in the Code.

The Honourable Mr. ROGERS proposed to meet Mr. Mandlik's objections by altering the section to read as follows :—“The right of Government to mines and mineral products in all unalienated land is, and is hereby declared to be, expressly reserved, provided that nothing in this section shall be deemed to affect any subsisting rights of any occupant of such land in respect to such mines or mineral products.”

The Honourable Mr. MANDLIK declined to accept the alteration or to withdraw his amendment. He said the honourable mover of the Bill declared a right which the Government had never previously claimed, and he did not think there was any evidence before the Council to warrant the insertion of such a clause.

The Honourable Colonel ANDERSON said :—The section, as now proposed by the honourable mover, was little more than declaratory. There would be no encroachment whatever on existing rights, where rights could be shown to exist.

The Honourable Mr. MANDLIK said :—The new section, as now proposed by the Honourable Mr. Rogers, was somewhat more liberal than the original sweeping clause, but the objections he had already urged still applied. He thought that any such innovation in the existing law was to be deprecated. He had never opposed anything which would assist the realization of the revenue, and any administrative change that was necessary for the perfection of measures for such realization, he would be the first to support; but he thought that the great thing which ought always to be very carefully guarded against in this country, was the danger of too frequent changes and alterations of the existing law.

The amendment moved by Mr. MANDLIK, that Section 206-A be omitted, was then put to the vote, and was lost by six to five, the order of voting being :—

*Ayes—5.*

The Honourable Major-General M. K. KENNEDY.  
The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes—6.*

His Excellency Sir CHARLES STAVELEY  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK next moved that Clause 2 of Section 134 should be omitted. The honourable gentleman said:—This is what may be called the perpetual tenancy clause, and it goes farther than any legislation of the kind has yet done. Even where occupancy rights have been granted *de novo* by the Legislature, it has been distinctly held that such rights are non-transferable. Occupancy rights under (Bengal) Act X. of 1859 have been held to be non-transferable. Another point is, that there is no definition of what is meant by “antiquity.” It is well known in England what “time immemorial” means, but there is no such limitation here, and it would be difficult to define what antiquity might mean. I have already stated, more than once, the reasons why I object to this clause. There was a case decided not very long ago, from Pooña, in which a piece of ground belonging to a temple had happened to be held by one family for more than two generations, and the tenants happened to quarrel with the committee of the temple, or the manager of the committee, and refused to pay certain dues which were demanded for and of right belonged to the temple. The *sanad* was distinct, showing that the land had been granted to the temple; but taking advantage of the uniformity of the rate of rent for so long a period, the tenants argued that they had a perpetual tenancy. However, although uniformity of payment was proved, extending beyond a period of sixty years, it was held that, inasmuch as the land belonged to the temple, the *onus* was on the tenants to prove that they had a perpetual tenancy. Decisions in similar cases have all along run in that direction; but, according to the present section, there will be considerable difficulty, and probably the Courts will have to decide the other way. I see no reason why the present law should be altered.

In answer to a question from His Excellency the PRESIDENT, Mr. Mandlik said that in the case he had quoted the tenants wanted to set up almost as owners of the land, claiming that the temple had a right only to the collection of the Government revenue.

The Honourable Mr. BENGALI:—I have supported Mr. Mandlik in almost all his amendments, but I cannot vote with him in this instance. I am afraid Mr. Mandlik is somewhat inconsistent in his arguments, after stating, repeatedly, that Government in this country have only a right to a share in the produce of the land and not to the land itself, and in now bringing forward his present amendment. It appears to me that the object of the clause which Mr. Mandlik proposes should be omitted from the Bill is to prevent *Inamdars*, and others to whom land has been given by native sovereigns, or by the English Government, from ousting their tenants—tenants who may have been holders of the land for centuries—and sending them away whenever they may think fit. I do not see why these landholders should have a greater right over their tenants than the Government themselves possess. I consider the clause to be a safeguard for the tenants, whom influential landlords may otherwise turn out as they please, and I think it would be a great pity if it were omitted.

The Honourable Colonel ANDERSON:—The Honourable Mr. Bengali appears to be entirely in favour of the protection of the cultivating class against what may be called the landlord class, for the protection of the ryots against the *Inamdars*. As a general rule, *Inam* grants are not of an extremely ancient date, and they always contain a clause which may be interpreted—“with the reservation of all existing rights.” The families of the ryots holding land in these villages have, in many cases, been for generations there, and the Government, in granting an *Inam*, cannot make over their rights as tenants to the *Inamdars*, their tenure is perfectly independent, and, by the custom of the country, so long as they continue to pay their revenue dues, the right of collecting which alone the Government

makes over to the *Inamdars*, the *Inamdars* have no right to interfere. They gradually, however, came to do so; and matters reached a culminating point about 1865, when the *Inamdars* began to press their ryots for payment of higher assessments. The profits of the agricultural classes for two or three years, especially in the cotton-growing districts, had been enormous; they received gold where formerly they would have been glad to receive silver, or even copper; and the *Inamdars* began running up their rents to an enormous figure. In one particular case the Collector of Dharwar asked me to be present at an interview between himself and a large *Inamdar* and his ryots. This *Inamdar* had been pressing the ryots beyond all bearing, and the object of the interview was that the Collector might reason with him, and get him to do something fair and moderate. The *Inamdar* and the ryots appeared, and the latter said they were willing to pay so much, the figure being a great deal more than had been paid customarily, but still not absolutely unreasonable, according to the enormously depreciated value of money at that time. The *Inamdar*, however, said he would not take it, but he would put them down for Rs. 10 per acre that year, and if that was paid, for Rs. 100 per acre the next year; he did not want the money at all, he wanted the land, and was determined to get it. The ryots in this case had a tenure very probably far antecedent to the *Inamdar's* grant. The *Inamdars* did, in a large number of cases, succeed in taking the land away from the ryots. One case was tried in which an *Inamdar* sued a ryot for excessive assessment, and the ryot said he was willing to pay the proper sum according to his tenure, but the *Inamdar* refused to take it, and the court supported the *Inamdar*. The judge held that the law was imperfect, and wished to bring it to a certainty. There can be no doubt whatever that, in the existing state of the law, the cultivating class—the mass of the people—are under great hardship in *Inam* villages. They are required to pay very much more than the Government ryots have to pay; I know that from experience in having to settle *Inam* villages. The revenue which has to be given to the *Inamdars* in order to induce them to give their ryots a secure tenure, is very considerably higher than is exacted under the Government revenue assessments. What the ryots require is some legislative security against being under subjection to the landlord class, who are not always the most scrupulous people imaginable.

The Honourable the ADVOCATE-GENERAL drew attention to the saving clause, which, he said, ran as follows:—“Nothing contained in this section shall affect the right of the landlord (if he have the same either by virtue of agreement, usage or otherwise), to enhance the rent payable, or services renderable by the tenant, or to evict the tenant, for non-payment of the rent or non- rendition of the services, either respectively, originally, fixed, or duly enhanced as aforesaid. The honourable gentleman said he considered that that saving clause perfectly preserved the landlord's right, if he had the right to increase his rent, and if the tenant would not pay, he could turn him out. This clause would meet the case of the temple to which Mr. Mandlik had referred. The intention of the section was to preserve rights in cases where landed estates had been held by the present or former Government; and grants had been made of them to *Inamdars* and others, because the Government could only make such grants, subject to the preservation of existing rights of the ryots, so long as they continued to pay their rents.

The Honourable Mr. ROY:—I think it is not right to place Government and private landlords in the same category, and to argue, because Mr. Mandlik holds that Government should not transgress rights that had existed from time immemorial, that therefore he ought also to hold, that a landlord has no right to turn out his tenant, because he seems to

have an ancient right. I consider that the clause objected to by Mr. Mandlik will affect the rights of land-owners, who have a perfect right to turn out any tenant, whether an ancient or a new one, and whether he has any written lease or not, if he does not pay his rent. Colonel Anderson says that the proprietors of alienated villages are people who exact excessive payments from their tenants, and that the object of the section is to protect the tenants against such exactions. If that argument is admitted, I may say the Government are not consistent. The Government have in many cases levied assessments which they had no right to levy; and a Bombay Revenue Jurisdiction Act has been passed against the opposition of all the people of Bombay and all the Judges of the High Court. If antiquity is the only title to justify a tenant feeling that he is not liable to have his rent enhanced, the same argument should apply to the *Inamdars*, who have ancient rights, and from whom former Governments never took any assessment, but from whom Government now take one-eighth of their Inams. If honourable members speak of consistency, I do not think either the Council or the Government have ever been consistent. My honourable and learned friend, Mr. Mandlik, has been perfectly consistent. A tenant should be turned out if he does not suit the wishes of his landlord, and does not pay his rent; because the landlord invests his money with the object of getting a return from it, and if one tenant does not pay him, he has a right to let his land to another, who will. I think the section, as drafted, will take away the rights of the people under the plea of protecting the poor ryots, and I have much pleasure in supporting the amendment.

The Honourable Mr. ROGERS:—If the Council will consider the section attentively, they will see that there is no intention whatever to interfere with any rights, but merely to protect the status of ancient tenants. I am sorry to see the Honourable Mr. Mandlik placing himself in a position which, I think, is decidedly in favour of the landlord class and antagonistic to the tenants.

The Honourable Mr. MANDLIK:—I do not take up a position in favour of any particular class, either landlords or tenants; I merely point out that the law has stood for a long time, so that the *onus* has always been on the tenant, in disputed cases, to prove that he has a perpetual tenancy. The courts have been consistent, and in cases where a resident has showed that he was a resident of a village prior to the grant to the *Inamdar*, they have always placed the *onus* on the *Inamdar* to prove that he had the right to eject his tenant. The clause, as framed, is itself quite uncertain, because I do not see how it can be construed by reason of the antiquity of a tenancy.

On the amendment being put to vote, it was lost by 9 to 2, the order of voting being:—

*Ayes*—2.

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.

*Noes*—9.

His Excellency Sir CHARLES STAVRELY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Rao Bahadur BECHERDAS  
AMBALIDAS.  
The Honourable Colonel W. C. ANDERSON.  
The Honourable S. S. BENGALI.



The Honourable Mr. ROGERS then moved that the following be substituted for the present Section 66 :—“ Except as provided in the last preceding section and in Section 51, none but a watandar shall be appointed as deputy, whether by the Collector or by a representative watandar, if there be a watandar of the same watan, and descended from the same ancestor as the representative watandar, whose duty it is to officiate, fit and willing to serve; and in the event of the representative watandar declining to appoint any such watandar as his deputy, the Collector shall himself appoint one. Provided that it shall be lawful for Government to exempt representative watandars from the operation of this restriction in such cases as they shall for special reasons deem fit, and that when the Collector himself appoints a deputy under paragraph 2 of Section 59 he may, if Government so direct, appoint other than a watandar.” Mr. Rogers said : When this section was before the Council at a previous sitting, I explained a difficulty that had been experienced in administering the Watandari Act, which was passed three years ago, in consequence of the provision that the persons who were appointed as deputies, should always be watandars ; the Act thus preventing the appointment of any outsider as a deputy. The section I now propose to insert in the Act has been framed with a view to provide for this administrative difficulty. I have received the following long letter on this subject : (Read letter from a watandar at Ahmednagar.)

The Honourable Mr. GIBBS :—I might mention that this amendment was found to be necessary very shortly after the Watandari Act came into operation. Maharajas Scindia and Holkar are patels of villages of this description, and it is very desirable that they and others should be allowed to appoint their agents as their representatives under the Act.

The motion was then put to the vote and carried.

The Honourable Mr. ROGERS next moved that the word “ record,” in line 31 of Section 107, should be altered to “ title deed,” and that the words “ to him,” in the same line, should be struck out.

At the suggestion of the Honourable Mr. MANDLIK, the section was amended by the substitution of the word “ sunud” for “ record,” and the omission of the words “ to him” in the 31st line, and by the insertion of the words “ or other record,” after the word “ authority,” in the 32nd line.

The Honourable Mr. ROGERS :—The next amendment I had to propose has reference to Section 134. As it appears that the first paragraph of this section, as it stands, will throw upon the tenant the *onus* of proving that he is a tenant, I propose to add a third paragraph, which will read as follows :—“ And where there is no satisfactory evidence of the capacity in which a person in possession of land in respect of which he renders service or pays rent to the landlord, receives, holds, or retains possession of the same, it shall be presumed that he is in possession as tenant.”

The amendment was carried.

The Honourable Mr. ROGERS next proposed : “ That lines 12 to 23 of Section 211 be struck out, and the following new paragraphs inserted :—

“ The said survey-fee shall be payable within six months from the date of a public notice, to be given in this behalf by the Collector, after the completion of the survey of the site of the town or city, or of such part thereof as the notice shall refer to.”

“ In any town or city in which Bombay Act IV. of 1868 was in force before the passing of the Act, a similar public notice shall be issued by the Collector, within six months

after the passing of this Act, provided that in any such town or city no survey-fee shall be leviable when a fee has already been paid by a landholder for a sunud obtained by him under Section 10 of the said Act."

"Every holder of a building site as aforesaid shall be entitled, after payment of the said survey-fee, to receive from the Collector, without extra charge, one or more sunuds, in the form of Schedule H, specifying by plan and description the extent and conditions of his holding. Provided that if such holder do not apply for such sunud or sunuds at the time of payment of the survey-fee or thereafter within six months from the date of the public notice issued by the Collector under the last preceding section, the Collector may require him to pay an additional fee not exceeding one rupee."

The Honourable Mr. ROGERS said :—I have already explained to the Council, at a previous sitting, that the necessity for introducing these amendments arose in consequence of the withdrawal of the City Survey Act Amendment Bill, No. 4 of 1876. That Bill was brought forward at a time when it was thought there was very little chance of the Revenue Code Bill being brought before the Council, and passed into law so soon. In the present state of affairs there is no necessity for passing a separate law, and the amendment I now propose provides for all that it is necessary to provide for.

The Honourable Mr. MANDLIK said he had no objection to the first and third paragraphs, but he objected to the second paragraph, because the Act of 1868 did not make the payment of these fees compulsory, and as regards the intention of the Act of 1868 the Courts of Law had legitimately drawn the intention from the language of the Act itself. There had been nothing adduced to show that there need be any retrospective provision introduced now to make those dues payable. The issue of a fresh notice would not improve the matter, inasmuch as it would make leviable what was not leviable under the law passed nine years ago.

The amendment was put to the vote, and carried by show of hands.

In answer to a question from His Excellency the PRESIDENT, the Honourable Mr. MANDLIK said he should wish to have the division recorded, and the votes were accordingly recorded as follows :—

*Ayes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K.  
KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

*Noes—4.*

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAR.  
The Honourable S. S. BENGALI.

The Honourable Mr. ROGERS next proposed that Section 126A should be amended so as to read as follows :—“The right of Government to mines and mineral products in all unalienated land is, and is hereby declared to be, expressly reserved, provided that nothing in this section shall be deemed to affect any subsisting rights of any occupant of such land in respect of such mines or mineral products.”

The Honourable Mr. MANDLIK :—All I wish to say on this point is what I have said before. No doubt, this will be an improvement on the section as it originally stood, but

it is a matter for regret that any new section of this kind should have been introduced at all. I trust that as the Bill has not even yet been quite matured, this point may still receive further consideration.

The amendment was then put to the vote, and carried.

The Honourable Mr. ROGERS :—The Legal Remembrancer has called my attention to the fact that some difficulty may arise in consequence of the wording of Section 196. The new Civil Procedure Code, which has been passed since the last meeting of the Select Committee, and which will come into operation on the 1st of October next, enacts that the partition of estates, or separation of shares, shall be made by the Collectors; so that the Supreme Legislature has made the Collectors independent of the decrees of the Courts. Therefore, I propose, in order to bring the supplementary rules of the Local Legislature into accordance with this new state of the Law, that in clause 2 of the section, in place of the words “as the Court or other authority under whose order the partition is made,” shall be inserted the words “as the Collector thinks fit.”

The Honourable Mr. MANDLIK thought the new Civil Procedure Code would be a very complicated piece of machinery, particularly as regarded questions of partition; and he suggested that it might be well to postpone this point, in order that it might receive very careful consideration.

The Honourable Mr. ROGERS :—The simple fact is, the power is placed immediately in the hands of the Collectors, instead of under the direction of the Civil Courts.

The Honourable Mr. GIBBS said :—There were other points in the Bill which would probably need consideration on account of the bearing of the New Civil Procedure Code on the questions. The Council might adopt the present amendment provisionally, and leave it and other points open for future consideration.

The amendment was then put to the vote, and carried as follows :—That the words “as the Collector deems fit,” in clause 2 of the section, be substituted for the words “as the Court or other authority under whose order the partition is made,” and that after the word “demand,” in line 28, there be inserted the words “the expenses necessary and properly incurred in making such partition shall be recoverable as a revenue demand in such proportions as the Collector thinks fit, from the sharers at whose request it is made, or from the persons interested in such partition.”

The Honourable Mr. ROGAY :—Before the Council separates I wish to propose some verbal alterations in Section 103. His Excellency the President's predecessor assured the Council when the Bill was first introduced, and in answer to an objection from the Honourable Mr. Mandlik and myself, that this section would never be acted upon, except where the representative Watandar's deputy was convicted for treason, or some offence of the like nature; but I think it very likely that, in future, only the wording of the Act will be looked to; and I propose to make the offence explicit, and to insert before the word “offence” the word “treasonable,” and to strike out the words “in the discharge of his official duties.” I also propose that, from lines 2 and 3, the following words should be omitted :—“or any deputy or substitute appointed by him.”

The Honourable Mr. GIBBS pointed out that the section, as drafted, only referred to offences amenable to Courts of Sessions, and that only a limited number of grave offences would be tried by such Courts.

The Honourable Mr. MANDLIK suggested that it would be advisable to hold over the amendment to a future sitting. The section referred to had already been passed provisionally, and any amendment could be proposed when the Bill came up for the second reading.

The Honourable Mr. ROGAY declined to withdraw the amendment.

The Honourable Mr. ROGERS:—This question was fully argued out when the Watan-dari Act was before the Council; and the section was framed in accordance with what was shown to be the distinct custom of the country.

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

*Ayes—3.*

The Honourable Nacoda M. A. ROGAY.  
The Honourable Rao Bahadur B. AMBAIDAS.  
The Honourable S. S. BENGALI.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. MANDLIK declined to vote, although he was in favour of the amendment, because he thought it should have been moved at the second reading.

This concluded the consideration of the Revenue Code Bill.

The Honourable Mr. ROGERS moved for permission to introduce two Bills to regulate what was called the *Abkari* revenue,—one to apply to the Town and Island of Bombay, and the other applying to the Bombay Presidency generally. Mr. Rogers said:—I do not propose to enter into the details of these two Bills on the present occasion. I need only say that there are so many conflicting interests between the manufactures of liquor in the Town and Island of Bombay and outside it, and the interests of Government are so prejudiced by the various systems in force, that it has been found necessary to legislate on the subject. The sanction of the Government of India has been obtained to two Bills, and I now move for leave to introduce these Bills, copies of which will be supplied to honourable members so that they may see what the provisions are which it is proposed to enact.

Mr. Rogers moves for leave to introduce the Abkari Bills,—one for the City of Bombay and the other for the Presidency generally.

Leave given.

The leave applied for was given.

The Council then adjourned till Wednesday, June 27th, 1877.

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

J. NUGENT,

Under-Secretary to Government.

Poona, 23rd June 1877.

*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 Wednesday the 27th June 1877, at noon.

*P R E S E N T :*

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

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable Major-General M. K. KENNEDY.

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

The Honourable Rao Bahadur BECHERDAS AMBAIDAS, C.S.I.

The Honourable SORABJEE SHAPURJI BENGALI.

The Honourable Colonel W. C. ANDERSON.

The Honourable Mr. ROGERS moved the first reading of the new Abkari Bills, viz. :—

Mr. Rogers moves the first reading of the Abkari Bills—No. 2 of 1877 and No. 3 of 1877.

No. 2 of 1877,—“ A Bill to amend the law for regulating the control of the manufacture of spirituous liquors and for the realization of the Abkari revenue in the city of Bombay ;” and Bill No. 3 of 1877,—“ A Bill to consolidate and amend

the Abkari Law of the Presidency of Bombay.”

The honourable mover said :—The sanction of the Secretary of State and the Government of India having been obtained to this Council proceeding with the two Abkari Bills, to the introduction of which I obtained the consent of the Council on Saturday last, I now beg to propose the first reading of both the Bills. One of them relates to projected reform in the system of administering the liquor-revenue in the Island of Bombay itself, and the other to similar reform in the Presidency, as a whole, inclusive of Bombay. If my proposal to read the Bills a first time is agreed to by the Council, I shall proceed to ask for leave to nominate one Select Committee to inquire into, and report on, the advisability of proceeding quickly with that relating to Bombay alone, or of withdrawing it, and proceeding with that for the whole Presidency, inclusive of Bombay. I will now briefly explain to the Council what has led the Executive Government to desire the passing of these measures. In Bombay itself the administration of the revenue from intoxicating liquors presents great complication and difficulty. It is only from the toddy, which is plentifully produced in the island, that the manufacture of spirit is permitted ; distillation from mowra berries and other ingredients having been prohibited many years ago, I believe, on account of the unpleasant and, perhaps, unwholesome, smell arising from its waste-water. The revenue derived from toddy is only indirectly levied on the spirit by means of a tree-tax on toddy-producing trees, part of the toddy drawn from which is, of course, used in its sweet or fermented state. Both toddy and toddy-spirit can only be sold in shops licensed by

the Commissioner of Police on payment of certain fees, the proceeds of which are credited to municipal funds ; while the tree-tax, the payment of which on a certain number of trees carries with it the right to distil toddy into spirit, goes to imperial revenue. The stills in which this distillation is effected are scattered over the island in various directions, and are under no proper control. Such control it is, of course, desirable, for the Collector to have, for the protection of the revenue, and to make sure that the law is not infringed, as well as to enable us to assimilate the systems of administration within and without the island, so as to prevent their clashing and injuring the revenue. The liquor made from toddy not being sufficient for the consumption of the island, other liquor, prepared from mowra berries and other ingredients, is prepared at Uran, Bhándup, and Chimbur, and imported. This liquor, besides paying still-head duty at present rates of one rupee twelve annas per gallon to Government, is liable to a town duty, imposed by the municipality, of 4 annas, to which it has lately been raised from half that sum. The rate of Re. 1-12 was imposed last year, having been raised from Re. 1-4. As the one liquor competes with the other for sale in Bombay, it was necessary to raise the current rate of tree-tax also, in order to equalize the burden on both, and allow them to compete on fair terms. The rate was accordingly increased from Rs. 7 to Rs. 9 on cocoanut and brab trees, and the result was that both the liquor-manufacturers of Uran and those of Bombay struck, alleging, in each case, that it was impossible any longer to compete. This increase in the tree-tax was made on the best information the Collector could obtain. A committee was subsequently nominated to report on the subject, and was unable to advise as to what would be a fair equivalent of tree-tax to impose in relation to the still-head and town duty levied on mowra liquor imported into the island. It has, therefore, become perfectly apparent that no competition on fair terms can be brought about except by introducing into Bombay itself, in some form or other, the system of levying a still-head duty on liquor made from toddy. It will probably be necessary also to bring the sale of toddy and spirit more under the control of the Collector, and it will be more consistent with our general abkári system, if the proceeds of the licensing of the shops become imperial revenue. If this is done, the question of compensation to the municipality for the consequent loss in its income will, of course, be duly considered. The powers it is proposed to confer on abkári officers in both the Bills, will enable these measures of reform to be carried out ; and by remedying the defective provisions of the existing laws,—which will be found enumerated in the repealing clauses of the new Bills, in the matter of the control of the transport of liquor from one place to another,—will, it is hoped, enable us to check smuggling more effectually than is at present possible. The system of abkári administration in the Presidency outside of Bombay varies in almost every collectorate, and in some places, as in Tanna, almost in every taluka. In some, the sudder distillery system is in force, *i.e.*, where licensed shopkeepers manufacture liquor in enclosures under the supervision of Government officers, and pay a still-head duty on removing it for sale in their shops. In others, the right to manufacture and sell liquor in certain talukas, or tracts of country, is farmed out. The right to draw and sell toddy is, in some places, similarly farmed out, the juice being allowed to be sold only in certain licensed shops, or to certain contractors for the manufacture of spirit. In others, the holders of trees, paying a certain amount of tree-tax, have the right to draw the toddy and make it into liquor, either to sell to the public in certain places, or to contractors holding licensed shops. Under this system, which is called the Outputtee, the number of private stills scattered about the country is very large. They are under little or no control, and from providing cheap liquor, it might almost be said from every other tree in the country, tend, no doubt, greatly to encourage the vice of drunkenness,

which is frightfully prevalent, especially in the coast talukas of the Tanna Collectorate. It is the object of Government to check this by bringing the sale of toddy and the manufacture and sale of spirit more completely under control. It is intended to effect this by centralization of stills in places watched over by Government abkari officers. This centralization will enable us to extend the system of levying still-head duty on liquor, which, to some extent, will render liquor dearer, and the task more difficult for those who indulge too freely to procure it, and will thus discourage the vice of drunkenness. Various provisions to effect these ends are contained in the Bills, which I now propose shall be read a first time.

His Excellency the PRESIDENT asked the meaning of the term *outputee*.

The Honourable Mr. ROGERS said he did not exactly know. *Out* meant a plough, but he did not know how it was applied in this case. The term was only used in the Tanna Collectorate.

The Honourable Mr. BENGALI :—I have a few words to say regarding the second of these two Bills. In the Statement of Objects and Reasons which has been published, the honourable mover says, that one object of the Bill is the discouragement of the vice of drinking among the people; but on that point, I think, the Bill is very defective. I believe that one means of discouraging the vice of drinking spirits among the people is to encourage the use of the juice of the cocoanut and date trees in its pure state. This would be something like what is done in England by encouraging the use of light wines in order to render the use of spirituous liquors less common. Toddy is a pleasant drink, and is not injurious to health, except in an advanced state of fermentation, and it does less harm than spirits. It is largely used by the people, even with their food. The poor people in Guzerat, when they have no curry, often use toddy instead, and by its aid make a substantial dinner. All this being taken into account, I think the Legislature should do what they can to encourage the use of toddy in order to discourage the use of distilled spirits; but it seems to me that there will be more restrictions on the use of toddy under this new Presidency Bill than have ever previously existed. I intend to vote for the first reading; but I trust that, previous to its coming again before the Council, there will be some alteration made to provide a sure means of lessening the habits of drinking among the people.

The Honourable Mr. GIBBS :—With regard to Section 2 of the Bombay City Bill, viz. :—“No one shall draw juice from any cocoanut, brab, or date tree, except under the authority, and subject to the terms and conditions of a licence to be granted in this behalf by the Collector.” I have been informed that there is another description of palm that is now growing a good deal in Bombay, which yields more spirit than any of the trees noticed in this section; and if that description of tree is omitted, the people will probably commence at once to cultivate and utilize it in order to get beyond the provisions of the Act. I would suggest that the 5th section should be made to read—“No person shall draw juice from any cocoanut, brab, date, or other description of palm tree, except under the authority and subject to the terms and conditions of a licence to be granted in this behalf by the Collector.”

The Honourable Mr. RAVENSCROFT :—In the present stage of the Bill I do not think it is requisite to go into details; but I may say, generally, that I approve of the terms of both the City Bill and the Bill for the whole of the Presidency. There are some minor points in the Bills which can be best considered when they are before the Select Committee, and I have no doubt the members of the Select Committee will discover what is already known to all Executive Government officers, that the various systems which now prevail in the different collectorates of the Presidency are such that, until some Bill of this description becomes the law of the land, it is impossible that the Government can realize that fair share of

the revenue which in every civilized country is derived from the abkári duties. The Bill provides for rules which the Revenue Commissioner is presumed to draw up, and under which the provisions of the Bill will be brought into due operation; but such points, I think, can be better considered in Committee than at a sitting of the whole Council. With reference to the remarks of the Honourable Mr. Bengali as to the reduction of the vice of drinking spirituous liquors, I think that is not the main point which the Council have to consider. Of course, the diminution of drunkenness is an object which attracts the attention of all Governments; but the main point, I presume, in the introduction of these Bills, is the maintenance of the revenue to which the Government is entitled. With these remarks I beg to support the first reading of these two Bills.

The Honourable Mr. ROGERS:—The remarks of the Honourable Mr. Bengali tend simply to this effect, that the Government ought to discourage the vice of drinking by encouraging the use of ordinary toddy instead of distilled liquors. I propose presently to ask leave of the Council to nominate Mr. Bengali on the Select Committee to consider these Bills; and if he can bring forward any measure whatever by which that happy result could be secured, I am sure that the Council will be happy to give it every consideration; but I can conceive nothing that could be put in a law which could have that effect. It would be equivalent to passing a law in England to induce people to drink milk instead of milk punch. With regard to the Honourable Mr. Gibbs' remark, that there was another kind of palm tree besides those descriptions mentioned in the Bill, there would of course, be no objection to the Select Committee wording Section 5 so as to include all descriptions of trees; but, I believe, the tree Mr. Gibbs alludes to is the *Berlia Malova*, the white palm which grows in the Konkan and other parts of the country, but which does not grow in Bombay itself.

The Honourable Mr. GIBBS said there were some trees of that description growing in Bombay.

The motion was then put to the Council, and the Bills were read a first time.

It was further resolved, on the motion of the Honourable Mr. ROGERS, that the Bills should be referred to a Select Committee composed of the Honourable Mr. Ashburner (to whom the honourable mover proposed to hand over charge of the Bills), the Honourable Mr. Ravenscroft, the Honourable Colonel Anderson, and the Honourable S. S. Bengali, with instructions to report on the City Bill, in a fortnight, and on the general Presidency Bill in two months from this date.

Before the Council rose, His Excellency the PRESIDENT said:—As this is the last meeting of the Council at which the Honourable Mr. Rogers will occupy his seat, I may venture to express on behalf of all honourable members present our sense of the great enlightenment which our deliberations have received from his experience, and the support which the public interests have derived from his endeavours, and our regret that, by the official order of things, we are about to be unavoidably deprived of his presence.

The Honourable Mr. ROGERS:—I thank Your Excellency for the kind manner in which you have noticed my public services.

The Council then adjourned.

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

JOHN NUGENT,

Under-Secretary to Government.

Poona, 27th June 1877.



*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 27th July 1877, at noon.

*P R E S E N T :*

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

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

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

The Honourable the ADVOCATE-GENERAL.

The Honourable Major-General M. K. KENNEDY.

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

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

The Honourable Naoda MAHOMED ALI ROGAY.

The Honourable SORABJI SHAPURJI BENGALI.

The Honourable Colonel W. C. ANDERSON.

The Honourable WALTER LANG.

Paper presented to the Council. The Report of the Select Committee on "The City of Bombay Abkari Bill" (No. 2 of 1877) was presented to the Council.

The Honourable Mr. ASHBURNER moved that Bill No. 2 of 1877—"A Bill to amend the Law for regulating the control of the manufacture of spirituous liquors, and for the realization of the Abkari Revenue in the City of Bombay,"—be read a second time.

Mr. Ashburner moves the second reading of the Bombay City Abkari Bill,—Bill No. 2 of 1877.

Bill read a second time, and considered in detail.

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

The Honourable Mr. ASHBURNER:—I have an amendment to suggest to Section 9. Messrs. Kemp & Co., Pharmaceutical Chemists, Bombay, have written, complaining that that section which relates to stills will affect their business. I would suggest that a proviso should be added to the effect either that nothing in Section 9 should make it necessary for a pharmaceutical chemist to take out licenses for stills used for *bona fide* medicinal purposes, or that the provisions of Section 10, Clauses 1, 2 and 3, should not apply to stills used for *bona fide* medicinal purposes, the licenses for which may contain such special provisions as the Collector might, under the orders of Government, think necessary. The last-named proviso is the one which I should prefer to see adopted, because, if stills of any kind are permitted to be worked without licenses, a door will be left open to frauds in a manner that is not at all desirable. I agree with Mr. Kemp that it would be impossible, in the case of chemists, to enforce all the provisions contained in the Bill with regard to the strength of liquor, and the materials from which distillation may take place in the preparation of medicines.

The Honourable Mr. ROGAY asked if Messrs. Kemp & Co. had made any representations.

The Honourable Mr. ASHBURNER replied that they had stated that certain provisions of the Bill would interfere with their business.

Mr. ASHBURNER added that it had just been brought to his notice that the Government of India had ordered a duty, regulated by proof and strength, to be levied on spirituous preparations for medicinal purposes, so that it would be impossible to exempt Messrs. Kemp & Co. and other chemists from the payment of some kind of duty, and perhaps a still duty would be the most convenient form of collecting this revenue. He had also just been informed that the objections of Messrs. Kemp & Co. were met by Act XVI. of 1863, which expressly provided for the case of spirits used by chemists and in the arts, so that the amendment was unnecessary; what Messrs. Kemp & Co. objected to was, that they would not be able to work stills under this Bill. If the Bill were allowed to stand as framed, the chemists must take out licences under it, and the working of the stills was provided for by the Act of 1863.

His Excellency the PRESIDENT:—Then no amendment is necessary?

The Honourable Mr. ASHBURNER:—No: I was not aware that this Act of 1863 existed. It would be dangerous to permit any relaxation of the rules laid down, or rectified spirits might be prepared, and sold for the purpose of other than medicinal preparations.

His Excellency the PRESIDENT:—Then the honourable mover drops the amendment?

The Honourable Mr. ASHBURNER:—Yes.

The Honourable MAHOMED ALI ROGAY:—I wish to ask whether it is the intention of Government, under this Bill, to farm out the Abkari revenue of Bombay after the fashion of the present practice in the Mofussil? If it is intended to have a sudder distillery, worked departmentally, I have no objection; but if it is to be farmed out to the highest bidder, by public auction, the landowner will be completely at the mercy of the farmer, who will pay for the toddy just whatever price he likes. If that is the intention, I would suggest that a provision should be included in the Bill by which a certain rate should be fixed to be paid by the farmer, or authority should be vested in Government to compel the farmer to pay a certain price to the landowner.

The Honourable Mr. ASHBURNER:—I submit that it would be impossible to lay down rules of that kind. It has not yet been decided what particular course Government will take; but if it is resolved to farm the revenues, it will be impossible to lay down any fixed price for the farmer to pay to the landowners; the rate must depend on the market.

The Honourable Mr. ROGAY:—The farmers would have the matter entirely in their own hands, and could influence the market as they pleased. I think a section should be inserted by which Government might be empowered to compel the contractor or farmer to pay a certain reasonable rate to the landowner for drawing toddy from the tree.

The Honourable Mr. ASHBURNER:—What rate would the honourable member propose?

The Honourable Mr. ROGAY:—I would say the rate at present ruling in Bombay.

The Honourable Mr. ASHBURNER:—This point was raised by the Honourable Mr. Bengali in the Select Committee, and was very fully discussed, with the result that Mr. Bengali admitted the proposed provision was unnecessary and impracticable.

The Honourable Mr. BENGALI:—I think the Collector, or the officer administering the Act, might be empowered to make a condition with the farmers to buy the toddy at a certain price, which price might be varied from time to time. I agree with the honourable mover that it would be impossible to enforce a fixed rate.

The Honourable Mr. LANG fancied that no farmer would take up on such terms, because he might subject himself to a loss.

The Honourable Mr. ASHBURNER:—The difficulty would be that, at the time the price would be fixed, the farmer would not be able to know what his revenue or outlay would be.

The Honourable Mr. BENGALI:—As the contracts are to run only from year to year, it would not be very difficult to fix the prices at which the farmers should purchase the toddy from the owners of cocoanut oarts; otherwise, the landowners will be altogether at the mercy of the contractors. There will be no fear if the distilleries are in the hands of Government, because Government may be trusted to deal fairly in the matter; but if they are in the hands of a few private parties, they will do all they can to combine and purchase the toddy at the lowest possible price.

The Honourable Mr. ASHBURNER:—The Bill does not alter the present law in this respect, and if there will be objections under the new Act, why are there not objections now?

The Honourable Mr. ROGAY:—There are at present too many distillers to combine. If there was a monopoly in the hands of one person, it would be very different from the present competition.

The Honourable Colonel ANDERSON said it seemed to him that the root of the whole thing was the consumption; and it would be necessary for the Government to regulate how much everybody should drink—which was simply impossible.

After some further conversation the Honourable Mr. ROGAY moved that the following section be added to the Bill, viz.:—“The Collector, with the sanction of Government, shall, from time to time, fix the minimum price at which the contractors for the distillation of liquor distilled in Bombay shall purchase the juice from the owners of cocoanut, brab, or any other palm trees.”

On the vote of the Council being taken, the amendment was lost by 7 to 3, the order of voting being:—

*Ayes—3.*

The Honourable Rao Saheb V. N. MANDLIK.  
The Honourable Nacoda M. A. ROGAY.  
The Honourable S. S. BENGALI.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable L. R. ASHBURNER.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel ANDERSON.  
The Honourable W. LANG.

The Honourable Mr. ASHBURNER:—I have another suggestion to make. Section XI, as drafted, requires a duty to be levied on all spirituous liquors, whereas that is not the intention of Government at present. Government have ordered that the manufacture of toddy spirits not exceeding 75 degrees of strength is to be continued till the 31st of

December next, on the payment of the present tree tax only, and afterwards there is to be another arrangement; I therefore propose to omit the word "all" from the commencement of the section, and to add after the word "shall," in line 3, the words "if Government so direct."

This amendment was adopted.

The Honourable Mr. BENGALI :—I have given notice of an amendment which I intend to propose with regard to Section 8 of the Bill. I have not much more to say on this subject beyond the remarks I have made in the minute published at the end of the Select Committee's report on the Bill. I think that Section 8, as it appeared on the first reading, should be substituted for the section as now drafted. Since I wrote my minute I have made further inquiries into the matter, and I am quite satisfied that if toddy is not allowed to be sold in Bombay, as hitherto, free, and if it is insisted that it can only be sold through licensed dealers or to the distilleries, the result will be that the juice, which is so wholesome and good for the people, will be less used, and a great deal more toddy will be sent for distillation than at present. I have no doubt the revenue would be increased by adopting the Section 8 as now proposed, by the majority of the Select Committee, but I do not think it would be for the good of the people that there should be any restrictions placed on the use of the beverage. I therefore beg to move that instead of Section 8, as it at present stands in the Bill, the following section be substituted :—"That no person shall sell or barter toddy unless he be in possession of a licence under Section 5, or a pass under Section 7 of this Act, or of a licence which shall be issued by the Commissioner of Police under Bombay Act IX. of 1867."

The Honourable Mr. ASHBURNER :—This matter was very fully discussed in the Select Committee, and it was universally allowed that it would be impossible to relax the provisions of this section without rendering impossible the working of the whole Act. I do not think it is necessary to go *verbatim* over the whole ground followed in the discussion in the Select Committee, but I may mention that the subject was thoroughly discussed, and that the decision was against the Honourable Mr. Bengali's proposition. I may also mention that the provision of Section 8, as at present drafted, follows the existing rule over the whole Presidency. No one can sell toddy without a licence throughout Guzerat, and why should people be allowed to do so in Bombay ?

The Honourable Mr. ROGAY :—I think that the Honourable Mr. Bengali had forcibly shown the grounds for his amendment. It seems to me that other honourable members are under the misapprehension that toddy is a spirit; but a particular friend of mine remarked to me the other day, that he could drink an earthen cha'ty full of toddy, and it would do him no harm. Toddy is a kind of light wine much used by the lower classes of the people, and it would be hard on them to make it dearer and to tax it both ways, as a spirit and also when fresh from the tree. The Honourable Mr. Bengali has shown that it is used not only as a luxury but as food; and, as a landlord having cocoanut trees on my property in Bombay, I can bear testimony to this fact. I think the Government ought not to be hard on the poor people for the sole reason of collecting revenue. By Section 8 of the present Bill we shall impose a tax not only on an article of luxury but on food.

The Honourable Mr. RAVENSCROFT opposed Mr. Bengali's amendment, and said he thought Mr. Rogay was under a misapprehension as to toddy not being an intoxicating drink. It most undoubtedly was an intoxicant, and it was out of the question to suppose

that it could be allowed to be sold free, and hawked about the streets, which was contrary to the principle of excise legislation. The object of the Bill was to bring the whole liquor trade under surveillance.

The Honourable Mr. LANG said it seemed to him that the effect of Mr. Bengali's amendment would be that, whereas one party would have to buy the toddy from the tree-owner and be then required to take out a licence before he could dispose of it, the tree-owner could sell it without a licence, so that the latter would be able to undersell the other man. The result would be that no licences would ever be taken out.

The Honourable Mr. BENGALI :—I only wish that toddy should be as free as it has hitherto been. Government already derive a revenue from the tax on the trees; but if the Bill, as at present drafted, is passed, the juice will be taxed, by way of sale licences, more than it is at present. The Honourable Mr. Ravenscroft appears to think that I wish to encourage the sale of toddy by hawkers and others, and he says that for police purposes it is necessary not to do so. The fact is that, at present, hawkers do sell toddy in Bombay; and little boys on the road-side at Mahim and other places also sell it, and no licences are required. All I ask for is that the sale of toddy should be left as free as at present, and that no restrictions should be placed on it, because it is advisable that its use should not be discouraged in any way. Even if a great deal of money could be brought into the public exchequer by putting restrictions on the sale of toddy, that consideration should be set aside, and this beverage, which takes the place of spirituous liquors, should be free. If it is not kept as free as at present, the people will be driven to the use of more intoxicating liquors. The Honourable Mr. Ashburner said, in Guzerat toddy is sold by licensed dealers only; but, then, in Guzerat there is no tree-tax as there is in Bombay. In Bombay a tree-tax is paid, and there is no licence required; in Guzerat, on the other hand, there is no tree-tax, and the toddy is sold by licensed dealers. According to the present section—which reads: “no person shall sell, barter, or otherwise dispose of toddy, &c.”—a man will not be able to take a friend to his trees and ask him to drink as much toddy as he likes. At present this is often done in Guzerat; no money is paid, and no offence is committed; but under this section, as drafted, the man who treats his friend to a drink of toddy in this way, will be liable to be taken before a magistrate and fined for disposing of his toddy without a licence. It is very much like punishing a man for taking a friend into his garden and inviting him to partake of the fruit growing on the trees there.

The amendment was then put to the vote, and was lost by 7 to 3, the order of voting being :—

*Ayes—3.*

The Honourable Rao Saheb V. N. MANDLIK,  
The Honourable Nacoda M. A. ROGAY.  
The Honourable S. S. BENGALI.

*Noes—7.*

His Excellency Sir CHARLES STAVELEY.  
The Honourable L. R. ASHBURNER.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Major-General M. K. KENNEDY.  
The Honourable E. W. RAVENSCROFT.  
The Honourable Colonel W. C. ANDERSON.  
The Honourable W. LANG.

The Honourable Mr. ASHBURNER said he would now move the third reading of the Bill.

The Honourable Mr. ROGAY :—Before that is done I wish to make a few remarks with regard to the procedure of the Council. I have no doubt honourable members are aware that formerly, when a Bill was considered by the Council in detail, it was gone through section by section; the head to each section being read by the Secretary, and opportunity being given to honourable members to suggest any alteration or improvement that might occur to them. Then, if no objection was raised, the section was passed. His Excellency the President appears to be of opinion, however, that all that is necessary in considering a Bill in detail is to hear any particular objection an honourable member may have to any section, and to discuss amendments of which notice has been given. With due deference to His Excellency's opinion I think that is contrary to Rule 20 of the Rules of the Council, which is to the effect that, if a motion for the first reading of a Bill be carried in the affirmative such Bill shall be referred to a Select Committee for report, which report shall be presented to the Council; whereupon, the Bill shall be read a second time: on the second reading being carried, the principle of the Bill shall be considered as affirmed, and the Council shall proceed to consider the Bill in detail; after which the Bill shall be read a third time. If I understand the word "detail," this surely means that each section should be gone through carefully; and I submit that is the wisest and safest plan to adopt, for this simple and broad reason, that haste is generally productive of mistakes. I may quote the Municipal Act, which was carefully considered in the manner I have described, but into which, notwithstanding, a blot has crept here and there. Only the other day a flaw was brought to the notice of the Municipal Commissioner, and I believe the Honourable the Advocate-General has concurred in the opinion as to that flaw, the result of which is that the election of 32 members of the Municipal Corporation has been postponed. On this ground, and on the general ground that the safer plan is for the Council not to take everything for granted because a Bill has been considered by a Select Committee and has been drafted carefully by the legal officers of Government; but to consider each Bill in detail, as has hitherto been the rule, I think we should adhere to the form of procedure adopted by His Excellency's predecessor.

His Excellency the PRESIDENT :—There is no objection whatever to the headings of the sections being read.

The Honourable Mr. ROGAY added, with reference to Mr. Ashburner's proposal that the Bill should be read a third time on that day, that he did not think sufficient reason had been shown for any particular hurry.

The Honourable Mr. ASHBURNER :—Perhaps I may be allowed to explain. It is very necessary that this Bill should come into operation on the 1st of August next.

His Excellency the PRESIDENT said, if the Council wished, the titles of the sections might be read.

The Honourable Mr. ASHBURNER :—It will only delay the proceedings for a few minutes. I do not object, but I think it unnecessary.

His Excellency the PRESIDENT thought the majority of the Council wished it to be done, and instructed the Secretary to read the heads of the sections.

The Honourable Mr. BENGALI moved that to Clause 2 of Section 3—(Interpretation Section)—defining the word "manufacture," should be added the following :—"Admixture is a process within the meaning of this definition." He said that this appeared in the Presi-

dency Abkari Bill, which was now before the Select Committee, and he thought it should also appear in the City Bill.

The Honourable Mr. ASHBURNER :—I have no great objection, but I think it is unnecessary.

The Honourable Mr. MANDLIK :—I think it better that these words should be inserted.

The words were accordingly added to the definition.

When Section 13 was reached, the Honourable Mr. LANG said it provided for the confiscation of conveyances which were being used to convey toddy liable to confiscation, and it occurred to him that, in many instances, the vehicles would not belong to the same people who owned the toddy.

The Honourable Mr. ASHBURNER :—Often, when people are detected in the act of smuggling, they run away, leaving the vessels in which the spirit is contained; and if they are not liable to confiscation, there is no other means of inflicting punishment.

The Honourable Mr. LANG said the vessels holding the toddy might be confiscated without confiscating the carts.

The Honourable the ADVOCATE-GENERAL thought that Section 15 met the objection by providing that the confiscations should be subject to the discretion of the magistrate.

The Honourable Mr. RAVENSCROFT considered that if a man allowed his carts to be used for illegal purposes, he should take the risk.

After some conversation, the Honourable Mr. LANG moved that the words "and the animals, carts, vessels, or other conveyances used in carrying the same," in the 41st to the 43rd lines of the 13th section, should be struck out.

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

Mr. Ashburner moves the third reading of the Bill.

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

Bill read a third time and passed.

The motion was carried, the Honourable Mr. ROGAY dissenting, and the Bill was read a third time and passed.

His Excellency the PRESIDENT then adjourned the Council.

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

JOHN NUGENT,

Under Secretary to Government.

Poona, 27th July 1877.

*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 Wednesday the 8th August 1877, at noon.

*PRESENT:*

His Excellency the Honourable Sir RICHARD TEMPLE, Bart., K.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. ASHBURNEE, C.S.I.

The Honourable the ADVOCATE-GENERAL.

The Honourable Major-General M. K. KENNEDY.

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

The Honourable SORABJI SHAPURJI BENGALI.

The Honourable Colonel W. C. ANDERSON.

Mr. Gibbs asks permission to suspend Council rules in order to enable him to introduce Bill No. 5 of 1877 (A Bill to validate the appointment of certain members and for the temporary continuance of the Municipal Corporation of the City of Bombay).

The Honourable Mr. GIBBS :—I have to ask Your Excellency, under the powers of Rule 42, to suspend the rules of the Council for the purpose of enabling me to bring in Bill No. 5 of 1877—"A Bill to validate the appointment of certain members, and for the temporary continuance of the Municipal Corporation of the City of Bombay."

Council Rules suspended.

His Excellency the PRESIDENT :—Then, if the Council approve, the Rules may be suspended; and they are suspended accordingly.

The Honourable Mr. GIBBS :—With Your Excellency's permission I now beg to move, first, for leave first to introduce and then to read, for the first time, Bill No. 5 of 1877. Your Excellency and the members of the Council are aware that the municipal elections, which were to have commenced on the 26th of July,

have been postponed. The circumstances are shortly, I believe, these: The Municipal Commissioner received notice from certain rate-payers, objecting to one gentleman whose name appeared in the list of candidates for the Corporation, on the plea that he was not eligible, because he had not paid house-rate and police and lighting rates. The Municipal Commissioner considered it necessary to take the honourable and learned Advocate-General's opinion on this point; and the Advocate-General's opinion was that, undoubtedly, the objection was a valid one under the Act, the gentleman objected to not having paid both owners' and occupiers' rates. I may mention that it was intended, when the Municipal Bill was brought in, that the elections should not be confined to the owners of house property in Bom-



bay, but that persons who paid what are called occupiers' rates should also be eligible to vote, and qualified to become members of the Corporation. I may here, in passing, quote from one of the speeches made during the proceedings of the Council when the Bill was introduced. The then Advocate-General said: "What is wanted is, that those who are not owners, but are only rate-payers, should be able to make their voices heard on the question of the administration of the local funds." When the original Municipal Act of 1872 was passed and sent to receive the assent of the Viceroy, it being a very long Bill, a considerable time passed before the Legislative Department of the Government of India could go through it; and when it was received back with the Viceroy's assent, the periods of election which had been fixed by the Act had passed, and the consequence was, that it became necessary to pass a short Act to alter the dates, so that the elections might take place. Accordingly, Act II. of 1873 was brought in by my honourable friend Mr. Ravenscroft, and passed at a special meeting of the Legislative Council, at which the rules were suspended, as they have been on the present occasion. That Act, which repealed sections 4 and 6 of the Act of 1872, enacted that one qualification of a member of the Municipal Corporation of Bombay should be, that he must have paid Rs. 50 in the following municipal rates, viz., the house rate and police and lighting rates. These include both the occupiers' and the owners' rates. This was not the intention of the promoters of the original Act, but the word *and* had the effect, no doubt, of making the legal qualification for becoming a member of the Corporation, and also for voting the payment of all these three rates. On the occasion of the first election which took place the Municipal Commissioner made out his list of voters on the principle that owners and occupiers were equally eligible to vote and to be members of the Corporation, and the election of 1873 was conducted accordingly. That election was good for two years. In 1875, when the next election took place, the same principle was acted upon; and the same would, no doubt, have been the case this year, had not this objection been taken and supported by the legal opinion of the Advocate-General. The Advocate-General will, no doubt, tell the Council his reasons for that opinion. I believe he foresaw that if the elections were allowed to take place the result would in all probability be an enormous amount of litigation, the nature of which he will be better able to explain than I can; and he considered that, under all the circumstances, it would be better to postpone the elections and bring in a short Bill legalizing the two Corporations which have existed; and that, as we are about to introduce a Bill amending the general Municipal law, which will take a few months to pass, the shortest plan would be to pass a short Act, legalizing the two Corporations that have existed, to continue the last Corporation till the 31st of December next, or until such further period as may be notified in the *Government Gazette*, so that the amended Bill may be passed and become law before any further elections take place. I may mention that the amended Bill is founded chiefly on amendments that have been proposed by the Town Council, who have gone very carefully into the question; and one of their first amendments is, that in the section above alluded to the word "and" should be omitted and "or" substituted. With these few observations I will now request permission to bring in this Bill, No. 5 of 1877.

The Honourable the ADVOCATE-GENERAL :—According to the section of the existing Act as it stands, unless a person pays the whole of the three rates mentioned, viz., the house rate, police rate, and lighting rate, he is not qualified. Now, the house rate, according to the Act, is payable by the owners, and the police and lighting rates by the occupiers; and the result, of course, is, that no person can be legally qualified unless he occupies the excep-

tional position of being in actual occupation of his own premises. I was informed by the Municipal Commissioner that, according to this, a very large majority of the persons hitherto considered eligible in Bombay would be disqualified from becoming either members of the Corporation or electors. Europeans in Bombay being, almost without exception, only the occupants and not the owners of their houses, the result as regards them would be that, except those gentlemen who happen to be Fellows of the University, no European would be eligible as a member of the Corporation or an elector. Under those circumstances it appeared to me that to proceed with the elections would be to produce a very considerable amount of litigation; because people in Bombay would be perfectly ready to dispute the qualification of members of the Corporation in the law courts, and I did not think that was desirable. Another result of the elections being proceeded with, would have been that there would not have been fair representation, by the members of the Corporation, of the citizens of Bombay, as was certainly the intention of the framers of the Municipal Act. The intention of the Act would thus have been defeated, and possibly the persons elected might not have been altogether desirable. For these reasons it seemed to me very desirable that the elections should be postponed; and I advised the Municipal Commissioner to that effect. Then the elections having been postponed, there were two courses open: either to amend the original Act and make the qualification the payment of owners' or occupiers' rates, or to continue the present Corporation in existence by such an Act as is now proposed. It appeared to me that the last course was the most desirable, and for this reason—that, besides those I have mentioned, there were other objections. One was, that it appears to me there is no proper and certain machinery, under the Act as it now stands, for ascertaining who are qualified to be electors. The Act of 1872 provides that lists are to be made out by the Municipal Commissioner; but the section does not go on to say that a person's name being placed on the list shall be part of the qualification; and it is an exceedingly arguable point as to whether or not the simple fact of a man having paid the necessary rates would not, apart from his name being entered on the Municipal Commissioner's list, give him a proper qualification. If that be so, the result, of course, is, that the lists prepared by the Municipal Commissioner, and supposed to include all the persons properly qualified, are really useless; and on the very day of the election a man may produce his papers in proof of payment of the necessary rates, and claim to exercise his right as an elector. That is one objection, and there are other objections which, perhaps, I need not specify. It seems to me that it is very desirable, inasmuch as an amended Act is proposed and will come before the Council in a very short time, to take the course which is being followed in passing this short Act, validating the action of the Corporations of 1873 and 1875, and continuing the present Corporation until the end of the year, or until the amended Act shall be passed and come into operation.

His Excellency the PRESIDENT:—Then the motion before the Council is that leave be given to introduce the Bill?

The motion having been carried in the affirmative, the Honourable Mr. GIBBS moved the first reading of the Bill.

The Bill read a first time.

The Bill was then read a first time.

The Honourable Mr. GIBBS:—In moving the second reading I will merely state that the Bill, which has been drafted by the Honourable the Advocate-General, has a treble object,—first, of legalizing all acts and payments—everything that has been done, in fact—by the two Corporations of 1873 and

1875; second, legalizing the action of the Municipal Commissioner in stopping the elections of July of this year; and, third, revising the Corporation, which, legally, expired on the 26th of July, and continuing it in full force and vigour until the end of the year, or until such time as may be notified in the *Government Gazette*. I beg now to move the second reading.

The Bill read a second time and considered in detail.

The Bill was accordingly read a second time.

The Honourable Mr. GIBBS:—I have now to suggest that the Bill be taken into consideration by the Committee of the whole Council in detail.

The Bill was then considered in detail, the explanatory note to each section being read by the Secretary.

The Honourable Mr. GIBBS moved that Section I. be amended by the insertion, after the word "respectively" in the 16th line, of the words "or such of them as shall continue to be members of the said Corporation," and also by the substitution of the word "until" for the word "to" in the 18th line.

This amendment was adopted.

Section IV. was amended, on the motion of the Honourable Mr. GIBBS, by the insertion of the word "emoluments" after the word "authorities" in the 9th line.

The Honourable Mr. GIBBS:—The Bill, having been considered in detail by the Committee of the whole Council, I now move the third reading.

The Bill read a third time and passed.

The Bill was read a third time and passed.

His Excellency the PRESIDENT then adjourned the Council.

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

J. NUGENT,

Under Secretary to Government.

Poona, 8th August 1877.

*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 14th September 1877, at noon.

**P R E S E N T :**

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

The Honourable J. GIBBS.

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

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

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable Rao Bahadur BECHEEDAS AMBAIDAS, C.S.

The Honourable SORABJI SHAPURJI BENGALI.

The Honourable WALTER LANG.

The Honourable Mr. GIBBS. moved the first reading of Bill No. 4 of 1877—A Bill to amend Bombay Act II. of 1868 (the Ferries Act). The honourable gentleman said:—It will be in the recollection of some of the members of this Council that at a meeting of the Council held in January 1876 I moved the first reading of a Bill to amend Act II. of 1868. The principal object of the amendments which were then brought forward was, if possible, to bring within the powers of the general Ferries Act of the Presidency such steamers as pass from Bombay to Alibág and other places down the coast, and also from Surat or Broach to Gogo. At the same time provision was sought to be made for protecting the revenues of any bridges which might be built, in order to prevent people from running ferries near and so hindering those who had built the bridge from getting that fair return for their expenditure which was considered advisable. There was also another provision introduced into that Bill at the suggestion of the Government of India, which was, to add to the exemptions provided by Act II. of 1868 so as to include any persons whom the Governor in Council, by notification in the *Government Gazette*, might exempt from the payment of tolls. This clause was added for the purpose of providing for cases of great native chiefs like the Gaekwár, Scindia, or Holkar, coming into the Presidency and passing over the roads, with their attendants; and was intended to simplify the practice which had been followed up to that time, of the Political Officer in charge paying the tolls and then charging them in a bill to which he had to get sanction afterwards—a system which gave rise to a great deal of inconvenience. There is such a provision in a similar Act on the other side of India, which enables Government to exempt chiefs in such cases from the payment of tolls. The Bill I spoke of was introduced into this Council and was read a first time on the 4th of January 1876, and referred, subsequently, to a Select Committee; but owing to the very great practical difficulties which were likely to be experienced in carrying out the principal object of the amendments which it contained, the Select Committee suggested that it should be withdrawn, and the Council concurring

in that opinion, it was then withdrawn. Since that time the notice of the Government has been directed to the two clauses which I have mentioned, providing for the protection of the tolls of bridges and to enable the Government to exempt certain persons from the payment of tolls; and it is to make these provisions law that the Bill has been drawn up, the first reading of which I have the honour now to move. Section 3 of Bombay Act II. of 1868, to which the first addition is intended to be made, at present exempts only policemen on duty, sepoy and soldiers in uniform and proceeding on duty, and persons in custody of the police; and it is proposed to add a clause including in the exemption "any persons whom the Governor in Council, by notification in the *Government Gazette*, may exempt from the payment of tolls." The next portion of this short Bill provides for the protection of bridges by preventing traffic from being carried over the river by other means within three miles on either side of a bridge. This provision has especial reference at the present time to the new bridge over the river Tápti at Surat. It is considered to be—and I think there can be no doubt that it is—wise to encourage municipalities and local fund committees to build bridges when they have the means to do so, because many rivers, especially in the monsoon time, are extremely dangerous for ferry boats; and hardly a year passes without our having to lament very serious accidents owing to ferry boats being upset. Only the other day I read in the newspapers of one of these boats being upset, and I think 35 lives were lost. It has been found where bridges have been built that not unfrequently persons attempt, by carrying passengers across in boats at a very small rate and without any regulations for the safety of the passengers, to compete with the toll fixed to be paid by persons crossing over the bridge; and this not only is a source of danger to the people carried, but also interferes with the fair income which those who build a bridge have a right to expect. It is to prevent this that the addition to the Ferries Act is now proposed. I may state that a similar provision now exists with regard to public ferries which it is now proposed to apply to bridges. Wherever a public ferry is authorised, no person can carry passengers, goods, &c., across the same river within three miles on either side of that ferry. It is therefore proposed merely to place the bridges in the same position as that now occupied by the licensed ferries. These are the only two objects of the Bill, which I now beg to move be read a first time.

The Honourable Mr. BENGALI:—It is my intention to vote against the first reading of this Bill. It seems that a new bridge has been built over the river Tápti near Surat, which has cost heavily, and the present income of which does not suffice to cover the expenses of maintenance and to pay the interest on the money expended in its erection. My honourable friend Mr. Gibbs has stated that it is wise to encourage local funds committees and municipalities to build bridges; but I think, at the same time, it is not wise to encourage those bodies to commit such blunders as seem to have been made at Surat, where they have built a very costly bridge which does not pay. The object of this Bill is to drive all the traffic over the river to the bridge, instead of leaving it to the people to cross the river in the manner most convenient to themselves. Poor people may be able to cross the river by boat on payment of a single *pie* per head, but if they are compelled to go over the bridge they will have to pay whatever toll may be levied. The Bill simply seeks, I think, to cover a great blunder which has been made, and I think it is the duty of the Legislature to encourage such blunders as little as possible. It is not only that the people will have to pay more if they are compelled to cross by the bridges, but it will be a source of great inconvenience; for instance: It is sought to prohibit any boat

from plying within three miles on either side of the bridge, and if a man, or men, living on the bank of a river two miles from the bridge, had to cross over the river to the opposite bank, they would have to travel two miles along the bank, pass over the bridge, and then travel two miles back again on the other side, so that they would have either to drive, ride, or walk a distance of four miles or more, to avoid the penalties which the Bill would impose upon them if they went straight across from the point from whence they set out. I think that this Bill is entirely unnecessary. If the Surat Municipality wish to draw the whole of the traffic over the bridge, let them reduce the toll to such a figure as will induce the people to cross by the bridge rather than by any other means. I will put a case for the consideration of the honourable members:—Suppose that the Prince's Dock, which is now in course of construction in Bombay, is meant, as it is said, for the good of the trade of the port, should prove a failure—as some people predict that it will—that therefore the Legislature should pass an Act compelling every vessel that comes into the harbour to load and unload in that dock and nowhere else. If it is thought that such an enactment would be impossible in the face of public opinion, and that no Indian Legislature can have the courage to pass such an enactment affecting foreign vessels, I think that to pass such a Bill as is now before the Council should also be considered impossible in view of the same principle and interests of the poor people of Surat. This imposition—for so I must call such an attempt to force large numbers of people to cross the river in this manner—will fall principally on the poorer classes, and they will have to pay a much higher toll than would otherwise be demanded of them. On these grounds it is my intention to vote against the first reading of the Bill.

The Honourable Mr. ROGAY:—Before I give my opinion I should like to ask the honourable member in charge—with the permission of your Excellency—whether local funds are not collected for the purpose of building bridges or carrying out any other works of local utility?

The Honourable Mr. GIBBS:—I believe local funds are employed for purposes of local utility, generally; anything that is a work of local convenience may be carried out with them—roads, bridges, and so on.

The Honourable Mr. ROGAY:—I think that if local funds are collected for the purpose of building bridges, and if tolls are imposed also, the people will have to pay for them twice over.

The Honourable Mr. RAVENSCROFT:—I think the Honourable Mr. Bengali's argument would be stronger if it was proposed to introduce a new principle; but if he refers to Section 14 of the existing Act, he will see that precisely the same principle applies to the ferries in existence at present. All that the Honourable Mr. Gibbs proposes to do is to substitute "bridge" for "ferry"; and as a bridge is a much more safe and convenient means of communication than a ferry, I cannot see any objection to the alteration.

The Honourable Mr. BENGALI:—Will your Excellency allow me to correct a mistake into which, I think, my honourable friend has fallen? If Mr. Ravenscroft refers to the latter part of Section 13 he will find that, although a ferry cannot be started in competition with an existing public ferry plying under the authority of Government—which I think is very right and proper—still the penalty does not apply to the conveyance in boats

for hire of passengers, animals, &c., from one part of the city of Bombay to another, nor to persons specially hiring a boat for the conveyance of themselves or their families, &c., nor to the person letting such boat for hire. If similar permission were allowed in this Bill my remarks would not have much weight, but I think that so long as such a proviso does not exist my remarks are applicable. As far as I can see the tendency of the Bill is entirely to force the whole of the traffic on both sides of the river, for a distance of six miles, over the bridge.

The Honourable Mr. ASHBURNER :—Mr. Bengali's objection, as has been already pointed out, will apply to all public ferries. No mention has yet been made of the extreme convenience the bridge has been to the traffic of Surat. It is well known, no doubt, to the Honourable Mr. Bengali in what way the traffic across the river Tapti was conducted before this bridge was built. The principal description of goods taken across the Tapti is cotton; and formerly bales were rolled for several hundred yards along the beach until they reached the mud, and were then rolled another hundred yards through the mud to the side of the boat; and having crossed the river they had to undergo similar operations on the other side. What great hardship to the traffic is it to be relieved from such an inconvenience?

The Honourable Mr. BENGALI :—Let the people be the judges of that for themselves.

The Honourable Mr. ASHBURNER :—I wish to impress upon the Council a sense of the extreme convenience this bridge has proved. If Government does force the whole of the traffic to pass over the bridge, there can be nothing to complain of. The Honourable Mr. Bengali says, let the people judge for themselves; I say, they are not fit to be allowed to judge, for the whole of the trade, and especially the cotton trade, which is of essential importance to the welfare of the country, is affected very considerably; the staple of the cotton is destroyed by its being shipped and unshipped in the way I have described, and it re-acts upon the market. Our Indian cotton is already at a sufficient disadvantage in the home markets, and it is owing chiefly to the inconveniences met with in these sorts of places, not only in Surat but elsewhere, that it has fallen into disrepute. As to the bridge being a failure, I beg to differ from the Honourable Mr. Bengali; the bridge is far from a failure. I do not know upon what ground Mr. Bengali has stated that it does not pay expenses and the interest on the outlay. It has only been open a few months, and at the period of the year when the traffic of Gujarat is, in a great measure, suspended; but let my honourable friend wait a few months till the people fully realise what a convenience the bridge is, and he will then see if there will be any longer a desire to keep up these ferries which are said to compete with the bridge. I believe that in a few months the traffic across the bridge will be so great that it will not only pay working expenses and the interest on the money expended, but will contribute materially towards paying off the capital outlay. The same arguments that the Honourable Mr. Bengali has adduced might be used to deter any improvement being made in the country. He would say also, I presume, let the people use the old roads and tracks that they have been in the habit of using for years and years. Is there to be no progress at all in the country simply because my honourable friend objects to some few people being put to a slight inconvenience? I beg to support the motion of my honourable friend Mr. Gibbs that the Bill be read a first time.

The Honourable Mr. GIBBS :—Until I came into this room I was not aware that any honourable member was about to oppose the first reading of this Bill, and until the Honourable Mr. Bengali made his speech I was quite unaware what his reasons were for opposing the motion. Having now become acquainted with them, I am afraid I must take up the time of the Council a little longer, while I go back into what I may almost call the “ first principles ” of the public ferries of the Bombay Presidency. On reference to Act II. of 1868 it will be found enacted that, it is lawful for Government to declare by notification in the *Government Gazette* what ferries within the Bombay Presidency shall be deemed to be public ferries; to establish any new public ferries or discontinue any existing ferries, tolls are to be levied, according to such rates as shall be approved by Government; and Government are to appoint toll-keepers and other necessary servants and pay them from the revenues of the ferries. These provisions are contained in the first four sections of the Act; and, I think, show pretty clearly that all public ferries are now in the hands of Government. Then Section 5 permits Government to lease these public ferries, either by public auction or by private contract; and most of them are leased, because that is a simpler plan for Government to adopt than to recover the tolls by its own servants. Next, passing over three or four sections about penalties for non-payment of tolls, I beg to draw the attention of the Honourable Mr. Bengali and the Council to the 12th section, which provides that the Senior Magistrate of Police in the Presidency, or the Collector of a district, shall, under the direction of Government, make rules for the management of these ferries; and then we come to the sections to one of which.—Section 14—this Bill now before the Council proposes to make an addition. It will be noticed from the 13th section, which I believe came down from an earlier Act and from a time when there was greater necessity than there is now for passing from one part of the Island of Bombay to another by water,—that the latter portion of that section was intended to meet certain particular cases. For instance:—In my early days people coming from Bombay to Poona had to go by boat from Bombay to Panwel. This was, I believe, a public ferry; but if any person chose to hire a boat on his own account and to get himself and his family across by that means, he was specially exempted from committing an illegal act. That is the only meaning of Section 13. Then we come to Section 14, which provides that any person who, except as in the section last preceding, shall convey for hire any passenger, animal, cart, &c., across any creek or river within the Presidency of Bombay to any point on the opposite shore not more than three miles from any public ferry without a special licence from the Collector of the district, shall be liable to a penalty not exceeding Rs. 500. So that, as was pointed out by the Honourable Mr. Ravenscroft, what is now sought to be done by this Bill is merely to substitute for the words “ any public ferry ” the words “ any bridge ”; and I think the arguments advanced by the Honourable Mr. Bengali cease to have any effect whatever when we consider the subject in this light. At present every public ferry is under the management of Government: and at Surat—which is the particular point that has been noticed—there was a public ferry managed by a contractor under Government, and for which Government fixed the tolls, and over which Government had superintendence through the Collector: therefore, when that public ferry was in existence none of the poor people whom Mr. Bengali has alluded to could ply their small boats for hire within three miles of the ferry; and all that the present Bill seeks to do is to continue the same regulation in force in regard to the bridge which has succeeded the public ferry which formerly plied there. There will be no difference at all as far as the people are con-



cerned, except that for the former ferry is substituted a bridge which has been paid for partly from the local funds, partly by the municipalities of Surat and Ránder, and partly by Government; and Government seek merely to have the same power in regard to boats plying for hire in opposition to that and other bridges as they have already in the case of all public ferries. I think my honourable friend Mr. Bengali will agree that, under all the circumstances of the case, the bridge is a great improvement over the ordinary public ferry with a boat plying to and fro. I trust the observations I have now made will satisfy the public that the people are not to be interfered with one whit more by this Bill than they are under the existing Ferries Act.

His Excellency the PRESIDENT then put the motion to the meeting, and it was carried, the Honourable Mr. Bengali alone dissenting.

The Bill read a first time.

The Bill was accordingly read a first time.

The Honourable Mr. GIBBS:—I do not propose, your Excellency, to appoint a select committee to consider this Bill. It is very simple, and after it has been published we can go on at once to the second reading.

The Honourable Mr. GIBBS:—I beg now to move for leave to bring in a Bill to amend the Bombay Municipal Act of 1872, and to continue the same as so amended, in operation. The Bombay Municipal Act of 1872 was passed for three years only, but a provision was inserted that the Governor in Council might extend the period of its operation from time to time by notification in the *Government Gazette*. That Act became law on the 22nd of February 1873 and has been continued in operation from time to time since the expiration of the first three years in February 1876 by notifications in the *Government Gazette*. After the Municipal Act had been in force for some time, although the Act itself, according to the common of *concensus* opinion throughout Bombay, I believe, has worked remarkably well, yet the Municipal Commissioner, the Town Council, and the Corporation have, from time to time, found matters in which it was necessary to amend its provisions; and it was considered that when such amendments were made would also be the proper time to ask for the Act to be made permanent. The Town Council had the matter under consideration for a long time, and last year they submitted a very elaborate series of proposals to the Municipal Commissioner, pointing out what sections of the Act they considered required amendment. Mr. Pedder, who was then Municipal Commissioner, and who took a very great interest in the working of the Act, reviewed the proposed amendments and submitted them to Government with some further proposals of his own. Those amendments were, some of them, of minor importance, and some of considerably greater importance. Legal difficulties had been found to arise with regard to several points in the Act. The matter was finally submitted to Government by the Municipal Commissioner about the middle of last year. Several consultations of the then Government (Sir Philip Wodehouse's Government) were held, at which the Municipal Commissioner was present; and it was finally determined to have a Bill drafted by the Legal Remembrancer which should contain the principal amendments that were thought advisable to adopt. That Bill has now been prepared. It will be remembered that, a very short time ago, owing to a mistake which had occurred, and which dated from the very commencement of the present Municipal Corporation, we had to pass a short Bill to legalise what had been done. One of the principal amendments proposed by the Town Council was that very one, viz., the

Mr. Gibbs moves for leave to bring in a Bill to amend the Bombay Municipal Act of 1872.

the Bombay Municipal Act of 1872, and to continue the same as so amended, in operation. The Bombay Municipal Act of 1872 was passed for three years only, but a provision was inserted that the Governor in Council might extend the period

substitution of the word "or" for "and" in the section which determines the qualification for electors and also for the elected. Honourable Members will see from the *Statement of Objects and Reasons* that there are three principal heads of modifications, viz:— I., Constitutional, II., Concerning Rates, and III., Administrative. As regard the first point it will be noticed that, by the second section of (Bombay) Act II. of 1873—which was an Act passed to amend the original Municipal Act with regard to the constitution of the Corporation—the franchise is conferred on rate-payers who have paid for the year next before the election, house-rates and police and lighting-rates to the amount of not less than Rs. 50. I must here notice that a great deal of unnecessary expense has been thrown on the Municipality in realising the income which they were authorized to raise. The rates were really divided into two classes, the owners' rates and the occupiers' rates; and the number of bills necessary for their collection and for the collection of the wheel-tax was very, very large; in fact the system has led to considerable difficulty, not only as far as the Municipality is concerned but also as far as the landlords of Bombay are concerned. I may state, for instance, that, supposing a gentleman owns a large chawl and lets it out in rooms at a certain rate *per mensem* at the end of six months, when the municipal rates become due from the occupiers, the landlord often finds that his tenants have gone, leaving not only their rent for the last month but also the municipal rates for the six months unpaid. This was one of the difficulties which arose, and the result is that it is now proposed, instead of having the distinction between the owners' and occupiers' rates, to have what is called a consolidated rate, which will include the house-rate, which is called the owners' rate under the present Act, and also the police and lighting rates, which are called the occupiers' rates. The consolidated rate will be levied from the landlord and he will be left to make arrangements with his tenants as may best suit him. The result will be great simplification in the recovery of the municipal income and will lessen the trouble of landlords, who will be able, for instance—taking the case of the chawl again—by simply charging, say Re. 1-4 per month, instead of Re. 1, to collect all that is due; and the poor people who occupy the rooms will find it much easier to pay Re. 1-4 than Re. 1 per month *plus* the municipal rates at the end of each half year. It is further proposed that in lieu of the present complicated system the franchise shall be given to rate-payers who are assessed to the consolidated rate, or to wheel-tax, or both, for the half year next previous to that in which the election takes place, at the rate of not less than Rs. 30 per annum. To explain this more fully I may say, that in order to keep the Municipal constitution about the same as far as rates are concerned as at present, when it was determined to do away with the distinction between owners' and occupiers' rates, and have only a consolidated rate, it was found that it would disenfranchise everybody who was not an owner of property in Bombay. It was therefore proposed that the payment of wheel-tax should be made a qualification also; and the sum has been fixed at Rs. 30 per annum, I believe, to enable a person who keeps only a horse and buggy or dog-cart to continue his right to the franchise, which he may have at present from paying occupier's rates. It has also been determined that instead of the qualification being that a person shall have *paid the rates*, it will suffice that he shall have been assessed to them only. The present system has led to a great many inconveniences, and makes it very difficult for the Municipal Commissioner to draw up—as he has to do by law—a list of those persons who have a vote for the election of members of the Corporation. I believe I am right in saying that the proposed plan of wording the section so that those who are assessed to certain rates will be qualified to vote, follows

the practice that has been observed in many of the Municipal Corporations in England. That is one of the principal alterations. The next point has reference to the Fellows of the University. Under the present Act the fact of being a Fellow of the Bombay University confers the qualification to become a member of the Town Council; and it is proposed to give these gentlemen also, as Fellows of the University, the qualification to vote for members of the Corporation. In addition to the alteration of the franchise for voters, it was necessary also to alter the qualification for membership of the Corporation; and that qualification is proposed to be altered in a similar manner to those which I have mentioned. These, I think, are the principal alterations in connection with constitutional changes and changes in the rates—at least, these include all the constitutional changes which are connected with the collection of rates; but there is another constitutional alteration in regard to the election and appointment of members of the Corporation and Town Council for a fixed term of two calendar years. Most people will probably think that this is already provided for, but it turns out that it is not, and I will shortly explain how this happens. Section 8 of the original Act provided that members should be nominated or elected every two years; but owing to the changes which were rendered necessary by the delay which occurred before the Act became law and which were effected by Act II. of 1873, considerable confusion has arisen, resulting in the necessity for passing the recent short Act for validating the proceedings of the Town Council and Corporation. It is proposed to remedy this by providing in Section 12 that in future all appointments and elections shall be for a term of two calendar years. This is really no alteration at all; it is what was intended originally; but it is necessary, as the difficulties which occurred in connection with the first Act raised doubts in the minds of the legal advisers to Government. The next alteration is a considerable one. At present, as you are aware, the Municipal Commissioner is an officer appointed by Government. He is very likely a member of the Corporation from the fact of his being a Justice of the Peace; but otherwise there is no provision for it, and under the present law he is expressly prevented from becoming a member of the Town Council. It has been considered by those who have had the management of municipal affairs in Bombay, that this condition of things is open to some objections, and several proposals have been made to effect an alteration. As one of the best instances of the difficulty which has arisen I may take the introduction of the Municipal Budget. It is prepared yearly by the Municipal Commissioner himself, and has to be laid before the Town Council; but the Municipal Commissioner, not having a voice in that body, after completing the budget has to prepare a brief for the Chairman of the Town Council, on whom it falls to introduce it. It has therefore been considered advisable that the Municipal Commissioner should be an *ex officio* member of the Corporation and Town Council, so that he may be able to lay the budget and other matters directly before the Town Council. The plan will also have this benefit, that it will leave the Chairman of the Town Council, like any other member of that body, more freedom in objecting to anything which the Municipal Commissioner may bring forward. It is also provided that the Municipal Commissioner, although an *ex officio* member of the Town Council and the Corporation, shall not be eligible to be Chairman of one body or the other; and it is further provided—and this is an important matter to notice—that in making the Municipal Commissioner *ex officio* a member of these bodies, no permanent increase is allowed to the number of members of either one or the other; nor does this plan affect the right of the people of Bombay to choose a certain number of members of the Corporation. It is provided that the Municipal Commissioner shall

always be considered as one of those members appointed by Government, so that, taking four members of the Town Council, for instance, to be appointed by Government, there will in future be only three so nominated, because the Municipal Commissioner will always make the fourth. There is, however, a special provision for the present—that until the next election, or until a vacancy occurs amongst the Government nominees, the Municipal Commissioner shall sit as an extra member. There is also one other charge which it is necessary to allude to, with regard to a provision which will be found in the Bill for meeting what has been a legal difficulty on which the Municipal Commissioner obtained counsel's opinion. The 29th section of the Bill runs as follows:—"After Section 70 of the Principal Act the following section shall be inserted, namely:—

"70A. The said rates shall be leviable from the actual occupier of the house, building, or land upon which they are assessed, if the said occupier be himself the landlord of such house, building, or land, or if he hold the same immediately from Government. In any other case the said rates shall be leviable from the immediate landlord of the actual occupier, or, when the property is unoccupied, from the person who would be the immediate landlord of the occupier if it were occupied:—

"Provided that if any person hereby made liable to the said rates, himself pays rent to another person other than Government, in respect of his interest in the house, building, or land, for which he is assessed to such rates, he shall be entitled to credit in account with such other person for such sum as would be leviable on account of the said rates, if the amount of the rent payable by him were the full annual value of the property taxed.

"And any person other than Government, possessing any interest in or over any such property superior to that of the person assessed to the said rates, in respect of which he receives rent from any other person, shall be bound to give credit in account to such other person for such sum as would be leviable on account of the said rates, if the rent which he receives were the full annual value of the property assessed.

"But nothing in this section shall be deemed to affect any agreement into which persons interested in any such property have entered, or may hereafter enter, concerning their respective liability on account of the aforesaid rates; and when any person other than the person hereby made liable for the said rates has, by any such agreement, rendered himself responsible for the same, or for any portion thereof, the person hereby made liable shall be entitled to recover the amount of the said rates or such portion thereof from the said person. For this purpose the portion of the consolidated rate levied for lighting shall be deemed to be two per centum, and for the police two per centum of the annual value of the property assessed; but if at any time the said consolidated rate is increased on account of the expenses of the police, the amount of such increase may be added to the said two per centum on account of police."

The purport of this section is to show distinctly who is liable for the payment of property rates which come under the new head of "consolidated rates." The definition of the word "owner" in the original Act has given rise to much doubt, and even to litigation against the Municipality, on the part of persons who deny their liability to payment of what have hitherto been called owners' rates. The matter is a complicated one, but I

think it may be stated, briefly, that the object is to render the actual landlord immediately liable to the Municipality for the rates, whether he be in actual occupation or not; and to enable the landlord to get from his tenant a proportionate share of the rates which he pays to the Municipality; and further, to apply the same rule to all persons having an interest superior to that of the actual landlord; so that every such person will be liable for property-rates to the extent of the individual interest in the property. When, however, Government is the superior holder, it is exempt on the same principle that it is exempt from rates generally under the original Act. As this system may interfere with contracts at present in existence, there is a clause added by which present contracts between superior and inferior, as to payment of rates, are saved. Halalcore and water-rates, which properly fall on the occupiers, are made recoverable from them by the persons who pay them to the Municipality, except where contracts exist to the contrary; but for the other property-rate, viz., the consolidated rate, no such provision is made, because it is intended to fall, as hitherto, on the landlord or the owner. I think these are the principal points which this Bill is intended to deal with as far as regards the constitutional changes and also the changes as to the rates. In the administrative portion of the Bill there are three points which I think it right to notice. The first has reference to empowering the Town Council to revise assessments; the second to indemnifying men of the Fire Brigade, or others assisting, for acts done in saving life and property from fire; and the third to providing efficiently against the spread of infectious diseases in the city. With regard to the first point, the assessments have been revised hitherto by the Municipal Commissioner, and the proposed alteration was suggested by the Town Council. It is, of course, a question how far the change accords with the general intention of the law as to conferring such powers on the Town Council; and it is of some importance in connection with Section 19 of the proposed Bill, by which it is intended to abolish the limit to the number of meetings at which the members of the Town Council are allowed to draw fees. At present such meetings are limited to one per week. This will be a matter for the Select Committee to look into very carefully. It has come up as a proposal, and the late Government, under whose orders this Bill was drafted, considered it right to include it in the Bill that it might be discussed fully by the Select Committee and the Council. The want of provisions for the indemnification of officers of the Fire Brigade was made known by the Commissioner of Police, who is Superintendent of the Fire Brigade in Bombay; and the clauses which have been included in this Bill have been taken from the Metropolitan Fire Brigade Act of London. We trust that they will be found sufficient for the purpose, they having already been found sufficient in London. On the subject of the prevention of the spread of infectious diseases, I may remind the Council that we have grappled with one of the worst of those diseases, small-pox, by the Compulsory Vaccination Bill, which I had the honour of passing through this Council, and which has since the 1st instant been brought into operation in the city of Bombay. The clauses which have been introduced into this Bill for meeting cases of other infectious complaints are very similar to those in that Act. These also will require very careful supervision by the Select Committee and the Council before they become law. I may mention that the penal clauses, not being amendments or alterations of the Penal Code, do not strictly require the consent of the Government of India; yet, under instructions which we have received from the Secretary of State, these must be sent up to the Government of India for sanction. It will therefore be necessary that the Council should not proceed to make them law until an answer from the Government of India has been received; but it has been thought advisable, considering the delay that has already

occurred, to introduce the Bill into the Council and to print it, so that the public may know what is proposed to be done without further delay. I may mention one other alteration which is proposed to be made in the Act, viz., that it is proposed to make the appointments of the Executive Engineer and Health Officer—which are at present only for three years, and then subject to re-appointment—last during good behaviour. The Municipal Commissioner, Mr. Pedder, was very strongly impressed with the necessity for doing this; and I think there are very good reasons why it should be done. It is a matter which, like many of the others I have mentioned, will attract the careful attention of the Select Committee. We think it is an advisable thing to do, because, while giving them greater independence in action, it will not prevent any person who misbehaves himself, or who does not give satisfaction to the Municipality, from being removed from his office, as can the Municipal Commissioner, though nominated by Government, by two-thirds of the votes of the Corporation. With these observations I beg to ask leave to bring in a Bill to amend the Bombay Municipal Act of 1862, and to continue the same as so amended, in operation.

Leave given.

His Excellency the PRESIDENT put the proposition to the vote and it was carried.

The Honourable Mr. GIBBS :—I will now ask your Excellency's permission to suspend the standing rules of the Council to enable me to move the first reading of the Bill, in order that it may be published for general information, and that a select committee may be appointed to consider and report on it, so that the

The standing rules of the Council suspended; Mr. Gibbs moves the first reading of the Bill.

Council may proceed to the second reading on returning to Bombay for the cold weather.

His Excellency the President having suspended the rules—

The Honourable Mr. GIBBS moved that the Bill be read a first time. He said :—I need not detain the Council with more observations on the Bill itself, because I think I have already noticed every point of considerable interest, so that the citizens of Bombay, with my statement and the draft Bill before them, will be pretty well aware of the changes which it is proposed to make. But I will take this opportunity of saying one word on a matter to which I see attention has been drawn by the public papers. It has reference to the short Act which this Council passed a few weeks ago and to which the Viceroy's assent has just been received, by which the present Municipal Corporation and Town Council are continued in force. I saw in one of the Bombay newspapers the other day a public notice that a meeting of the Corporation was to be called to elect a successor to the late Sir Jamsetjee Jejeebhoy. Now the short Act to which I have referred expressly prohibits any new member being added to the Corporation at the present time. When my attention was first directed to the matter I thought that the learned Advocate-General had overlooked the point in drafting the Bill, and I wrote to him on the subject; but it afterwards occurred to me—and his reply confirmed my view—that it had purposely been so enacted. One of the duties of the Municipal Commissioner, as I mentioned just now, is to prepare a list of those entitled to vote and also of those eligible to serve. Now the lists at present in existence were prepared under what has been held to be an illegal interpretation of the Municipal Act, and therefore they are invalid, and the consequence is that there are no lists of legal voters for the Municipal elections, or of persons eligible to be elected; and no such lists can be prepared for some time. Therefore it was considered that as this new Act, the first reading of which I have now the honour to move

and which proposes to alter the franchise, would become law in a short time, it was better not to have any more lists prepared until that time should arrive. This is the reason why at present there can be no more elections of members of the Corporation. I now beg formally to move the first reading of the Bill.

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

Accordingly, the Bill was read a first time, and on the motion of the Honourable Mr. Gibbs it was referred to a Select Committee consisting of the Honourable Mr. Ravenscroft, the Honourable the Advocate-General, the Honourable Mr. Bengali, the Honourable Mr. Mandlik, the Honourable Mr. Rogay, and the Mover, with instructions to report before the 1st November next.

The Honourable Mr. ASHBURNER moved for an extension of the time allowed to the Select Committee on the Presidency Abkari Bill, to send in their report. He said that in the early part of the present century certain grants of ground were made to some Parsi and other gentlemen in Salsette, and those gentlemen now claimed Abkari rights. They asserted that the Bill under consideration would interfere with their rights of Abkari, and he (Mr. Ashburner) and other gentlemen had considered the point very carefully, with the result that there was a difference of opinion on the subject. Owing to this it had been found impossible to secure the necessary information within the two months given to the Select Committee to report, and he begged to move that the period be extended to the 1st of November next.

The motion having been carried—

The Honourable Mr. ASHBURNER further proposed that the Honourable the Advocate-General should be added to the Select Committee appointed to consider this Bill. He stated that the legal questions involved in the matter already alluded to made it necessary that the Committee should have the assistance and advice of the Advocate-General.

His Excellency the PRESIDENT put the resolution to the vote, and it was carried.

His Excellency the PRESIDENT:—I beg to remind the Council that this is the last meeting at which our Honourable friend Mr. Becherdas Ambaidas will be present, and I am sure I shall be expressing the sentiments of every Honourable Member of this Council when I thank him, on behalf of the Government and the community at large, for the valuable services which he has rendered during the past two years.

The Honourable Mr. Becherdas Ambaidas thanked His Excellency for the kind manner in which he had alluded to his connection with the Council.

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.

Poona, 14th September 1877.

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

The Council met at Bombay on Wednesday the 7th November 1877, at noon.

*P R E S E N T :*

His Excellency the Honourable Sir RICHARD TEMPLE, Bart., K.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 Rao Saheb VISHVANATH NARAYAN MANDLIK, C.S.I.

The Honourable Nacoda MAHOMED ALI ROGAY.

The Honourable SOBABJI SHAPURJI BENGALLI.

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 the Secretary to the Government of India, Legislative Department, No. 777, dated 15th September 1877, returning, with the assent of His Excellency the Viceroy and Governor-General signified thereon, the authentic copy of the Bill to validate the appointment of certain members, and for the temporary continuance of the Municipal Corporation of the City of Bombay.
2. Letter from the Secretary to the Government of India, Legislative Department, No. 820, dated 16th October 1877, stating that the Governor-General refuses to give his assent to Bill No. 2 of 1877 (The City of Bombay Abkari Bill), on the ground that section 7 of that measure is in conflict with certain of the provisions of the Consolidated Customs Act (VI. of 1863) and the Indian Tariff Act (XVI. of 1875).
3. Report of the Select Committee on the "Bill to consolidate and amend the Abkari Law of the Presidency of Bombay."
4. Petition from Messrs. Hormusji Cursetji, Bomanji Cursetji, and Hirjeebhoy Cursetji, Administrators to the Estate of the late Mr. Cursetji Cowasji, dated 9th July 1877, relating to the Abkari Bills.
5. Petition from Mr. Ahmedbhoy Habibbhoy and others, dated 28th July 1877, relating to the Abkari Bills.
6. Petition from Mr. Hormusji Jehangir Ardasir and others, dated 28th July 1877, relating to the Abkari Bills.
7. Petition from Mr. Dady Jehangir Ardasir, dated 28th July 1877, relating to the Abkari Bills.



8. Petition from Mr. Ardassir Hormusji, dated 31st July 1877, relating to the Abkari Bills.
9. Petition from Mr. Nanabhoy Byramji Jejibhoy, dated 14th September 1877, relating to the Abkari Bills.

The Honourable Mr. ASHBURNER moved the first reading of Bill No. 7 of 1877 (A Bill to amend the Law for regulating the control of the manufacture of Spirituous Liquors and for the realization of the Abkari Revenue in the City of Bombay). The honourable member said:—

Mr. Ashburner moves the first reading of the Bombay City Abkari Bill. Your Excellency and the Council have just heard that the Supreme Government have objected to the Bombay City Abkari Bill, No. 2 of 1877, on certain technical grounds. The objection has been met by amendment, and I now beg to ask that the rules of the Council be suspended to allow me to move that the amended Bill be read a first, second, and third time, and passed. The amendments that have been made are of a purely technical nature, or I should not have proposed to pass a Bill with such rapidity. All the necessary forms have been attended to; the amendments have been in the hands of every member of the Council; and it now only remains to pass the Bill.

His Excellency the PRESIDENT:—Considering that the real purport of the letter from the Government of India is that if we will make these technical amendments the Bill will receive the assent of the Viceroy, and after what has been said by the honourable mover, I think the rules may be suspended.

The Honourable Mr. ROGAY said the petition from Messrs. Hormusji Cursetji, Bomanji Cursetji, and Hirjibhoy Cursetji had reference to this Bill. That petition was not laid before the Council when the Bill which had been vetoed by the Viceroy was passed; but by accident the Bill had not been confirmed, and there was an opportunity now for the Council to consider the objections to it contained in the petition. He should like to know why the petition had not been presented to the Council. As a rule, petitions referring to legislative enactments were laid before the Council.

The Honourable the ADVOCATE-GENERAL:—I think the petition relates to the Presidency Bill.

The Honourable Mr. ROGAY:—It relates to both.

The Honourable Mr. MANDLIK suggested that the first reading of the Bill might be passed, and that the Honourable Mr. ROGAY's remarks could be considered afterwards.

The rules were then suspended, and the Honourable Mr. ASHBURNER moved that the Bill be read a first time.

The motion was adopted; and

The Honourable Mr. ASHBURNER moved that the Bill be read a second time.

The Bill was read a second time, and it was resolved, on the motion of the Honourable Mr. Ashburner, that it should be considered in detail by the Council.

When section 7 was reached:

The Honourable Mr. ROGAY said the petition he had referred to alleged that the petitioners had hitherto enjoyed the right of importing toddy into Bombay free of tax, and by the passing of this section they would be deprived of that right. Two years ago the

Municipality of Bombay wished to levy town duty on this toddy, and the petitioners disputed the matter, and it was referred to the High Court, by which authority the dispute was decided in the petitioners' favour. He thought it was rather hard that people who had enjoyed a right for a great number of years should be deprived of that right by the passing of the present Bill. By sections 7, 8, and 13 of the Bill it was proposed to prohibit the bringing of toddy juice into the City of Bombay from any place outside without a pass, and also to prohibit the sale of such juice in Bombay unless the seller possessed a pass or a licence.

The Honourable the ADVOCATE-GENERAL:—I think the honourable member is under a misapprehension with regard to the decision of the High Court to which he has alluded. I have myself looked at the case within the last few days, and the decision turns solely on the point whether or not toddy is a spirituous liquor within the meaning of the Municipal Act. The decision had nothing to do with the rights of the petitioners—with any question as to whether they had granted to them in 1852 abkari rights or the right to bring toddy into Bombay without paying any tax. It was decided that toddy was not a spirituous liquor within the meaning of the Municipal Act, and that therefore they were not liable.

The Honourable Mr. MANDLIK said similar decisions had been given in some parts of the Presidency, and it had been generally held that toddy, in its unfermented state, was not a spirituous liquor and was not therefore liable to taxation; but now it was proposed to go further and to include fresh toddy among taxable articles. The lands owned by the petitioners were granted to them very many years ago under the former state of the law, and it seemed to him that the question was, substantially—Whether the proposed provisions of the new Bill would not be doing away with existing rights? There was no doubt that after the passing of the Bill as framed, toddy as toddy would be a liquor liable to taxation, whereas formerly it was not so liable.

The Honourable the ADVOCATE-GENERAL pointed out that the petitioners were in precisely the same position as other toddy growers. Hitherto anyone who liked to do so could bring fresh toddy into Bombay without paying duty. The rights of the petitioners were not injured in the slightest degree more than the rights of any other owners of toddy trees. The Council had already, in passing the Bill, affirmed the position that toddy ought to be taxed.

His Excellency the PRESIDENT:—I should like to add one word, to the effect that it will be in the recollection of honourable members present, that this very point was put before the Council during one of the sittings at Poona, and that after full consideration the Council decided that a particular article, described to honourable members as toddy, should be liable to taxation. So this very question has really been decided by the Council; and the effect of the objection now raised is merely to re-open a question which has already been set at rest, so far as this Council is concerned.

The Honourable Mr. MANDLIK said the Council had not then before it the fact that certain parties had a right to bring toddy into the town and island of Bombay without paying duty, and that that right was purchased with their properties from Government many years ago. There remained, therefore, a special case for the Council to decide, one way or the other.

The Honourable Mr. GIBBS said the petitioners would only be affected in the same way as other people, and he did not think there was anything to show they had a special right.

The Honourable Mr. ASHBURNER:—I beg to bring to the notice of the Council that it has been decided by the advice of the Legal Remembrancer, that under the present law even persons have no right to import toddy into Bombay; and such importation has been strictly prohibited by the Government establishments without being challenged.

The Honourable Mr. DOSABHOY FRAMJI:—It is well understood that the present Abkari Law in Bombay and in the Mofussil is very unsatisfactory. It may be that, notwithstanding what the Honourable Mr. Ashburner has said, some people have been in the habit of bringing toddy into Bombay without paying duty; but as we are now seeking to amend the law, and to make it as perfect as possible, there is no reason why those who have not been paying duty should not be made to pay as well as others who have had to pay already.

The Honourable Mr. ROGAY:—I beg to move that section 7 be omitted. I am glad that the learned Advocate-General corrected me as to my impression of the High Court's decision; but by this Bill we propose to affirm a new principle, viz., that fresh toddy is a spirituous liquor, and I think this is an opportune time to consider the question. The same question was discussed at Poona upon the dissent of Mr. Bengalli, but not upon this petition, which has never been read before the Council, and as to the non-reading of which no explanation has been offered.

On Mr. Rogay's motion being put to the vote it was lost by 7 to 3, the order of voting being:—

*Ayes—3*

The Honourable Mr. ROGAY.  
The Honourable Mr. BENGALLI.  
The Honourable Mr. MANDLIK.

*Noes—7*

The Honourable Mr. GIBBS.  
The Honourable Mr. ASHBURNER.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Mr. RAVENSCROFT.  
The Honourable Mr. LANG.  
The Honourable Colonel ANDEBSON.  
The Honourable Mr. DOSABHOY FRAMJI.

The remaining sections of the Bill and the preamble were passed without opposition, and the Bill then, on the motion of Mr. ASHBURNER, was read a third time and passed.

The Honourable Mr. GIBBS:—I have the honour to move the second reading of Bill No. 4 of 1877—A Bill to amend Bombay Act II. of 1868 (The Ferries Act). It will be in the recollection of honourable members that when I brought this Bill into the Council I stated the circumstances which had made it advisable to pass it in order to amend the law with reference to public ferries, to meet the question of bridges. Perhaps I did not go quite so minutely into the details of the measure as I might have done had I known there was to be any opposition to it. If the second reading be carried the principle of the Bill will be affirmed; and in moving the second reading I have now to state that, from the earliest times, public ferries have been the property of Government, and managed, in some

instances, by the servants of Government, and in other—and the far greater number of instances—by lessees, Government letting out the ferries to different persons. But from the earliest times, wherever public ferries have existed, there has always been a law by which other persons were prohibited from running private boats for the carriage of passengers backwards and forwards for hire within a certain distance from the public ferry. Government have recently built two bridges to replace two of these public ferries, which were leased out by Government, and the rates which were allowed to be taken by the contractors were fixed by Government, and the rules for the management of which were laid down by Government or Government Officers. It is now proposed that wherever, in lieu of a public ferry, a bridge—which I think all members of the Council will admit is a very much more convenient mode of crossing a river than a ferry is—wherever a bridge is constructed, the same privilege, if I may so call it, shall attach to it which formerly attached to the ferry which it supersedes, viz., that no private ferry shall ply within three miles of it on either side. Had the ferries up to the present time not been Government property, had they belonged to private parties, I could have understood why opposition should be offered to a Bill of this kind, because then we should be proposing to interfere with private property; but as it is, we do not propose to interfere in the slightest degree with private property. The present law is that the ferries belong to Government, and that no one may ply boats for hire of passengers within three miles on either side of a public ferry; and what we ask now to do is, on building a bridge in lieu of a ferry, to have exactly the same privilege applied to the bridge as is at present applicable to the ferry. These are the reasons for the Bill, the second reading of which I have now the honour to propose.

The Honourable Mr. BENGALLI said it seemed to him that the new Bill contemplated a very different state of things to that existing under the old Act. The old Act provided that when a public ferry was established by Government no one had a right to establish another ferry in opposition; but at the same time it was open to people to employ boats for transporting themselves from one side of the river to the other. If the new Bill merely proposed to apply the same regulations to bridges that at present applied to ferries he would not object; but it seemed to him that under the new Bill a family or a few friends would be unable to hire a boat to cross a river where there was a bridge.

The Honourable the ADVOCATE-GENERAL:—I think the Bill has reference to persons plying for hire. If you choose to set up a boat and take people across for nothing, all well and good, the Act will not apply to you.

The Honourable Mr. BENGALLI:—That does not meet my argument. I put the case of a family or a few friends hiring a boat to cross a river over which there is a bridge. I do not mean a regular ferry; I think the Bill should provide for a case of that kind.

The Honourable Mr. GIBBS said the Bill was intended to put bridges and ferries on exactly the same level. If the honourable member could hire a boat and cross a river where there was a public ferry, with two or three of his friends, at present, he would be able to do so equally well under the new Act where there was a bridge. He (Mr. Gibbs) was not prepared to give an opinion as to whether it could be done at present, but certainly, whatever could be done at present could be done also under the new Act.

The Bill read a second time.

The Bill was then read a second time.

The Honourable Mr. GIBBS moved that the time allowed to the Select Committee to report on the Municipal Act Amendment Bill be extended to the 15th instant and that the Honourable Mr. Dosabhoj Framji be added to the Committee. Mr. Gibbs said the Committee had held a good many meetings and had agreed to a report; but since then certain communications had been received from the Government of India which the Select Committee should have an opportunity of looking at. The Honourable Mr. Dosabhoj Framji had attended several meetings of the Committee while he was at Poona on sick leave, and he had given and could give very valuable assistance as a member of the Municipality and the Town Council.

The motion was adopted.

The Honourable Mr. ASHBURNER moved the second reading of Bill No. 1 of 1875 (A Bill to consolidate and amend the Law relating to Revenue Officers and the Land Revenue in the Presidency of Bombay). Mr. Ashburner said:—When a Bill has reached the important stage of the second reading it may be permitted to the Member in charge to indulge in a few general remarks in congratulation of having carried his Bill through all the dangers of the first reading and the conflicting views of his colleagues on the Select Committee. Such, however, is not my intention. I have studied the debates on this Revenue Code Bill, I have perused the Statement of Objects and Reasons, I have attended to all the writings on the subject and to the opinions of the Press, and I have failed to find a single subject that has not been thoroughly ventilated and discussed; and where there has been an irreconcilable difference of opinion, it has been voted upon. I should be open to a charge of needless reiteration, therefore, if I went over the same ground again. There is not an idea of any value that has not already been brought forward by the able man who preceded me or his colleagues on the Select Committee. The Bill, as it at present stands, is not exactly what I should wish. All legislation must be more or less a compromise, and this Bill is specially one of compromise—a compromise, in a great measure, with the views of the gentlemen who represent native public opinion in this Presidency. I should have liked to see a more comprehensive legislation on the subjects of landlord and tenant, of alluvion and diluvion, and many other subjects, of which the most we can say is that a foundation has been laid in this code for future legislation. It cannot be said that we are legislating in a hurry, for this matter has been under discussion for years. With these observations I beg to move the second reading of the Bill. I have some amendments to bring forward and shall reserve my remarks on them till they are arrived at.

The Honourable Mr. MANDLIK:—When this Bill was discussed in Poona there were several sections, notably the sections with regard to town and village sites, which the honourable member then in charge of the Bill stated he proposed should go provisionally before the public, that they might be commented on and also reported upon by those officers of Government who were considered authorities on revenue matters. Since then I have looked for such reports, but I am sorry to say we have not yet received any. The honourable member at present in charge has alluded to the diversity of opinions on this Bill. Speaking for myself I may say that, if it were a Bill for the consolidation of the existing revenue law merely, as I had hoped it would be, I should have had no objection

to it; but, unfortunately, several new provisions of law have been introduced, almost at the end of our labours. No doubt, in one sense, we have been working at this enactment for a long time—for more than three years; but considering that we are going to change a law which has been in existence for more than fifty years, I cannot see that we have taken an unduly long time. I should have been very glad if the work of consolidation, as consolidation, had been strictly carried out, instead of changes being made in the law, many of which I think are changes of very doubtful propriety. I am supported in many of these remarks by some of the Officers who reported against any change being made in the revenue law at all. The Bill interferes with vested rights which I think it ought not to interfere with, and I shall vote against the second reading.

The Honourable Mr. ROGAY :—I also shall vote against the second reading of this Bill. My arguments and reasons have been fully stated by my friend the Rao Saheb, and I will only add that this Bill, instead of merely codifying, changes the old Revenue Law, interferes with proprietary rights, and introduces innovations which will act most oppressively and injuriously to the interests of landlords. For instance, the introduction of the Burmah Law with regard to mineral products, &c., is new in this Presidency, and will be looked upon with distrust by every proprietor of land throughout the Presidency. The Honourable Mr. Ashburner stated the Bill has gone through various debates of the Council, and that compromises have been made consistent with the views of the native members of this Council. I beg to deny that any compromise has been made. On the contrary, on all our motions we have been out-voted, and whatever we objected to has been carried by an unfortunate majority of the votes in the Council. The Bill having been discussed on previous occasions in every section, I do not wish to take up the time of the Council further, but will conclude by the expression of my opinion, that the passing of this Revenue Code will give a very bad impression to the subjects of Her Majesty of legislation, which abolishes—I may say confiscates—their rights.

On the motion being put to the vote it was carried by 7 to 3. The order of voting was as follows :—

*Ayes—7.*

The Honourable Mr. GIBBS.  
The Honourable Mr. ASHBURNER.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Mr. RAVENSCROFT.  
The Honourable Colonel ANDERSON.  
The Honourable Mr. LANG.  
The Honourable Mr. DOSABHOY FRAMJI.

*Noes—3.*

The Honourable Mr. MANDLIK.  
The Honourable Mr. ROGAY.  
The Honourable Mr. BENGALLI.

The Bill read a second time.

The Bill was accordingly read a second time.

The Honourable Mr. ASHBURNER next moved the second reading of Bill No. 3 of 1877 (A Bill to consolidate and amend the Abkari Law of the Presidency of Bombay). The honourable mover said he would reserve any remarks he might have to make till the Bill came to be considered in detail. It would be necessary to propose an amendment to meet the views of Mr. Framji Moos regarding the Poway estate. The estate was the subject of litigation in the High Court, and it would be necessary for the learned Advocate-General

Mr. Ashburner moves the second reading of the Presidency Abkari Bill.

to draft an amendment in such terms as would include the parties who should eventually be decided to be entitled to the estate, so it could not be brought forward at the present meeting.

Bill read a second time.

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

The Land Revenue Code  
Bill considered in detail.

The Council next considered the Land Revenue Code Bill  
in detail.

The Honourable Mr. ASHBURNER said he had a number of amendments to propose. He suggested that the Bill should be gone through and that he should move his amendments as each section to which they applied was arrived at.

His Excellency the PRESIDENT said it was open to the Council to take the sections to which no amendment was proposed, as read.

Sections 1 and 2 were accordingly taken as read.

The Honourable Mr. ASHBURNER moved that in section 3, clause 12, line 66, for the words "set apart" should be substituted the word "held." The honourable mover said the object of this amendment was merely to simplify matters. The use of the term "set apart" would render a notification specially setting apart in each case necessary,

The amendment was adopted.

The Honourable Mr. ASHBURNER moved that in section 4, line 12, after the words "control of each" should be inserted the words "whether generally or for any specific purpose." The honourable mover said the object of this was to enable one Revenue Commissioner to undertake certain special duties within the territorial limits of another, It had been found convenient in several cases to follow this course,

The amendment was agreed to.

Section 5 was taken as read.

The Honourable Mr. ASHBURNER moved that to section VI. the following para. be added:—" Assistants so appointed shall perform such duties as the Revenue Commissioners, to whom they are respectively subordinate, may from time to time direct." The honourable mover said it had been brought to notice that the functions of an Assistant Revenue Commissioner were nowhere defined in the Code, and this amendment supplied that deficiency,

The amendment was carried.

Sections 7, 8, 9 and 10 were taken as read.

The Honourable Mr. ASHBURNER moved that to section XI. the following para. be added:—" An Officer whose principal office is different from that of an Assistant Collector, and who is an Assistant Collector for special purposes only, shall not be deemed to be an Assistant for the purposes of this section." The honourable mover said this amendment was a verbal improvement of the original section, the wording of which rendered it doubtful what was intended by " Assistants of highest rank." It was intended to mean the Assistant Collector, and not any special Officer who happened to be in the district.

The amendment was adopted.

Sections from 12 to 80, inclusive, were taken as read.

The Honourable Mr. ASHBURNER moved that in section 81, line 3, after the word "watandar" should be inserted "or by any officiator in an hereditary office." The honourable mover said the duties of watandars were sometimes performed by officiators who were not watandars; and this amendment was intended to provide for such cases.

The amendment was adopted.

Section 82 was taken as read.

The Honourable Mr. ASHBURNER moved that in section 83, line 1, after "chapter" should be inserted "or in sections 97 to 100, both inclusive"; and, that in section 98, line 3, for "Government" should be read "Revenue Commissioner." The honourable mover said these two sections must be considered together. Sections 97 to 100 were the penal clauses of the Watandars Act, and the object of the amendment was to make them coincide with the Police Act.

The amendments were adopted.

Sections from 84 to 97, inclusive, and sections 99 to 104, inclusive, were taken as read.

Section 105 was amended by the insertion of the words "of the sea" after the word "bed" in line 5.

The Honourable Mr. ASHBURNER moved that from section 106, lines 10 to 14, the following words should be omitted:—"and in any village, or in any town or city to which the said Acts have not been applied, such compensation shall be given, if the buildings are proved to have been erected previous to the passing of this Act." The honourable mover said this amendment was proposed in accordance with the orders of the Government of India, and it required no remark.

The Honourable Mr. BENGALI:—I should like to inquire why these words are to be omitted. Might I ask whether the Government of India have given any reasons?

The Honourable Mr. ASHBURNER:—I think they thought it was a great sacrifice of the rights of Government. It was considered unnecessary to give compensation for what was actually an encroachment. The Government of India objected to give compensation to anybody who had the audacity to encroach upon Government land.

The Honourable Mr. MANDLIK said the Council had settled upon certain principles to guide it in regard to encroachments, and had embodied those principles—if he was not mistaken—in an Act having reference to the City of Bombay; and the question of encroachments and village and town sites was fully discussed by the Select Committee on the present Bill, and unanimously resolved upon. If the amendment now proposed were adopted, people in one part of the Presidency would be entitled to receive compensation, while, in other parts, people similarly situated would get no compensation at all. He thought the amendment was wrong in principle.

The Honourable Mr. ROGAY:—I should like to know whether the Government of India look forward to this amendment being made. Should we take it for granted that any order coming from the Government of India should be obeyed by us, though we may not consider it reasonable?

The Honourable Mr. ASHBURNER:—You can oppose it, of course.

The Honourable Mr. ROGAY:—I do oppose this amendment.



The Honourable Mr. BENGALLI :—I shall certainly not be a party to the omission of these words.

His Excellency the PRESIDENT :—I may explain that the Government of India, doubtless, did not intend to give any order to this Council ; but it is quite open to them to suggest a matter for our consideration, and I hope it will be the pleasure of the Council to take this suggestion into consideration. That is all the honourable mover meant by his remark ; and it is quite open to the honourable mover to give the opinion of the Government of India as a reason for an amendment which he proposes.

The Honourable Mr. ROGAY :—Mr. Ashburner said “ the Government of India have ordered the omission and it requires no remark.” That led me to ask the question which I put.

His Excellency the President :—It was in order to save time. The honourable mover stated it for the sake of brevity.

The Honourable Colonel ANDERSON said section 105 provided for cases where land had been held for twelve years and upwards.

The Honourable Mr. ASHBURNER :—I think the Honourable Mr. Mandlik has overlooked the meaning of the word “ encroachment.” It essentially means an infringement of rights, and why should compensation be given for an attack on the rights of Government ? It is unnecessary to open the old question of village sites—that has been thoroughly exhausted ; but recent information obtained by Government leaves no doubt that village sites have been the property of Government from the very earliest period of our rule. There is a letter on record from Mountstuart Elphinstone, which says that, in Guzerat at any rate, village sites were the property of Government from the earliest dates, and could not be sold. But I will not re-open that old question which has been so much talked of both in and out of this Council. I merely point out that the word “ encroachment ” implies, of itself, an attack on the rights of Government ; and I see no reason whatever why such an encroachment should be the subject of compensation. No doubt that was the reason which actuated the Supreme Government.

On the motion being put to the vote it was carried by 7 to 3. The order of voting was as follows :—

*Ayes—7.*

The Honourable Mr. GIBBS.  
The Honourable Mr. ASHBURNER.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Mr. RAVENSCROFT.  
The Honourable Colonel ANDERSON.  
The Honourable Mr. LANG.  
The Honourable Mr. DOSABHOY FRAMJI.

*Noes—3.*

The Honourable Mr. MANDLIK.  
The Honourable Mr. ROGAY.  
The Honourable Mr. BENGALLI.

Sections 107 and 108 were taken as read.

The Honourable Mr. ASHBURNER moved that for the present section 109 the following section be substituted, viz. :—

“ In villages, or portions of villages of which the original survey settlement has been completed before the passing of this Act, the right of Government to all trees in unalienated land, except trees reserved by Government or by any Survey Officer,

whether by express order made at or about the time of such settlement, or under any rule or general order in force at the time of such settlement, or by notification made and published at or at any time after such settlement, shall be deemed to have been conceded to the occupant. But in the case of settlements completed before the passing of Bombay Act I. of 1865, this provision shall not apply to teak, black-wood, or sandal-wood trees. The right of Government to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.

“ In the case of villages, or portions of villages of which the original survey settlement shall be completed after the passing of this Act, the right of Government to all trees in unalienated land shall be deemed to be conceded to the occupant of such land, except in so far as any such rights may be reserved by Government or by any Survey Officer on behalf of Government, either expressly at or about the time of such settlement, or generally by notification made and published at any time previous to the completion of the survey settlement of the district in which such village or portion of a village is situate.

“ When permission to occupy land has been or shall hereafter be granted after the completion of the survey settlement of the village or portion of a village in which such land is situate, the said permission shall be deemed to include the concession of the right of Government to all trees growing on that land which may not have been or which shall not hereafter be expressly reserved at the time of granting such permission, or which may not have been reserved under any of the foregoing provisions of this section at or about the time of the original survey settlement of the said village or portion of a village.”

The honourable mover said that as the section stood only occupants of land acquired since the passing of Act I. of 1865 were entitled to the trees; and the object of the amendment was to alter this objectionable state of the law.

The Honourable Mr. MANDLIK asked whether this section would not apply, retrospectively, in favour of Government and against the people in regard to the landholders in Southern Konkan to whom Dunlop's Proclamation of 1824 had granted certain rights, and which rights the Secretary of State for India (His Grace the Duke of Argyll) had acknowledged.

The honourable mover pointed out that the first clause of the section provided that “ the right of Government to such trees shall not be deemed to have been conceded except by clear and expressed words to that effect.” If such words were used in the Inamdars' Proclamation the rights of Government would have been conceded.

The Honourable Mr. ROGAY said he was in a puzzle; the Advocate-General might enlighten the Council on the subject.

His Excellency the PRESIDENT :—It is for every honourable member under the rules to exercise his own discretion as to whether he sees fit to address the Council or not.

The Honourable Mr. ROGAY :—My experience is that the Advocate-General is often asked to give an opinion upon a technical point.

On the amendment being put to the vote it was carried by 7 to 3.

The order of voting was as follows:—

*Ayes—7.*

The Honourable Mr. GIBBS.  
The Honourable Mr. ASHBURNER.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Mr. RAVENSCROFT.  
The Honourable Colonel ANDERSON.  
The Honourable Mr. LANG.  
The Honourable Mr. DOSABHOY FRAMJI.

*Noes—3.*

The Honourable Mr. MANDLIK.  
The Honourable Mr. ROGAY.  
The Honourable Mr. BENGALLI.

Sections 110 and 111 were taken as read.

On the motion of the Honourable Mr. ASHBURNER it was resolved that in section 112 there should be inserted after "tree" in line 3, "or any portion thereof," and after "tree" in line 7, "or portion thereof."

Section 113 was taken as read.

The Honourable Mr. ASHBURNER further moved that in section 114, line 8, after "any" there should be inserted "special contract with Government, or any";

That from section 196, line 15, the words commencing with "nor" to the end of the section should be omitted;

That section 198 should be omitted entirely;

That from section 199 should be omitted "either of" in line 1, and "two" in line 2; and that for "sections" in line 2 should be substituted "section";

That from section 201 should be omitted "or 198";

That to section 204, line 16, there should be added after "rupee" the words "for each sanad."

The honourable mover, with regard to these six amendments, said that by Regulation 17 of 1827, Government had always been empowered to assess building sites in towns, cities and villages, but the Courts had on several occasions ruled—not exactly formally, but incidentally—that that Regulation applied only to agricultural lands and not to town and village sites. The Revenue Jurisdiction Act contained a clause which declared that Regulation 17 of 1827 not only did apply, but always had applied to such sites; and the effect of the above amendments was to correct any conflict that might exist between the law in this Code, Regulation 17 of 1827, and the Revenue Jurisdiction Act. In fact it left the question of village sites exactly where it stood in the days of Elphinstone's Code. He would not re-open the question whether that was a good law or a bad law, but it had been the law for the last fifty years, and it was now declared so authoritatively.

The Honourable Mr. MANDLIK opposed the omission of section 198, and the vote of the Council was taken on the point, when the amendment was carried by 7 to 3, the order of voting again being:—

*Ayes—7.*

The Honourable Mr. GIBBS.  
 The Honourable Mr. ASHBURNER.  
 The Honourable the ADVOCATE-GENERAL.  
 The Honourable Mr. RAVENSCROFT.  
 The Honourable Colonel ANDERSON.  
 The Honourable Mr. LIANG.  
 The Honourable Mr. DOSABHOY FRAMJI.

*Noes—3.*

The Honourable Mr. MANDLIK.  
 The Honourable Mr. ROGAY.  
 The Honourable Mr. BENGALLI.

The remaining five amendments were also adopted.

Sections 115 to 118, inclusive, were taken as read.

The Honourable Mr. ASHBURNER moved that from section 119, lines 7 and 8, be omitted the words "so long as his holding or tenancy shall endure." The honourable mover said the section as drafted enabled the superior holder to collect his cesses only so long as his tenants remained in possession. This amendment was to enable him to collect cesses which had accrued during a tenancy, though the holding might have been thrown up.

The amendment was adopted.

Sections 120, 121, and 122 were taken as read.

The Honourable Mr. ASHBURNER moved that in section 123, line 5, after the word "person" there should be inserted "who, under section 207, is." The honourable mover said this was merely a verbal amendment to make clear what was meant by the person primarily responsible under section 207.

The amendment was carried.

The Honourable Mr. ASHBURNER moved that in section 124, after "survey" there be inserted "or such other Officer as he deems fit." The honourable mover said the object of this amendment was to enable Government to entrust the duty of assessing water to a Canal Officer, or to any other special Officer.

The amendment was adopted.

Sections 125 to 142, inclusive, were taken as read.

The Honourable Mr. ASHBURNER moved that for the first para. in section 143, the following be substituted, viz. :—

"An occupant may, by giving written notice to the Mámlatdár or Mahálkari, relinquish his occupancy, either absolutely or in favour of a specified person, provided that such relinquishment apply to the entire occupancy or to whole survey numbers or recognized shares of survey numbers. An absolute relinquishment shall be deemed to have effect from the close of the current year, and notice thereof must be given before the 31st March in such year, or before such other date as may be from time to time prescribed in this behalf for each district by the Governor in Council. A relinquishment in favour of a specified person may be made at any time."

The honourable mover said this amendment was to provide for the transfer of land at any time, instead of merely at the close of the season, as was enacted by the original section.

The amendment was adopted.

Sections 144 to 149, inclusive, were taken as read.

The Honourable Mr. ASHBURNE moved that after section 150 the following heading and additional section be inserted, viz. :—

*“Suspension of certain Provisions of this Chapter.*

“150 A. It shall be lawful for the Governor in Council by notification in the *Bombay Government Gazette* from time to time—

“(a) to suspend the operation of sections 129 or 143, or of both, within any prescribed local area, either generally, or in respect of cultivators or occupants of a particular class or classes; and

“(b) to cancel any such notification.

“During the period for which any notification under the above clause (a) is in force within any local area, such rules shall be substituted for the provisions of which the operation is suspended, as the Revenue Commissioner shall from time to time direct.”

The honourable mover said the object of this amendment was to enable Government to relax the stringency of the rules for taking up land in the districts inhabited by Bhils and other wild tribes.

The amendment was adopted.

Sections 151 to 171, inclusive, were taken as read.

On the motion of the Honourable Mr. ASHBURNE it was resolved that in section 172, for “such” in line 12, be substituted “revised survey,” and that from lines 14 and 15 the words “or holder of alienated land” be omitted.

Sections 173 to 181, inclusive, were taken as read.

The Honourable Mr. ASHBURNE moved that for the present section 182 the following section be substituted :—

“Whenever any one or more co-sharers in a Khoti estate into which a revenue survey has been introduced or in a talukdari estate consent to a partition of the said estate, it shall be lawful for the Collector or for any other Officer duly empowered by him in this behalf, subject to the rules contained in the last preceding section, to divide the said estate into shares according to the respective rights of the co-sharers and to allot such shares to the co-sharers :

“Provided that no such partition shall be made unless :

“(a) all the co-sharers are agreed as to the extent of their respective rights in the estate, and—

“(b) the assessment of the share or shares of the sharer or sharers consenting to such partition exceeds one-half of the assessment of the entire estate.

“In such cases the expenses of partition shall be recovered under Rule (3) of the last preceding section from all the co-sharers in the estate divided.”

The honourable mover said section 182 provided for the partition of estates, and the words “one-half of the entire estate” were used, leaving it in doubt whether half in

area or half in value was intended. This amendment was proposed to remove that doubt and to declare that half an estate meant the portion which paid half the assessment. The word Khoti had been introduced in consequence of a suggestion from Mr. Arthur Crawford, and in order to enable him to divide estates in portions of the Ratnágiri district which had been surveyed.

The amendment was carried.

Sections 183 to 213, inclusive, were taken as read.

The Honourable Mr. ASHBURNER moved that from section 214, line 11, the words "not exceeding one-half" be omitted. The honourable mover said there was a conflict between this section as drafted—which gave the Collector power to attach only one-half the crops—and section 221 C, which enabled him to seize the whole crops; and the object of the amendment was to reconcile the discrepancy.

The amendment was adopted.

Sections 215 to 224, inclusive, were taken as read.

The Honourable Mr. ASHBURNER moved that for the present section 225 the following section be substituted:—

"The Collector may also cause the defaulter's moveable property to be distrained and sold.

"Such distrains shall be made by such Officers or class of Officers as the Revenue Commissioner, under the orders of Government, may from time to time direct;"

and that after section 226 the following new section be inserted:—

"226 A. All such property as is by the Civil Procedure Code exempted from attachment or sale in execution of a decree, shall also be exempt from distraint or sale under either of the last two preceding sections.

"The Collector's decision as to what property is so entitled to exemption shall be conclusive."

The honourable mover said these two amendments were proposed in order to bring the Bill in accordance with the Civil Procedure Code, which exempted certain property, such as the bullocks and carts of agriculturists, from seizure.

Sections 226 to 246, inclusive, were taken as read.

The Honourable Mr. ASHBURNER moved that in section 247, line 4, after "shall" should be inserted the words "except when such re-sale takes place forthwith." The honourable mover said the object of this amendment was to reconcile the section with section 241, which required the sale to be forthwith.

The amendment was adopted.

Sections 248 to 258, inclusive, and sections 260 and 261 were taken as read.

It was resolved, on the motion of the Honourable Mr. ASHBURNER, that in section 259, line 19, for "21 and 22" shall be read "640 and 641"; and that in section 262, line 6, for "151" shall be read "160."

Sections 263 to 282, inclusive, were taken as read.

The Honourable Mr. ASHBURNER moved that for the present section 283 the following section be substituted:—

“Whenever in this Act it is declared that a decision or order shall be final, such expression shall be deemed to mean that no appeal lies from such decision or order.

“The Governor in Council alone shall be competent to modify, annul or reverse any such decision or order under the provisions of the last preceding section.”

The honourable mover said the amendment was merely verbal and was intended to make the meaning of the section more clear.

The amendment was adopted.

Sections 284 to 288, inclusive, were taken as read.

The Honourable Mr. ASHBURNER moved that the following new section be added to the Bill, viz.:—

“289. Nothing in this Act which applies in terms to unalienated land or to the holders of unalienated land only, shall be deemed to affect alienated land or the rights of holders of alienated land, or of Government, in respect of any such land; and no presumption shall be deemed to arise either in favour or to the prejudice of any holder of alienated land from any provisions of this Act, in terms relating to unalienated land only.”

The honourable mover said it might be presumed that the expression “unalienated land” was intended to except alienated land, and the object of this amendment was to prevent such a presumption being raised.

The amendment was adopted.

It was resolved, on the motion of the Honourable Mr. ASHBURNER, that in schedule A, opposite Bombay Act I. of 1866, for “Ditto” should be substituted “the whole Act.”

His Excellency the PRESIDENT suggested that the Council should next consider the Presidency Abkari Bill in detail, reserving the amendment to be submitted by the honourable mover to meet the case of the Poway estate to a future meeting.

The Presidency Abkari Bill considered in detail.

The Honourable Mr. MANDLIK moved that in section 2, line 17, after the word “arisen,” the words “or any rights which may have become vested” should be inserted.

His Excellency the PRESIDENT said that such a general proviso was objected to because it would leave many matters undetermined which the Bill was intended to determine; but the case of a particular estate might be deferred till the section referring to the Poway estate was reached.

The Honourable Mr. ASHBURNER was inclined to reject the amendment entirely. Most careful inquiries had been made by Mr. Pritchard, the Collector of Tanna, and other officials. The Bill might have been passed three months ago if it had not been for the inquiries. Besides, all who were interested had petitioned, so that the Council had the whole question before it; and it would only unnecessarily keep alive the irritation which

the question created to hold out hopes which must eventually be destroyed. He was much opposed to keeping the question open. Who had shown ground for believing that the petitioners had rights?

The Honourable Mr. LANG said the facts were in the petitions.

The Honourable Mr. ASHBURNER :—But they have been considered by the Honourable the Advocate-General.

The Honourable Mr. LANG :—But the opinion of one legal gentleman may differ from that of another. The petitioners may have another legal opinion to say they have not got their rights; and by this Bill they will be debarred from ever opening the question. If a man thinks he has a right, I think he should have liberty to try and prove it at any time. If he does so it is at his own expense. It would seem unfair to debar a man from making an appeal.

The Honourable Mr. ROGAY thought Mr. Ashburner was wrong in saying there were no facts before the Council which proved the petitioners had rights. There were copies of deeds attached to their petitions which proved that they had received concessions from Government. He thought there should be a general saving clause to protect these people from retrospective action of the law, or else their indentures would be invalidated, and people would entertain a very bad opinion of Government promises and Government sanads.

The Honourable Mr. DOSABHOY FRAMJI said he was afraid Mr. Rogay's remarks were too general to be accepted. To one of the petitions a copy of the original instrument had been annexed, and that instrument distinctly stated that the estate was free from land assessment, but subject "to all laws and regulations that now are or from time to time may be enforced in the Island of Salsette touching the manufacture and sale of spirituous liquors," &c. Yet the petitioner said these rights had been reserved to him. Perhaps His Excellency the President's suggestion to consider the petitions later might be adopted, but a general saving clause was not advisable.

The Honourable Mr. BENGALLI said the Council cannot be asked to say whether the petitioners possessed rights or not, but merely to say that wherever rights had become vested they should remain untouched. It was not the business of the Council to decide that the proprietor of one estate in Salsette possessed abkari rights, and that other proprietors did not possess such rights. That would be transforming the Council into a Bench of Judges and the Council would be assuming the powers which belong only to the High Court. He would therefore vote in favor of the amendment.

After some further conversation the question was put to the vote, when Mr. Mandlik's amendment was lost by 6 to 4. The order of voting was as follows :—

*Ayes—4.*

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

*Noes—6.*

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.



The Honourable Mr. MANDLIK moved that in section 6, lines 23, 24, and 25, instead of the words "shall in no case be conferred on any Officer of any department who is not superior in rank to a peon or constable," should be substituted "shall in all cases be conferred upon Officers specially selected for the purpose."

On the motion being put to the vote it was lost.

The Council then adjourned till eleven o'clock to-morrow, 8th November 1877.

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

J. NUGENT,

Under Secretary to Government.

*Bombay Castle, 7th November 1877.*

*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 Thursday the 8th November 1877, at 11 A.M.

**P R E S E N T :**

His Excellency the Honourable SIR RICHARD TEMPLE, Bart., K.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 Rao Saheb VISHVANATH NARAYAN MANDLIK, C.S.I.

The Honourable Nacoda MAHOMED ALI ROGAY.

The Honourable SORABJI SHAPURJI BENGALLI.

The Honourable Colonel W. C. ANDERSON.

The Honourable WALTER LANG.

The Honourable DOSABHOY FRAMJI, C.S.I.

Consideration of the Presidency  
Abkari Bill resumed.

The Council resumed consideration of the Presidency  
Abkari Bill (Bill No. 3 of 1877) in detail.

Sections 7, 8, and 9 were passed without amendment.

In reference to section 9 the Honourable the ADVOCATE-GENERAL said the same amendment that was made in the City Abkari Bill would be necessary to be made in the Presidency Bill. The amendment would apply to both sections 9 and 10, and he proposed that after section 10 a new section should be inserted as follows:—

“ Provided that nothing in the two last preceding sections shall be deemed to affect any law for the time being in force, which prohibits or restricts the importation of toddy or of any spirituous liquor into the said Presidency; or which empowers the Governor-General in Council to prohibit or restrict such importation; or which empowers the Governor-General in Council to exempt toddy or any spirituous liquor from the whole or any part of the duties of customs to which it is liable under any law for the time being in force.”

The motion was carried without opposition.

Sections 10, 11, 12, 13 and 14 were passed.

The Honourable MAHOMED ALI ROGAY said:—The gentlemen who had petitioned against this Bill objected to the 4th clause of the 15th section, which provided for the Collector granting licences for drawing toddy, and he moved that the words “for drawing toddy” be omitted.

The Honourable Mr. GIBBS asked if the honourable member's intention was that anybody throughout the Presidency should be allowed to draw toddy without licence, as that would be the effect of the amendment which the Honourable Mr. Rogay had proposed.

The Honourable Mr. ROGAY said the question had been referred once to Government, and, after mature deliberation and a good deal of correspondence, it was held that the petitioners had the right they claimed and that Government had no business to interfere with the right. Under No. 33 of the Council Rules he (Mr. Rogay) asked for the petition of Mr. Ahmedbhoy Hubbibhoy.

The petition was produced by the Secretary, and His Excellency the PRESIDENT remarked that it had been submitted to the Select Committee. His Excellency asked if any member wished to read the petition; but there was no response.

The Honourable Mr. ASHBURNER suggested that it might be convenient for Mr. Rogay to combine his objections to the Bill in one amendment; that course would, at any rate, save time.

The Honourable Mr. ROGAY:—Any member may move for the insertion, substitution or omission of any words in any clause he likes.

His Excellency the PRESIDENT:—It is, no doubt, quite within the discretion of the honourable member to choose his own form of proceeding.

The Honourable Mr. ASHBURNER:—I withdraw my suggestion. I thought the course I proposed would be more convenient and would meet Mr. Rogay's views. I may as well at once state what I have to say upon this whole question. What I have to say now will apply to all the objections which will probably be raised by Mr. Rogay. The objections he raises question the right of Government to tax sweet toddy; that is really the substance of his objections. Hitherto sweet toddy has been exempt from taxation, not only in the case of those gentlemen who claim immunity, but throughout the whole Presidency; and Mr. Rogay's objection amounts to this—that Government is not to have the right of taxing this produce. He might just as well object that Government has no right to put on an income-tax or customs duty, or adopt any other mode of taxation. His objection strikes at the very root of the authority of Government to impose taxation upon this country. The deeds on which this exemption is claimed have been very carefully examined, not only by the learned Advocate-General but by other members who are deeply interested in this question and have taken the greatest trouble about it. There is not one of those deeds in which the right of abkari is conveyed. The words are distinct and apply to the tree tax which was at that time levied; and Government have distinctly said, in many orders, that this is all that is conveyed by those deeds, which in no way affect the right of Government to excise. It would be easy to talk on this subject for an hour, but the whole matter may be condensed into a few words. Government claim the right of taxing fresh toddy now as a new tax, and that is all that is enacted in this Bill. It has been found necessary, in order to check the evasion of the abkari duty upon toddy, to adopt this course. It is impossible to draw any distinction between sweet toddy and fermented toddy, because within half an hour—I believe, chemically, even within half a second—of fresh toddy being put into a pot that has contained old toddy, fermentation has commenced and it becomes liable to duty. So, practically, it is impossible to draw any distinction between sweet and fermented toddy. This will apply to all the objections that may be raised in respect of these petitions and deeds now before the Council. The words in the deeds on which these exemptions are claimed would apply equally to fermented toddy, exemption in respect of which has never been claimed by petitioners.

The Honourable Mr. MANDLIK did not think that his friend Mr. Rogay for one moment questioned the power of Government to impose taxation whenever it might be necessary. His object was to secure, as far as possible, rights that had become vested in certain persons. It was with the same view that he proposed an amendment yesterday, and that having been carried against him he did not wish to move any further amendment on the point.

The Honourable Mr. GIBBS :—I am not on the Select Committee and have only seen the papers since they came into circulation ; and it was not until yesterday that I became fully aware of the nature of the case set up by the petitioners whose petitions are before the Council. My impression at first was that the case they were trying to set up in the present Bill was, that Government was taking to itself power to interfere with their rights of property in certain trees which had been granted to their ancestors—or to some persons of whom they are now the assigns—many years ago, when, in accordance with Lord Cornwallis's plan, it was endeavoured to make Salsette into large zemindaries. I have since, however, gone more carefully into the matter, and though the distinction which has been drawn in the Bill is perhaps rather a fine one, I have satisfied myself that it does not go further than maintaining the right of Government to impose taxes upon different articles of excise ; and, in consequence, it does not affect the rights of property in the trees which the petitioners, by certain deeds, had granted to them by the Bombay Government many years ago. The right of taxing the trees was a point at one time in dispute, but Government gave up that and have since placed no tax on the trees, nor is it now proposed to tax them. The object of the present Bill is, for certain very good reasons, to make unfermented as well as fermented toddy exciseable by Government. This will benefit the public generally and not the Government alone. The Honourable Mr. Ashburner has just mentioned what I think is the strongest argument in favour of the Bill, viz., that not one of the petitioners who claim exemption from the proposed tax on unfermented liquor argued that his fermented liquor is untaxable or that Government cannot tax it. The only question is whether Government is going beyond its power in saying that unfermented liquor also shall be taxed. Up to the present time, I am given to understand, unfermented liquor has been free all over the country ; but Government, for certain good reasons, and in view, especially, of the large amount of fraud and smuggling which is practised, owing to the difficulty of deciding between the unfermented and fermented liquor, has come to the determination that unfermented liquor shall in future be liable to duty ; and the petitioners have hitherto admitted that fermented liquor is so liable, and that up to the present time unfermented liquor everywhere has not been ; *ergo*—if Government now considers it necessary to place an excise duty on unfermented liquor all over the Presidency, what right have these gentlemen to come forward and say, “ You may tax unfermented liquor in every part of the Presidency except on our estates ” ? Then comes the question—Is there anything in their deeds which exempts them specially from *abkari* duties ? They admit that they are liable to pay excise duty on fermented liquor, and the question is—Whether there is anything which will relieve them from a duty on unfermented liquor ? I do not see that there is anything in their deeds which any more precludes their paying duty on unfermented liquor than on fermented liquor. Government has an undoubted right to tax, for excise purposes, any article which it deems fit ; and I can find nothing to prevent its taxing unfermented toddy. If there had been anything of that nature I should have maintained that the petitioners' rights of property in respect of such claim

should be defined by the High Court; but the distinction is so evident between the rights of property and the right of Government to levy an excise duty, that I think the petitioners have not anything to complain of. The only question is as to the right of Government to tax unfermented toddy, about which I think there is not the slightest doubt, and I shall support the Bill as it is submitted to the Council.

The Honourable the ADVOCATE-GENERAL :—As the papers have been placed before me for consideration with reference to the rights of the petitioners, perhaps I may be permitted shortly to state some of the reasons which induced me to come to the opinion that they did not acquire any rights in abkári. Their rights, whatever they may be, must be granted to them by the original deed or grant by which the estates were made over to their predecessors; and in those deeds there is not one single word which directly states that any abkári rights were granted. I think it is perfectly clear that the only right relinquished was the tree tax, which was part of the land revenue, and was a tax levied on trees variably according to the situation and produce of each tree. On a fair construction of these deeds nothing in them can be considered as affecting abkári rights; the tax relinquished was distinctly a land revenue tax and not an excise tax. If we consider these deeds in comparison with the grant of the Poway estate we shall find how very much the terms of the two leases differ. The Poway estate was granted “free from all rent and arrears of rent, and also from abkári and all other rates, taxes, &c.” It is clear that the Company did intend to give up the abkári rights in that case, because they are specifically mentioned in the deed. The question of the right of Government to levy a tax on unfermented toddy has already been dealt with by Mr. Gibbs. There is considerable force in what fell from Mr. Shapurji Bengalli yesterday—that the Council is not to turn itself into a Court to determine certain rights; but what I say is this—the Council certainly has a right to consider whether there is any foundation for claims preferred before it. The claim of Mr. Nanabhoy Byramjee Jeejeebhoy, in the present case for instance, received a complete answer in the extract from the original deed which was read by the Honourable Dosabhoy Framji. It is easy, in general terms, to assert certain claims and rights before the Council; and the Council have a right, in considering such claims, to go back to the original documents to discover if there is any foundation in them; and if they find there is no foundation, they have a right to reject them entirely.

The Honourable Mr. LANG said that, with all due deference to the learned Advocate-General, he would submit, that in following his advice the Council would be taking upon itself more of the duty of a judicial body than properly pertained to it. He had no desire to question the opinion of the learned Advocate-General as to the merits of this particular case, but all matters legal must be open to question; and even though the petitioners might really have no rights at all, he thought the matter would have been better settled if the amendment proposed yesterday by the Honourable Mr. Mandlik had been adopted. That amendment merely left to them the right of urging any grievance they might feel at any time before any properly constituted court in the Presidency. If they had no real grievance it would be very unlikely that they would institute an expensive suit against Government; and at any rate, if they did institute such a suit, it would be adjudged against them, and they would have to pay the penalty of instituting a suit which was not well-advised.

The Honourable Mr. GIBBS said that, unless the petitioners had something very strong and clear to show,—as in the case of the Poway lease,—that they were specially exempt

from the payment of all excise duties, he did not see how they could have any grievance, because they were merely put on a par with all the world of the Bombay Presidency with regard to unfermented liquor as they were already with regard to fermented liquor.

The Honourable Mr. LANG :—They say that they possess a right not to be taxed for unfermented liquor ; that is their grievance.

The Honourable Mr. ROGAY said the honourable member in charge of the Bill had stated that Government claimed the right to tax fresh toddy, and that such tax should be levied on all toddy-growers alike, whether they had inherited express grants from Government or not. All he said was that, if Government had the right of levying new taxes, let them exercise it, but with deference to existing rights, which ought not to be infringed. The Honourable Mr. Gibbs had stated that the petitioners were on a par with everybody else. He (Mr. Rogay) said they were not ; they claim exemption on certain grants which had been recognised and acted upon up to the present time. He did not think the Council could very well constitute itself a legal tribunal to decide the question of rights ; and had the Honourable Rao Saheb's amendment of yesterday been carried he would not have moved any further amendment ; but as the Council unwisely rejected it, he thought he should be neglecting his duty if he did not bring to notice matters which, he believed, injuriously affected existing rights. He should take the opportunity of moving an amendment whenever he considered it necessary to do so. With due deference to the opinion of the learned Advocate-General, he had before him an opinion—given by one of the leading lawyers of the day, and a gentleman who had held the same office of Advocate-General—which stated that the petitioners had a right to claim exemption ; and on that opinion Government had acted up to the present time. It was all very well to say this Bill would benefit the general public ; but he declined to go on the ground that, in order to benefit the general public, existing rights should be confiscated ; he had a great distrust of that kind of legislation. He did not think the Council could decide as to the rights of the petitioners ; it was not a competent body to do so ; and if his present amendment was rejected, as he anticipated it would be, he should move when section 61 was reached, that a saving clause be added exempting the Bhandoopwallas as well as the owners of the Poway estate ; or if the Council would agree to the proposition made by the Honourable Rao Saheb Mandlik yesterday, he would withdraw his amendment.

On the motion that the words "for drawing toddy," in clause (d) of section 15 being put to the vote, it was lost.

Section 16 was passed.

The Honourable Mr. MANDLIK said that the second proviso of section 17 as drafted would prevent any portion of a tree or plant from which an intoxicating drug was produced from being sold to any one except a licensed distiller or dealer in such drugs. This was objectionable, as the leaves and stump of the cocoanut palm, portions of the bhang plant, and mowra trees, &c., were common articles of sale. He wished to substitute for the words "of such plant, or of the flowers, leaves, or any other portion of such plant," in the 19th, 20th and 21st lines of the section, the words "all those portions of the plant from which any intoxicating drug or material is produced."

The Honourable Mr. ASHBURNEE had no objection to the amendment, and it was adopted.

Sections 18, 19, 20, and 21 were passed.

The Honourable Mr. ROGAY objected to section 22, because as drafted it would make the owner responsible for the fault of the tenant. He was a landlord himself, and had tenants who took out licences to draw toddy without his knowing anything about them; and if this section was passed he should be sorry to own land of this character. It was the most unreasonable thing he had ever known. He proposed that the words "and in default by him, from the owner of the trees," should be omitted,

The Honourable Mr. LANG agreed with the remarks of Mr. Rogay on this point. If it was necessary that the owner should be held liable for the default of his tenant, it should be provided that the tax should be paid in advance on issuing the licence,

The Honourable Mr. MANDLIK suggested that the word "primarily," in the first and second lines of the section, should also be omitted,

The Honourable Mr. RAVENSCROFT considered the section as drafted was a very fair one. In districts like the neighbourhood of Bombay, where the trees grew very thickly, unless the landlord took proper care to see that his tenants paid the taxes due to Government, in a great many cases the taxes never would be paid. It was one of the fair responsibilities of property owners, and he supported the section as it stood.

The Honourable Mr. DOSABHOY FRAMJI was of opinion that the section might be allowed to stand, and pointed out that there were several other Acts which contain similar provisions. For instance, by the Municipal Act house-owners in Bombay were made liable in default of payment of the taxes by the occupants of the houses; and if such a provision was necessary in Bombay, where householders could be so easily got at, how much more necessary was it in the case of people like the bhandaris who farmed cocoanut and brab trees and who could not be found when wanted. Under this section owners of such trees would be careful to let them out to men of good character, who would be likely to meet the just demands of Government. In fact-landlords of such estates exact from the bhandaris of their own rents payments in full in advance.

The Honourable Mr. MANDLIK thought there was some misconception. He did not for one moment advocate anybody shirking due responsibility with regard to taxation; but the persons who took out licences in these cases were, in no sense, the agents or representatives of the landlords, but could tap trees only under such conditions as the Collector saw fit to impose. The bhandaris were not a migratory class, as they were represented to be; any body who had lived in the Mofussil could see that. The landlord had no lien on the licence; and the analogy between the Municipal taxpayers and tenants and landlords of this class did not apply. The security of the revenue might be provided for by making payment of taxes compulsory in advance.

The Honourable Mr. ASHBURNER said no one could touch trees without the owner's permission; and the owner would not allow any one to tap his trees without payment; and it was on that account that the owners became liable.

The Honourable Mr. ROGAY said that so far from owners of these trees getting their rent always in advance, his experience of the bhandaris was that they were always in arrear. They might pay the Government where they would not pay the landlord, because the landlord had unfortunately to go to a civil court to prove his claim, and might then lose his money by the man becoming insolvent; while Government could exact its dues by summary procedure and levy an attachment on the defaulter's property. It was quite

true that the bhandaris were independent of their landlords, except for the payment of rent, and he did not see why the landlord should be held liable for the default of his tenant. The analogy drawn by Mr. Dosabhoj Framji between bhandaris and occupiers of houses in Bombay was not a fair analogy at all.

On the motion being put to the vote it was lost by 6 to 4. The order of voting was as follows :—

*Ayes—4.*

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

*Noes—6.*

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.

The Honourable Mr. MANDLIK requested permission to propose a new section. By the vote that had just been passed the owner of trees was compelled to pay the tax in default of the licence-holder paying it, it was fair that he should be allowed to recover it from the licence-holder as a superior holder could recover rent from an inferior holder. He moved that the following section be inserted, viz. :—

“ 22A. For recovering the duty paid by the owner of the trees under the provisions of the last preceding section, the said owner shall be entitled to the assistance given to superior holders in recovery of dues from tenants under the provisions of Chapters 6 and 7 of Regulation XVII. of 1827.”

The Honourable Mr. ASHBURNER said he thought the amendment was a very good one, and it was adopted,

Section 23 was passed,

The Honourable Mr. MANDLIK opposed section 24 on the ground that retrospective legislation in revenue matters was not desirable. He proposed that the section should be omitted.

The Honourable Mr. GIBBS explained that the section was intended merely to continue matters as they existed at present,

The Honourable Mr. ASHBURNER said the object of the section was to include certain levies that had been made in the district of Ratnágiri, where there are rights of tenure which it was necessary to provide for. It was meant to allay irritation,

The Honourable Mr. RAVENSCROFT said the section was intended to legalise a collection which had been made for a great number of years but as to the exact legality of which some doubt had arisen on purely technical grounds. No rights were involved ; the object was merely to prevent any future discussion on the subject. It was merely a legal technicality.

The Honourable Mr. MANDLIK said his objection was, generally, to revenue law being made retrospective. He had always objected, on principle, to retrospective revenue law, and it was on this ground that he objected to the present section.



The motion was lost by 6 to 4, the order of voting again being—

*Ayes—4.*

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

*Noes—6.*

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 FRANJI.

Sections 25 to 40, inclusive, were passed.

The Honourable Mr. MANDLIK objected to the words at the end of section 41—"or with imprisonment for a term which may extend to six months, or with both." He thought a proper punishment for a man who neglected to pay certain duties was a heavy fine and confiscation, but not imprisonment. He moved that the words he had read should be omitted.

The Honourable Mr. ASHBURNER said that would be impossible; the persons who would come under this *abkari* law were poor coolies, who could not pay fines. If imprisonment were dispensed with, there would be no power, practically, of dealing with smugglers.

The Honourable Mr. BENGALLI said it was in accordance with his suggestion in the Select Committee that the imprisonment clause was added. There were men to whom a fine of Rs. 1,000 or Rs. 5,000 would be no punishment; and he had impressed on the Committee the fact that a fine would not be a sufficient deterrent.

The Honourable Mr. LANG considered that the penalties should be severe, but that they should only be in the hands of officers of a high class.

The Honourable Mr. MANDLIK thought if the law was made too severe it would be likely to defeat its own object. The sympathy should always be with the officer working to enforce the law; and when a poor coolie was in danger of six months' imprisonment, because he was found in possession of a pot of liquor, that would scarcely be the case.

The amendment was then put to the vote and lost.

Sections 42 to 50 were passed.

With reference to section 51 the Honourable Mr. MANDLIK said that, ordinarily, the prosecution had to prove that an accused person was guilty of committing an offence, and he did not see why this Bill should be an exception to the rule. He proposed that this section should be omitted.

The Honourable Mr. LANG quite agreed with Mr. Mandlik. His impression was that the presumption always was, that a man was innocent until he was proved to be guilty; but in this case a man was to be presumed guilty until he proved that he was innocent.

The Honourable Mr. ASHBURNER said the apparatus made use of for distilling liquor and so evading this Act was of so peculiar a nature, that it was hardly possible for any one to have it in his possession without having committed or intending to commit an offence against the Act; and it was on that ground that the presumption was against the possessor of the apparatus. The same presumption was found in the Opium Act; and it

had been found impossible to dispense with it in the present Bill. If it were omitted, the whole apparatus for distillation might be found in a house, and if it was not actually at work the offender would be free.

The Honourable the ADVOCATE-GENERAL:—I may say, also, that a similar section is included in all the English Acts with reference to excise.

The Honourable Mr. MANDLIK said opium was a dangerous poison and the case was very different. An apparatus for distillation need not necessarily be kept and used for the purpose of manufacturing intoxicating liquors; in fact, he knew persons who had such apparatus in their possession who could not by any means be induced to manufacture intoxicating liquors or drugs, as it was opposed to their religious and social usage.

On the motion being put to the vote it was lost by 7 to 3. The order of voting was as follows:—

*Ayes—3.*

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

*Noes—7.*

The Honourable Mr. GIBBS.  
The Honourable Mr. ASHBURNER.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Mr. RAVENSCROFT.  
The Honourable Colonel ANDERSON.  
The Honourable Mr. BENGALLI.  
The Honourable Mr. DOSABHOY FRAMJI.

Sections 52 to 60, inclusive, were passed.

The Honourable Mr. ROGAY proposed that section 61 should be altered so as to especially exempt the Bhandoopwallas as well as the Poway estate.

The Honourable Mr. LANG said he was in favour of a general saving clause, but was not prepared to exempt a particular estate.

The Honourable Mr. ROGAY:—If a general saving clause is adopted I will withdraw my amendment, but I think this estate ought to be exempt.

The Honourable Mr. Ashburner said he had exhausted his arguments on this subject.

The amendment was lost by 8 to 2. The order of voting was—

*Ayes—2.*

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

*Noes—8.*

The Honourable Mr. GIBBS.  
The Honourable Mr. ASHBURNER.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Mr. RAVENSCROFT.  
The Honourable Colonel ANDERSON.  
The Honourable Mr. BENGALLI.  
The Honourable Mr. LANG.  
The Honourable Mr. DOSABHOY FRAMJI.

The Honourable the ADVOCATE-GENERAL said he had an amendment to propose to section 61 to meet the wishes of those concerned in the Poway estate. That estate was now the subject of a suit in the High Court; and an order had been made

appointing a receiver to receive the moneys of the estate; and it had been suggested, in order to avoid expense, that instead of proceeding under the Land Acquisition Act the matter of compensation should be referred to arbitration. One of the Judges of the High Court had, he believed, kindly consented to act as arbitrator. He proposed that the two provisos to the section, instead of as framed in the Bill at present, should read as follows :—

“ Provided that compensation shall be payable by Government to the receiver for the time being duly appointed by the High Court of Judicature at Bombay in its Ordinary Original Civil Jurisdiction in Suit 877 of 1870, wherein Mithabai, widow, and others are plaintiffs, and Limji Nowroji Banaji and others are defendants; being a suit for the administration of the estate of the said Framji Cowasji for the loss and determination of the said rights and immunities; and that if such receiver is dissatisfied with the amount of compensation offered by Government, the amount to be paid and all other questions in respect of such payment may be referred to the arbitration of such person as may be agreed upon by Her Majesty's Government and such receiver, and whose decision shall be final; or in default of such reference, then that the amount of such payment and such other questions as aforesaid shall be determined under the provisions of the Land Acquisition Act of 1870, so far as the same may be applicable, as if the said rights and immunities affected land situate in the Tanna District required for public purposes;

Provided, further, that the payment of compensation to such receiver shall bar all claims of any other person against Government in respect of the same,”

This amendment was adopted.

The Honourable Mr. MANDLIK objected to the proviso to section 62—“ provided always that no action shall lie against any abkari officer in respect of any act for which he has already been criminally prosecuted.” He failed to see any reason why abkari officers should be so protected any more than other people, and he moved that the proviso be omitted.

The Honourable Mr. ASHBURNER :—I have no objection to the amendment proposed. The section was taken from a Bengal Act,

The amendment was then adopted.

The Honourable Mr. MANDLIK moved that the 5th definition should be amended so as to define “ magistrate ” to mean, for the purposes of this Act, first and second class magistrates only. The honourable gentleman said there were many important provisions contained in the Bill which ought not to be entrusted to third class magistrates, and if they were, a good deal more money would often be paid by the accused than would go into the Imperial Treasury.

The Honourable Mr. ASHBURNER opposed the amendment on the ground that in the outlying districts, if cases were obliged to be taken before a first or second class magistrate considerable delays would take place. A poor Bhil found in possession of a bottle of liquor might have to be marched fifty miles before he could be tried. He also mentioned that third class magistrates formed the class from which mamlatdars are selected.

The Honourable Mr. GIBBS said as to the honourable member's statement that from the third class magistrates *mámlatdárs* were chosen, it might be agreed similarly that members of Parliament and Governors of provinces were chosen from among school-boys, but it would not do to place a boy in Parliament or to give him charge of a province while he was still at school. He had considered the point of loss of time and inconvenience, and he thought that would be preferable to placing the powers of this Bill in the hands of third class magistrates.

The Honorable Colonel ANDERSON was also of opinion that cases under this Act should be tried by superior men to the third class magistrates.

On the amendment being put to the vote it was adopted.

His Excellency the President then adjourned the Council.

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

J. NUGENT,  
Under Secretary to Government.

*Bombay, 8th November 1877.*

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

The Council met at Bombay on Wednesday the 19th December 1877, at noon.

*P R E S E N T :*

The Honourable J. GIBBS, *President.*

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

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

The Honourable the ADVOCATE GENERAL.

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

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK, C.S.I.

The Honourable NACODA MAHOMED ALI ROGAY.

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. Report of the Select Committee on the Bill to amend the Bombay Municipal Act of 1872, and to continue the same as so amended.
2. The recommendation of the Town Council as regards alterations in and additions to the Bombay Municipal Act Amendment Bill.

The PRESIDENT moved the second reading of Bill No. 6 of 1877—a Bill to amend the Bombay Municipal Act of 1872, and to continue the same as so amended. Mr. GIBBS said :—I may remind the Council that though this Bill comes before it as a measure of the Executive Government, the Bill itself has been framed on recommendations which Government received from the Town Council and from the Municipal Commissioner. I believe the Town Council had the old Act under consideration for a very long period, and many meetings were held to consider in what way it could be best altered and improved, and the result of those meetings was that a letter was forwarded to Government by the then Municipal Commissioner, Mr. Pedder, embodying the alterations suggested by the Town Council, together with a good many suggestions of his own. It was on a consideration of all those suggestions that Government framed the measure which was introduced into this Council some time ago and referred to a Select Committee. The Select Committee went very carefully into the matter, and its report, with the Bill as amended, was printed and published. The Bill has since then received further consideration from the present members of the Town Council, and the result of their deliberations is contained in a letter addressed to the Chief Secretary to Government by Mr. Maclean, Chairman of the Town Council, No. 1595, dated 9th December 1877. The

Mr. Gibbs moves the Second Reading of the Bombay Municipal Act Amendment Bill.

Select Committee which had been appointed by this Council to consider the Bill having sent in its report, had performed the purpose for which it was appointed, but on receipt of this letter, I, as the member in charge of the Bill, thought it right that the members who composed the Committee should be consulted as to the fresh recommendations of the Town Council, and therefore, although in an informal manner, I requested their presence at a meeting (which most of them attended) a few days ago, and the additional recommendations referred to were very carefully considered. Some of the alterations were adopted as recommended, others were adopted in a modified form, and some have not been adopted at all. I think it necessary now to refer to the constitution of this Council. It has been said—and I see it was stated again lately by one of the additional members—that this Council is not an independent body. I never myself felt that it was an independent body in the full sense of the term, but I am certain of this much, that it is as independent now as it ever has been. It is, if I may say so, a Legislative Company, Limited. Its powers are limited, first of all, inasmuch as it cannot bring in or pass measures which will affect Acts of Parliament, nor can it pass measures affecting Acts of the Legislative Council of India passed subsequent to 1861. Those are matters which it cannot in any way touch; and, furthermore, there are other matters which it cannot touch unless it first acquires the assent of the Governor General. That is another limitation of its powers. Every measure passed by this Council, before it can become law, as honourable members are aware, must receive the assent, not only of the Governor of the Presidency, but also of the Governor General; and, further, although the assent of the Secretary of State is not required to each Bill, that high officer has the power of vetoing any measure that is passed by this Council, even after it has received the assent of the Governor General. The consequence is that it may be fairly said that any measures passed by this Council have always been and are still subject to the approval of the Governor General and also of the Secretary of State. Now, as a mere matter of convenience, and to prevent complications that would occur if this Council were to bring in and pass measures which should afterwards be vetoed by the Governor General or Secretary of State, it has been the custom to send every measure which it is proposed to introduce into this Council first to the Governor General and the Secretary of State, to ascertain if they had any objections to the measure, and when those high officials have signified that they have no objection to a measure as proposed by a member of this Council, or by the Government, that measure is introduced into the Council. With reference to the Bill now before us, and to some of the proposals of the Town Council, it was necessary for me to make the observations which I have made on this point; and these observations are rendered particularly necessary on account of the proposal made by the present Town Council, that the Government buildings shall be assessed in the same manner as the Government buildings are assessed in Calcutta and Madras, and also by reason of the proposal that the Government should be bound in the amended Act to make the contribution of Rs. 90,000 a year towards the maintenance of the police establishment a permanent one. The Council will remember that neither of these propositions was put forward by the Town Council in their suggestions for the amendment of the Act in the first instance, and in consequence they found no part in the Bill which I had the honour of introducing into this Council, which Bill, as it was then proposed to be brought in, received the prior assent of the Government of India and the Secretary of State. When I found that the present Town Council had mooted these two questions in their additional recommendations, I referred to my learned friend the Advocate General to find whether there was any difficulty in the way of our consi-

dering an amendment to the Bill in accordance with the recommendations of the Town Council; and he gave an opinion that the proposed alteration could not be made in the Bill unless the whole proceedings were stayed, and permission to make the amendments was first obtained from the Governor General, because they were both matters affecting the public revenues of the presidency. And, further, it was doubtful, as the Honourable the Advocate General will tell you, whether these proposed amendments could be introduced at all into this Bill,—whether, if Government wished to accede to the proposals of the Town Council, they would not have to bring in a fresh Bill for the purpose. On these points the Honourable the Advocate General will be able to give you a more clear explanation than I can offer; but I thought that these observations which I have made in introducing the Bill were necessary to explain the reason why we have not acceded to the proposals of the Town Council in these respects. I will now notice the main recommendations of the Town Council, which I think may be divided into seven points. With regard to the assessment of Government buildings and the Government contribution to the police rate, I have already said what I had to say, and I will leave it to the Honourable the Advocate General to explain further on those points. The next point is as regards what are called the “bludgeon clauses.” The first Town Council which sent in proposals for altering the Municipal Act did not, I believe, make any proposition with regard to these clauses, and it is only now that we are asked to cancel that portion of the old Act. Whether this could be done legally, or not is not, perhaps, a matter of much consequence, because although, I am happy to say, owing to the readiness and liberality of the Municipality, no occasion has ever yet occurred which has required Government to put those clauses into operation, it is still considered by the Executive Government advisable to leave them where they are, more especially as they are only new, and were not originally, when the Town Council first proposed the amendment of the Act, thought necessary to be omitted. The next point is as to whether the Commissioner of Police should or should not be eligible to be a Member of the Corporation and the Town Council. This, also, is an entirely new point put forward by the present Town Council, and not referred to by the former Town Council, which made the original suggestions for the amendment of the Act. I may say here that the Town Council, in sending in their recommendations to Government, have not backed them up with any reasons, but Mr. Nowrojee Furdoonjee—a Member of the Town Council who takes great interest in its affairs and who appears to have been the proposer or seconder of nearly all the proposals—has appended a minute which probably contains the reasons that led the Council to accept or decline the recommendations laid before them; and I cannot find in that minute any very strong reasons for this proposal regarding the Police Commissioner. I may answer those which do appear by saying that if the Police Commissioner is a servant of the Municipality he is already ineligible for a seat in the Corporation, and if that is the case, it is for any one who has an objection to the Police Commissioner sitting there to take the matter into Her Majesty’s High Court, where no doubt the learned Judges will decide the question. But supposing the Police Commissioner is not a Municipal servant under the Act, which is the view the Government take, no reason has been shown why the gentleman who holds the office of Commissioner of Police for the time being should not be eligible for a seat in the Corporation and the Town Council. It is not that every Commissioner of Police is, *ipso facto*, a member of the Corporation because he is a Commissioner of Police; for it has only been very recently, I believe, that Sir Frank Souter has been placed in that position, and I find the majority of the gentlemen interested in the matter are of opinion that his presence in the Town

Council is often very useful, because he is able to give greater details and more minute information about portions of the town and island of Bombay than any other officer. Speaking for myself, and for the majority of the Select Committee, we do not consider that sufficient cause has been shown for limiting the choice of Government or the Corporation by preventing them from nominating the Police Commissioner for the time being a Member of the Town Council. The next point is a proposal about which a great deal has been said, viz., the suggestion to alter the 5th section of the Act, to include in the term rate-payers "a person holding a general power of attorney from, and paying rates on behalf of, any company, firm, or other association of persons, whether incorporated or not." This was an alteration proposed by the Town Council in their first application for an amended Act, and it is now repeated in the additional recommendations which we have received. The matter was very carefully considered by the Select Committee, and the determination was arrived at that it was not advisable to make the alteration. Since the receipt of the subsequent communication from the Town Council, the matter has been again placed before the members of the former Select Committee who attended the meeting a few days ago, and they were unanimously of opinion that it was not advisable to make the alteration. The reason why it is not considered advisable is, in the first place, because, by the alteration in the franchise made in the new Bill, persons who keep a horse and two-wheeled vehicle and pay Rs. 30 wheel-tax, will be not only able to vote, but eligible to become Members of the Corporation and Town Council, and it is thought that that is sufficient to obviate the difficulty which certainly did arise before as far as agents of banks and large mercantile houses were concerned. The Select Committee did not consider that after the gentlemen who will become enfranchised by payment of the wheel-tax are taken into account, there will be any persons left on whose behalf it would be desirable to make the alteration suggested by the Town Council; while the adoption of this proposal would also give rise to the very considerable difficulty that if any gentleman in Bombay who had a large property went to England or Calcutta or on the grand tour through India, and during his absence left a person with a power of attorney to look after his houses or business, that person would become entitled to the franchise, and having regard to the duties of the franchise, it was considered advisable that the qualification should be a personal one and should not be transferred to a deputy, and devolve on any one who might happen to hold a power of attorney. I admit that had it not been for the alteration in the franchise, it might have been advisable to adopt some provision admitting the managers of banks and gentlemen signing *pro. proc.* for large mercantile firms to a voice in municipal affairs; but those gentlemen are supposed to be amongst those who keep a buggy and horse, which I presume is now, as it used to be in former days, the general sign of respectability. Whether that is so now or not I do not know, but no doubt all these gentlemen do keep vehicles of some description; and it is not considered desirable by the Select Committee to extend the franchise merely for the convenience of those who leave Bombay at certain periods and appoint some one to manage their affairs in their absence. The next matter I have to notice is the Town Council's recommendation regarding the Fire Brigade, the determination of the amount of whose cost, it is proposed, should be taken from Government and placed in the hands of the Town Council. There is one considerable practical difficulty in the way of this, and that is that the Fire Brigade at present is entirely managed by the police. There is no separate brigade kept up, and therefore it is not considered advisable to put it entirely under the Town Council, because the result of that might be a clashing of orders between the Town Council and the Commissioner of Police whenever a fire took place. The



matter was very carefully considered by the Select Committee and the result was that the practical difficulties were considered to be too much in the way at present. If at any time the Municipality should consider it right to have an entirely separate Fire Brigade, organized and paid for by themselves, there would be no difficulty about the matter; but so long as the Fire Brigade is worked, as at present, solely by the police, it is considered advisable to leave the law as it stands. The only other main point in the Town Council's recommendations to which I need refer is that regarding the revision of assessments. The Town Council have proposed that the revision of assessments should be made over to them, but considering that under the amended Act the assessments will be made more public than they ever have been—lists will be posted up so that any one may go and see them, and persons will also be able to purchase copies of the assessment books—it is not thought advisable to place this additional duty on the shoulders of the Town Council, because, if I understand Mr. Nowrojee Furdoonjee aright, it does not appear that the Town Council will have the time and opportunity for performing it fully. It will be found, when the Bill comes to be considered in detail, that there are other matters in respect of which alterations have been adopted or suggested, and they will come up when the Bill is considered in detail. In conclusion, I will refer again to the subject of the assessment of Government buildings, and I may inform the Council that the present system, by which an annual sum is paid in lieu of each building being assessed, as is done in Calcutta and Madras I believe, was established many years ago. It appears that from time to time the Government made contributions of what they considered their fair share to the expenses of the Corporation for the time being. The present arrangement was made in 1868-69, and it may be as well that the Council and the public should know how it was arrived at. The Government buildings at that date were assessed and the assessment value led to the annual payment by the Government being fixed at Rs. 48,553. This figure was arrived at, taking the house-rate at 6 per cent. and the police and lighting rate at 3 per cent. The amount of this assessment was reported to Government, and Government being anxious to assist the Municipality as much as they could, determined to give, instead of the Rs. 48,553, a round sum of Rs. 50,000 a year, and that sum has been paid annually since 1870, when the first payment under this arrangement was made. During 1870, 1871, 1872 and 1873 the house-rate continued at 6 per cent., but for 1874, 1875, 1876 and 1877 it has been only 5 per cent., so that really, since the assessment was fixed in 1868-69, the Government have paid every year a sum of Rs. 1,447 more than the assessment arrived at, and for four years, since the house-rate was reduced to 5 per cent., they have paid Rs. 5,000 yearly in addition. I may mention, further, that two or three years ago the attention of Government was called to the fact that new buildings were springing up, and that the assessment fixed in 1868-69 would probably be no longer fair, and Government directed a fresh assessment to be made. Owing to some mistake, the officers who were called on to report, instead of sending in a joint report, each sent in a separate report, and it was very difficult to make these different reports fit together, so Government returned them, and directed the officers to meet and discuss the matter and to send in a joint final report. The final report was received only a few days ago, and it has not yet been examined. In it every place and every hovel, I may say, belonging to Government in the town and island of Bombay has been entered and assessed. As far as one can make out not a single hut has escaped, but there are certain buildings included which do not properly come within the category of assessable buildings, because they are used purely for military purposes. I say, therefore, that there has not yet been

time for this report to be gone thoroughly into, but I have no doubt, when it is gone into, Government will carefully consider the matter in the same light in which they always have considered these matters, and if they find it just and right that a larger sum should be paid to the Municipality, they will doubtless pay it. But, as I said before, there is a legal difficulty in the way of cancelling that portion of the old Act in the present Bill, and there is a sort of conservative feeling, also, in the administrative Government of Bombay, that the course which has been pursued for so many years, ever since there has been the germ of a Municipality in Bombay, should be followed still, and that there should be a lump sum paid, which should be fairly fixed, so that the Municipality shall have their rights, and the Government, at the same time, shall preserve their dignified position of not being assessed, as is the Government in Calcutta for the Viceroy's Palace and other buildings, but shall pay a lump sum on account of municipal rates on all Government property. I beg now to formally move the second reading, and the remaining points in the Town Council's letter may be discussed when the Bill comes to be considered in detail.

The Honourable Mr. ROGAY—With your permission, Sir, I will make a few remarks on the principle of this Bill, and on the observations which have just fallen from yourself. The first point you alluded to was regarding a remark made by me elsewhere that this Council was not an independent body, and you showed the Council the limitation of its powers, and also pointed out that you consider the Council is now as independent as it ever has been. I was quite aware of the constitutional conditions attaching to this Council, and that it is a limited Council and cannot legislate beyond the limits laid down in the Indian Councils Act; but my remark did not apply to the constitutional aspect of this Council—it went further. I have now the painful duty of referring honourable members to the discussions which took place in this Council when the Cotton Frauds Act was considered and passed, and also more recently when the Abkari Bill was passed. When the Cotton Frauds Act was under discussion, one of the Executive Members of the Council, Mr. Rogers, admitted at first that he supported the Bill though he did not approve of it; and when the Council was engaged in considering the Abkari Bill, which has lately been passed, you yourself, Sir, spoke in support of a proposition made by my honourable and learned friend the Honourable Mr. Mandlik, to the effect that a saving clause should be inserted in that Bill to secure the rights of parties being respected and the decision of such rights being left in the hands of the Courts of Justice, but when the division took place on the point, after that expression of your opinion to the Council, you voted against the proposal. This led me to the belief that there is a compact understanding amongst the official members of the Council.

The PRESIDENT—You forget I think, as I spoke against it on the second occasion and explained why I had changed my opinion,—because I had seen the papers.

The Honourable Mr. ROGAY continued—These circumstances led me to believe that there was a compact understanding amongst the official members of this Council, either formed of their own accord, or because of the instructions of a higher authority, and that they thought it their duty to support any measure introduced by the Government and ordered by the Supreme authority to be passed by this Council. These are the reasons which I thought justified me in making the remark which I did make elsewhere, and I am still of the same opinion, that this Council, apart from the peculiarities of its constitution, is not as independent a Council as it was some time ago. I will now speak to

the question before the Council, and particularly to the points just raised by you, Sir. I must confess, as a member of the Select Committee, that on the whole the Bill is satisfactory, but I hope this Council will give its best attention to the alterations recommended by the Town Council, coming as they do from a body which has taken so much interest in the working of the Municipal Act, and whose members have specially met to discuss its provisions over and over again, besides having had intimate experience of the action of the Municipal machine during the last five years. The point mooted by you, Sir, with regard to the powers of the Council not permitting an alteration providing for the assessment of the Government buildings is not, I think, a fair position to take. With due deference to the opinion of the Honourable and learned Advocate General and yourself, Sir, I do not think there is anything in the Indian Councils Act which prevents this Council from omitting or modifying any section in any Bill which does not meet with its approval, though it is, no doubt, quite open to the Viceroy to refuse his assent to it if he thinks we have gone beyond our bounds. The question of the assessment of Government buildings is by no means a new question; it has been often and often discussed; it has been before the Committees appointed by the Bench of Justices, of which my Honourable friend Mr. Dosabhoj Framji was a member, besides having been discussed since by the Town Council, and seeing the example set in the other presidencies, I do not think we are treating the Bombay Municipality fairly in exempting Government only because it has been exempted hitherto and we must stick to the rule. There is another matter to which you, Sir, also referred in your speech, viz., the question of the disqualification of the Commissioner of Police. I think the Police Commissioner is a Municipal servant—though he is not declared to be so under the Act—by reason of his salary being paid out of the Municipal Fund. This fact constitutes him an officer of the Municipality, and I think we ought to give effect to the disqualification and exclude him from the Town Council. It is to the advantage of the Municipal administration that executive officers should be disqualified for a seat in either the Corporation or the Town Council. Any information which the Corporation or the Town Council may require on police or other subjects should be obtained through the proper medium of the Municipal Commissioner, who has a seat in both the Town Council and the Corporation, and who is invested with the power of discussing any and every subject brought before those bodies. So the argument that the presence of the Police Commissioner is of material assistance to them in their deliberations falls to the ground, because any information can just as well be obtained from the fountain head by the Municipal Commissioner. In the next place, I think the Town Council have made out a fair case for the omission of the “bludgeon clauses.” No one can accuse the Corporation of not fulfilling the duties entrusted to them. Honourable members are aware that the Corporation have sanctioned a large outlay for the completion of the water-supply to the city of Bombay, and they have also committed themselves to a large expenditure for improving the drainage of the city. I think the necessity for “bludgeon clauses” does not exist, considering that the Corporation have behaved admirably for the five years during which they have been in existence, have given universal satisfaction to the rate-payers, and are carrying out large works of public utility for the improvement of the city of Bombay. There is another matter mentioned by the Town Council which you, Sir, did not touch upon, viz., the subject of the payment of interest on Government loans to the Municipality. There is attached to the recommendation of the Town Council an elaborate paper prepared by a late member of the Town Council, Mr. Dadabhoj Nowrojee, in which he has satisfactorily shown that the Muni-

pality is charged by Government with compound interest, by which the Municipality is the loser of a considerable amount. I hope that in considering the Bill in detail the Council will settle this question satisfactorily to all parties concerned. I do not think it is the intention of Government to charge compound interest, but there appears to be some misunderstanding about the calculation of interest on these loans. The other recommendations of the Town Council are of as much importance as those mentioned by you, Sir, and when we come to consider the Bill in detail, I will, as far as lies in my power, speak to each point. I think we should try and adopt the recommendations of the Town Council as far as we can.

The Honourable Mr. DOSABHOY FRAMJI—I was not present when this Bill was first introduced into the Council, because I had not then the honour of being a member of this Council, and I therefore wish to say a few words on the general subject before the Bill is read a second time. The Bill on the whole I consider to be an excellent one. When the old Municipal Act was first brought before the Legislative Council, it was said that the Honourable Mr. Tucker, who had charge of the Bill, had succeeded in weaving a web which would be difficult to disentangle, but the experience of the last five years has proved that the Act is a good one, and that Mr. Tucker is entitled to the thanks of the community for giving them an Act which has not only worked well, but which gave the people of Bombay a franchise which they did not possess before. Now, the alterations which have been made in that Act by the present Bill have been mostly effected, as you, Sir, said just now, at the suggestion of the Town Council and the Municipal Commissioner. The Town Council, when they first made their suggestions, considered the Act very carefully section by section, and their recommendations, as well as those of Mr. Pedder, were laid before the Legislative Council, and have for the most part been adopted. Since then the Town Council have sat again, and have made certain additional recommendations, as to some of which I wish to say a few words. I agree with the recommendation that a proviso should be inserted in regard to the extension of the franchise to those who pay Rs. 30 per annum wheel-tax to prevent the extension applying to the owners of public conveyances. I think the Legislative Council ought to adopt that recommendation. The great fear of those in authority, anxious to give representative rights to Bombay, has always been that the privilege might be abused, and that the bulk of the people were not in a fit state to exercise those rights. Time has proved that there is an intelligent public in Bombay who have exercised the right of the franchise very well; but there is a limit to that intelligent portion of the public, and we should not go beyond that limit and extend the franchise to those who are unable by habit, by want of education, or by disposition, to exercise it properly, because if we do that a day will come when abuses will creep in, and then it will be said that Bombay was not prepared for a representative system because of such abuses. There are in Bombay about 500 hack-buggies, owned by about 400 people, most of whom drive their own conveyances. These people do not know how to read, their intelligence is very limited, and if the franchise were extended to them, I should not be surprised any day to see a buggywallah going to the poll to record a vote for the man he had last driven in his buggy, or for some one who had paid him an extra fare. The honourable members of this Council are not perhaps aware that there are also 450 bullock-hackeries in Bombay, owned by about 400 people, who, I am in a position to state authoritatively, are the actual drivers of these vehicles themselves; and I ask whether those men are fit to go to the polling-place and vote for the election of members of the Corporation, or fitted to become members

of the Town Council or Corporation themselves. Then, as to the question of the assessment of Government buildings. The Honourable Mr. Rogay has brought forward my name as having been a member of a Committee which reported in favour of their assessment. I have held a strong opinion on this point ever since my appointment to the Bench of Justices, which body had control, formerly, of the Municipal Fund, and I was a member of what is known as General Marriott's Committee, which strongly advocated the assessment of Government buildings. And I must say that that is my opinion even now; but from what I heard the Honourable the Advocate General say in the Select Committee, and from the statement made by you, Sir, that there is now a legal difficulty in the way of inserting a clause in the Bill providing for the assessment of Government buildings, I shall not urge any further objection on that score, and I have a further reason for refraining from so doing because it has fallen from you, Sir, that Government will be prepared to pay what would be the fair amount if the Government buildings were assessed in the ordinary way. I have had an opportunity of looking into the assessment list of Government buildings in the Municipal Offices, and from the considerable experience and knowledge I have of the business, I am able to say that the amount which Government now pay is very nearly the same as it would be if each Government building was assessed separately; and I think the assurance which you, Sir, have now given, that the Government contribution will be supplemented if it is found to be short, is enough to satisfy every one that Government is prepared to deal fairly by the Municipality. But if, owing to the low state of the provincial funds, Government were at any time to say that it was not called upon by law to make the contribution, there might be a difficulty on the subject, and there will be nothing to prevent the Government of any future day doing as was done in the case of the police contribution, and they could not then be compelled to pay. It is all very well for the present Government to say we will pay so much in lieu of the rates, but what security is there against any future Government saying it is not bound by the Act and will not pay. However, as there is the opinion of the Honourable the Advocate General against any alteration being made now, I must of course rely upon that opinion, and I shall not move any amendment. I wish to make one remark as to what the Honourable Mr. Rogay said about the official members of this Council. I must say that I, as an official member, have not come here with an understanding of any kind as to how I should vote. None of the official members has had any conversation with me on the subject, directly or indirectly; and I wish to say that I feel bound to vote here according to my lights, and shall do so. I was not bound to make this disclaimer, but the Honourable Mr. Rogay spoke of a "compact understanding" among official members, or an understanding which was ordered by a superior authority, and I distinctly say that that is not the case. Any measure which Government may bring forward, the official members will consider, each according to his lights, and vote accordingly. As for the interest on the loans which have been advanced by Government to the Municipality, I wish to point out that there is some inconsistency in the sections—

The PRESIDENT—I think that will more properly come on when the Bill is considered in detail.

The Honourable Mr. DOSABHOY continued—Then there is only one other point I wish to refer to, viz., the question of the eligibility of the Police Commissioner for a seat in the Town Council. The Commissioner of Police will not as a rule, I apprehend, be nominated to the Town Council unless he has shown the necessary qualifications to sit there. I am of opinion that the presence of an officer like the Commissioner of Police is sometimes

desirable in the Town Council, because he has necessarily a knowledge of the town which is very valuable to the Town Council, and there are many questions which arise with regard to police matters on which he can give ready information when he is present, and so enable the Town Council to dispose of questions expeditiously and with advantage. I do not think there should be a legislative prohibition to the Commissioner of Police being a member of the Town Council, because sometimes he may be very much wanted there. I would not, therefore, restrict the power of Government to appoint him, or of the Corporation to elect him, if he secures their suffrages. There are several other points connected with the Bill which I will mention when they come to be considered in detail.

The Honourable the ADVOCATE GENERAL said he noticed that Mr. Nowrojee Furdoonjee, in the minute attached to the Town Council's recommendations, had referred to an opinion which he (the honourable and learned member) gave to the Rate-payers' Association in 1872, that the Legislative Council had power to make Government liable to the payment of municipal rates and taxes. He was not at all disposed, after a further consideration of the Act, to recede from that opinion, but necessarily the power of the Council must be controlled by Section 38 of the Indian Councils Act, and that section said: "It shall not be lawful for any member or additional member to introduce, without the previous sanction of the Governor, any measure affecting the public revenues of the presidency, or by which any charge shall be imposed on the revenue." From that it was clear that a proposal to make Government buildings assessable to municipal rates could not be brought before the Council at the present stage. That was a matter affecting the public revenues of the presidency, and if that was so, it necessarily followed from the 38th section, that the proposed amendment could not be entertained by the Council, because its introduction had not been sanctioned. If he was right in that—and after the fullest consideration he had been able to give to the matter, he thought it was the proper construction of the law—it was clear that the Council had no power whatever to consider any proposition to amend the Bill now before it by adding a clause affecting the presidency revenues. And there was another question which might fairly arise. The earlier portion of the 38th section defined what motions might be introduced, and stated that members might move for leave to introduce some measure or make a motion relating to some measure already before the Council. This matter was not now before the Council, and there was considerable doubt whether it would not have to be the subject of a substantive measure. Those were shortly the legal considerations on which he had given the opinion that had been referred to. It appeared to him that, inasmuch as the previous sanction of the Governor had not been obtained to the suggested amendment, the Council could not entertain it.

The Honourable Mr. LANG thought the proposal of the Town Council was rather to strike certain words out of the Bill than add to it.

The PRESIDENT—No, the proposal is to add a new clause to this Bill to cancel that in the old Act.

The Honourable Mr. LANG—With regard to what fell from you, Sir, respecting our not being able to discuss this question now because the proposed amendment was not sanctioned along with the draft Bill, I do not think that that consideration should influence the matter, because if we go on that principle, the duties of this Council will become exceedingly prescribed. If the Governor General is to retain the option of refusing his sanction to any amendment that may occur to us as advisable to be made in a measure after

the original draft has been sent up and sanctioned, I think it is a very undesirable condition of things. I certainly am of opinion that Government buildings have no right to be exempted from payment of the municipal dues which have to be paid for other property in Bombay, and I am in favour of the amendment suggested by the Town Council. As to what the Honourable Mr. Dosabhoj Framji said, to the effect that Government at present pay the full rate—

The Honourable Mr. DOSABHOJ FRAMJI—What I meant to say is that Government pay a lump sum of Rs. 50,000 a year in lieu of Government buildings being assessed to police, lighting and house rates, and that sum covers what would be the assessment on Government buildings if they were separately assessed.

The Honourable Mr. LANG—At the present day?

The Honourable Mr. DOSABHOJ FRAMJI—Yes.

The Honourable Mr. LANG—Then Mr. Dosabhoj means to say that the Government buildings in Bombay are only worth, at the present day, some six or seven lacs of rupees.

The PRESIDENT said he thought discussion on the point should be reserved till the Bill came to be considered in detail.

The Honourable Mr. LANG continued—With regard to the question as to the eligibility of the Police Commissioner to sit in the Town Council, I am in favour of that, because he is able to give valuable information, and I see no objection to his having a vote. There is only one other matter which I wish to refer to, and that is the question of town duty refunds. Government have distinctly laid down that town duties should only be levied on articles consumed in the town, and we cannot make the system of refunds too liberal. I think the system of taxation should be remodelled.

The Honourable Mr. MANDLIK—I happen to have been a member of the Select Committee which sat on this Bill and considered it very carefully. The Select Committee also considered the additional recommendations the Town Council made after they had sent in their report. I think a great deal has been made of the point about the buggywallahs receiving the privilege of the franchise. If the payment of Rs. 30 per annum wheel-tax is made a qualification, I think there ought to be as few exceptions as possible, and no reasons have been shown why these people, simply because they are buggywallahs, should not have the franchise extended to them as well as to others who pay the same tax. Then as to the "bludgeon clauses," though the Town Council are now asking for their omission, they had the Act before them previously for more than two years, and did not include this among the suggestions which they sent in to Government as the result of their deliberations. If they have changed their minds during the last few weeks, it may be that they may change their minds again in a few weeks more, and wish to have the clauses re-inserted. I certainly should not support a change in any legislative enactment unless that change was held to be imperative after very careful consideration. With regard to the question of the assessment of Government buildings, I believe they pay the service rates and have compounded for what are now termed the property rates, which arrangement honourable members will find, when the facts are placed before them, has been more favourable to the Municipality than if the Government buildings had been assessed by the Municipal Assessor—Government have been paying more in this manner than they would have had to pay had the buildings been assessed in the ordinary way. But I entirely agree with the Honourable the Advocate General that we cannot now, without the

previous sanction of the Government, entertain any new amendment which will affect the revenues of the presidency. I do not think we need go to the Government of India to sanction every amendment that may be proposed to any measure before we can consider it, but anything which affects the public revenues of the presidency, whether it meets our views or not, must be referred to the Government of India before it can be introduced. I have known of cases where the progress of Bills has been stopped for a time in order that alterations of this nature might be made, and the same course might be followed here if it were thought to be necessary. But I do not think the present arrangement is prejudicial to the Municipality, and I am not willing to consent to the proposal at this stage. I think the Bill as a whole will be a great improvement on its predecessors. We have provided for a great check on the house assessments and for a consolidation of rates which will very much decrease the expenses of the Municipality.

The Honourable Mr. ASHBURNER—I intended to reserve my remarks until the Bill was considered in detail; but the Honourable Mr. Dosabhoj Framjee has taken advantage of the President's remark that Government are prepared to treat the Municipality liberally in such a marked manner that, in order to prevent future misunderstanding, I think it should be understood that that was an expression of the President's individual opinion, and it is quite open to Government to say, at a future period, that the exigencies of the State are such that the Government contribution to the funds of the Municipality must be reduced, or, it may be, abolished altogether. In general terms, I am inclined to concur in the President's remark that Government will be prepared, as they always have been, to deal liberally with the Municipality. As you, Sir, said, Government have paid Rs. 5,000 a year more than they need have done according to the assessment. But I wish it to be clearly understood that in refusing to give legislative authority under this Act for the assessment of Government buildings Government retain the right to decide how much they shall or shall not contribute to the Municipality. Government have created the Municipal Corporation of Bombay and endowed it with enormous funds,—forty or fifty lacs of rupees, and it is quite within the competence of Government to say to the Municipality “ We will make you a present of Rs. 50,000 a year, but we will not allow you to assess public buildings, for that would amount to a taxation of the general public of this Presidency for the benefit of the Municipality.” That is all. I wish it to be understood that it is quite competent for Government to say that, and the President's assurance is merely a general one and does not bind either the present Government or any future Government to the payment made at present or to any other payment.

The PRESIDENT—I did not intend to say anything in reply, because I think every point has been fully dealt with by the honourable members who have spoken, but I may state, with regard to what has fallen from my honourable colleague Mr. Ashburner just now, that what I meant to say—and will reiterate—was that Government have, and always had, a wish—and their past acts show it—to deal with the Municipality in the most liberal spirit in respect of their contributions in lieu of the assessment of Government buildings to municipal rates; and I am perfectly convinced that that feeling will always actuate Government. Of course no Government can bind another, and much less can a single member bind a whole Government, but from past history, and seeing that Government have always dealt with the Municipality on a liberal scale, I am sure they will continue to do so in the future. Of course, when Government are threatened with bankruptcy it will be quite time to consider whether they can afford to be as liberal to the Municipality



as they have been and are disposed to be. That is a matter which can be safely left to the future. I say Government have always treated the Municipality liberally, and I am sure it is the wish of Government and every member of Government to treat so.

The motion was then put to the Council and carried, and the Bill read a second time.

Bill No. IV. of 1877 (The Ferries Act Amendment Bill) considered in detail. The PRESIDENT next moved that Bill No. IV. of 1877 (The Ferries Act Amendment Bill) be considered in detail.

The motion was carried, and the Bill was considered in detail.

The PRESIDENT said—With regard to the 2nd section, he had an observation to make. He had given notice of his intention to move the words “without a license granted by the Collector” should be inserted between the words “shall” and “convey” in the sixth line of this section; but on further consideration, and after consulting with the Legal Remembrancer, he found that the insertion of these words was not required, because as the section stood the words “except as is aforesaid” meant “except with the consent of Government,” which was provided for in Section 14 of Act II. of 1868. He therefore withdrew the amendment of which he had given notice.

The Bill was gone through in detail without any amendment being suggested.

The Bill read a third time and passed. On the motion of the President, the Bill was then read a third time and passed.

The Bombay Municipal Act Amendment Bill considered in detail. The Council then proceeded to consider the Bombay Municipal Act Amendment Bill in detail.

The Honourable Mr. ROGAY proposed that, in accordance with the recommendation of the Town Council, the following definition be added to section 5, viz. :—The term rate-payer shall include a person holding a general power of attorney from, and paying rates on behalf of, any company, firm, or other association of persons, whether incorporated or not.

The Honourable Mr. LANG was in favour of the proposed alteration. He thought as these men represented large interests by their powers of attorney, they ought to have the privilege of a voice in Municipal affairs.

The Honourable Mr. RAVENSCROFT opposed the amendment. The matter had already been carefully considered by the Select Committee. All over the world this obligation was a personal obligation, and to give a man a vote merely because he represented some one else, and without his qualifying personally by the simple form prescribed, seemed to him to be out of the question.

The Honourable Mr. ASHBURNER was also very much opposed to the amendment, considering that, as the Honourable Mr. Ravenscroft said, the obligation should be personal. The qualification was exceedingly light, and if a man did not find it convenient to qualify, he (Mr. Ashburner) did not think he ought to have a vote. The mere fact that a man had position and great wealth should not entitle him to a vote.

On the amendment being put to the vote, it was lost.

The Honourable Mr. DOSABHOY proposed that, in accordance with the recommendation of the Town Council, after the last word of clause (a), section 5, there should be inserted

the words—" Provided, however, that no person assessed for vehicles or animals let out on hire shall be entitled to a vote on account of such assessment." Mr. Dosabhoj said he had made some inquiries a day or two previously of the Collector of Wheel-tax as to the means of identifying voters, and he was informed that it was often impossible to find the owners of buggies, and the vehicles had to be seized before the tax could be recovered. The polling officers would never be able to identify Rama Gunnoo, the owner of buggy number so-and-so, and there would be great danger of impersonation.

The Honourable Mr. ROGAY opposed the amendment on the principle just affirmed by the Council, that the franchise was a personal privilege and it should be given to all persons who paid the qualifying rate. Because a man did not hold a good position, he should not be disqualified; and he (Mr. Rogay) was quite sure that no man would attempt to join the Corporation unless he had sufficient knowledge of English to enable him to do so. As the Council had confirmed the principle of the personal privilege, he did not see how they could consistently exclude the buggywallahs. As to the question of identification, the fact that the rate was assessed on the buggies would obviate any difficulty.

The Honourable Mr. DOSABHOJ—I say it is difficult in many cases to find out the owner until the buggy was seized.

The Honourable Mr. ASHBURNER supported the amendment. He said that the persons to whom the Honourable Mr. Rogay proposed to extend the franchise were of the lowest order of intelligence, and it would bring the whole Municipality into contempt if they were allowed to vote. If buggywallahs were allowed to vote, why should the sweepers be excluded?

The Honourable Mr. RAVENSCROFT was not prepared to support the amendment on the ground originally given for proposing it, but what the Honourable Mr. Dosabhoj had just said was of considerable importance. The difficulty he had alluded to of identifying the owners of different buggies and hackeries and the consequent liability to impersonation was a serious matter and a condition of affairs to be avoided if possible.

The Honourable Mr. ROGAY said the list of voters would have to be prepared by the Municipal Commissioner, and that being the case, there would be no danger of impersonation.

The amendment was then put to the vote and carried.

The Honourable Mr. ROGAY proposed that in section 8, clause (b), after the last word "or," there should be inserted the words "Commissioner of Police, or a police officer."

The Honourable Mr. RAVENSCROFT opposed the amendment. He said he thought the Commissioner of Police—without speaking of the present Commissioner particularly—who had necessarily a thorough knowledge of the whole town, should be a member of the Town Council, so as to be able to afford the other members information regarding matters with which they were not acquainted, and he could not conceive any proposal more likely to bring disrepute on the Town Council and the Corporation than to exclude from a seat therein an officer who was capable of being of use, not only to the Town Council, but to the public.

The Honourable Mr. DOSABHOY opposed the amendment, because he thought the Commissioner of Police possessed special qualifications, from his knowledge of the town, which ought to be availed of.

The Honourable Mr. ASHBURNER considered that the Commissioner of Police was a most important member of the Town Council and the reason which had been given, that he proposed to spend money in building police chowkeys, &c., was a very poor reason for excluding him. The Police Commissioner's application to Government to provide proper accommodation for his men was the natural result of his anxiety to put the police force on a proper and efficient footing, and it would be absurd to exclude him from the Town Council merely because he did his duty.

The Honourable Mr. DOSABHOY said that as an instance of the influence exercised by the Commissioner of Police, he might state the fact that the combined influence of the Police Commissioner and the Police Magistrate had proved insufficient to procure a new chowkey.

The amendment was then put to the vote and lost.

On the motion of the PRESIDENT, it was resolved that the words "not less than" should be inserted between the words "for" and "three" in clause (f) of section 8.

The PRESIDENT said the Town Council had suggested that in clause (c) of section 8, after the word "imprisonment," there should be inserted the words "for at least six months." He moved that this amendment be adopted.

The Honourable Mr. DOSABHOY thought the words might be modified in some way. They might say "for an offence punishable to the extent of six months' imprisonment." Otherwise, a man might be imprisoned for three or four months for theft and would still be eligible for election to the Corporation and Town Council.

The Honourable the ADVOCATE GENERAL opposed the alteration of the clause—the effect of the alteration would be that a man who was imprisoned for five months would continue a member of the Corporation, while a member who had been absent from Bombay for three months would cease to be a member.

The Honourable Mr. ASHBURNER—I am very strongly opposed to any one who has been at any time subject to imprisonment being eligible to become a member of the Corporation. Is the population of Bombay so limited that we cannot afford to exclude from our Corporation men who have been in prison? What does it matter if one or two cases would occur where it would be hard, as compared to keeping your hands clean and giving a high tone to the Municipality? Why should there be a chance of a taunt being levelled against the Corporation that such and such a member of that body has been convicted and imprisoned for theft? Calcutta has excluded thieves from its Corporation, and why should Bombay admit them?

The Honourable Mr. LANG—But a man might be imprisoned for assault, and that is not a very grievous moral offence. A man might assault a man under very grave provocation, and he is not on that account necessarily a man of bad character.

The amendment that the words "for at least six months" be added to the clause was then put to the vote, and was lost.

On the motion of the PRESIDENT the 10th section was amended by the insertion of the word "quarterly" between the words "first" and "meeting," in the 1st line; and the 11th section was amended so as to read: "The first quarterly meeting of every new corpora-

tion shall be held on some day in the month of January, to be fixed by the Commissioner. Subsequent quarterly meetings shall be held on the first Tuesday in the months of January, April, July and October, respectively," &c. ; and the 20th Section was amended by the substitution of the words "each new Corporation at their first quarterly meeting" instead of the words "the Corporation at their first meeting in the month of January in each alternate year."

The Honourable Mr. ROGAY proposed that instead of the words "from the twelve members so appointed Government shall appoint the Chairman of the Town Council," there should be inserted words to the effect that the members of the Town Council should elect their own Chairman at the first meeting in each year. Mr. Rogay said he had stated his reasons for this amendment in his minute of dissent from the report of the Select Committee.

The Honourable Mr. ASHBURNER—I object to this amendment very strongly. I think it is very necessary that Government should retain the power of appointing the Chairman of the Town Council. The Municipality of Bombay, I may say, is still in its infancy ; it has only worked for five years, and we have yet to see whether it can safely be entrusted with all the powers that the Act entrusts to it.

The Honourable Mr. DOSABHOY FRAMJI—I also am opposed to this amendment, because the Chairmanship of the Town Council is different from that of the Corporation. The Corporation is a sanctioning body and the Town Council is an executive body, and the Chairman should always be a man of ability and position. One great point is that the field for the selection of the Chairman is so much wider if it is left to Government than if it is placed in the hands of the Town Council. Government, if they find no eligible candidate in the Town Council or Corporation, can go outside and nominate any one they choose. I think that Government has appointed to this position the best men the city could boast of hitherto, and I am of opinion that the selection should still be left in the hands of Government.

The PRESIDENT—I may add that in my opinion the chief objection to the amendment suggested by the Town Council is that it limits the field for the selection of the Chairman. The Government have the whole city to choose from, whereas if it is left in the hands of the Town Council they are limited to the twelve gentlemen who form that body. I think that to so confine the circle within the limits of which the Chairman must be elected would not be conducive to the best interests of the Municipality, and for this reason I oppose the amendment.

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

On the motion of the PRESIDENT the words "and records" were inserted after the word "accounts" in the 30th section.

The Honourable Mr. ROGAY proposed that sections 40 and 41 (which are commonly known as the "bludgeon clauses") should be omitted, on the ground that there was no necessity for retaining them, inasmuch as the Corporation had always done its duty, and had always shown an anxiety to do any work that was necessary for the good of the town of Bombay.

The Honourable Mr. ASHBURNER—I consider that these clauses should be retained for many reasons. What the Honourable Mr. Rogay says is quite true. That the Municipality has done its duty up to the present time is not denied, but what guarantee is there that it will

continue to do its duty if these clauses are omitted from the Act? Take the Municipality of Melbourne, for instance; it cannot be said that its members are deficient in intelligence, but jealousy and other causes have so interfered with their action that it is actually now the case that conservancy carts from one district cannot pass through other parts of the city without being taxed, and obstructions are rife to such an extent that most important sanitary arrangements are at a deadlock. What would not those gentlemen give if they had a strong Government at their head to say such and such things shall be done? It is on this ground that I say we should retain these clauses in the Act. They may slumber in quiet for centuries, but the day may come when they will be extremely useful, and when all good citizens will be exceedingly obliged to Government for retaining them. We have very mixed races in Bombay, and, though some are more intelligent than others, they all require a strong Government over them to say what shall and what shall not be done for them. I believe that if it were not for Government all these municipalities, within ten years, would crumble away.

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

The Honourable Mr. ROGAY next moved, in accordance with the recommendation of the Town Council, that the following clause be inserted at the end of section 43, viz.: "The Municipal Commissioner shall, during all days of business at the Municipal Office, keep open a book in which shall be entered all reasonable complaints made by any rate-payer of any matter cognizable by the Corporation, and the proper officer of the Corporation shall forthwith inquire into the truth of all such complaints and report thereon to the Municipal Commissioner, and such report shall be entered in the said book, and such book shall from time to time be submitted to the Town Council and shall be open at all reasonable times to any rate-payer free of charge." Mr. Rogay said that a similar clause existed in the Municipal Act of Calcutta, and it had been found very convenient.

The PRESIDENT said that this amendment was very carefully considered by the Select Committee and it was finally rejected because it would prove utterly unworkable, the constitution of the Calcutta Municipality being entirely different from the constitution of the Bombay Municipality. These matters were not cognizable by the Corporation here, but were entirely in the hands of the Municipal Commissioner and the Town Council.

The Honourable Mr. ROGAY said he did not press the amendment, and it was allowed to fall to the ground.

On the motion of the PRESIDENT, the following section was added as Section 15A of the Bill, viz.: "The Executive Engineer and Executive Officer of Health to the Corporation, at the time of the passing of this Act shall continue to hold their offices for a term of five years as if they had been respectively appointed under the provisions of Sections 44 and 45 of the Principal Act as modified by this Act." Mr. Gibbs explained that this was merely a formal amendment, to make the term of office of the present Engineer and Health Officer to extend to five years, as was already provided in the Bill for fresh appointments.

The Honourable Mr. ROGAY moved that the following proviso to section 59 of the existing Act be retained, viz.: "And provided that no greater expenditure from the Municipal Fund shall be in any case incurred in the whole by reason of any such allowance than would have been incurred had no leave been granted." Mr. Rogay said he thought it was wise and cautious to retain this proviso in the Act.

The PRESIDENT said the reason why the Select Committee proposed to leave out this proviso was because there would be an objection to an officer having privilege leave, which

was allowed by Government to all their servants, uncovenanted as well as covenanted. The omission of the proviso would merely give the Corporation the power to allow it, and would not compel the allowance.

The amendment was lost.

The Honourable Mr. ROGAY moved the omission from section 77 after the word 'purposes' of the words 'and buildings and land owned by Government.' He said he need not argue the point any further; but if it was thought the Council would be going beyond their powers in passing the amendment, he would suggest that it should be adopted provisionally, and that the Government of India be asked to consent to it.

The PRESIDENT—As advised by the Honourable the Advocate General, I must rule that this amendment cannot be put.

The Honourable Mr. ROGAY said that after the expression of opinion that had been made, that there was no obligation on Government to pay even the contribution which they did pay at present, he thought there should be some words inserted binding them not to claim exemption.

The PRESIDENT—Under the advice of the Honourable the Advocate General, I am bound to rule that the amendment to this section cannot be put.

The Honourable Mr. ROGAY proposed that the following should be added to section 70A, viz.: "But the landlord shall have power to recover from the tenant or tenants the portion of the consolidated rate which forms the police and water-rate and the portion of the halakore-rate at present paid by such tenant or tenants."

The Honourable Mr. LANG said the landlord could include the rates in his rent.

The Honourable Mr. ROGAY—But if the tenant refused to pay?

The Honourable Mr. LANG—If he refused, I would not allow him to have my house.

The Honourable Mr. ROGAY said that at present the responsibility was on both, and it was proposed to shift it from both to one. He had stated his reasons for the amendment in his dissent from the report of the Select Committee.

The PRESIDENT said this point was carefully considered by the Select Committee, and the decision arrived at unanimously by all the members with the exception of the Honourable Mr. Rogay was that the Bill should stand as it was, on the principle mentioned by the Honourable Mr. Lang, that the landlord had the option of putting what rent he pleased upon his property.

The Honourable Mr. LANG—I presume that this does not apply to leases already in existence.

The PRESIDENT—No, they are all saved.

The Honourable Mr. LANG—It only remains, therefore, for landlords, in making new contracts, to look after their own interests.

The amendment was lost.

The PRESIDENT said that the purport of sections 76 and 82 was carefully considered by the Select Committee, and it was found that in cases where persons let out chawls in single

rooms, and where a good many rooms were vacant from time to time, the shorter plan had been followed that, instead of the owner giving notice and obtaining a refund, one-fifth of the regular assessment should be abated at once in satisfaction of all such claims. Section 82 of the Act gave power to make refunds in cases where parts of houses or chawls were let off, and some portions were empty; but it was not intended that owners should obtain abatements by both these means, by compounding, as it were, and afterwards getting the refund. It had been found that one or two sharp, clever people had obtained a double abatement in this way, and it was proposed by the Select Committee that the following proviso should be added to the section:—‘And provided, further, that no refund of consolidated rate shall be admissible in any case in which a remission has already been allowed under clause 2 of the said section seventy-six.’ He (the President) now moved that this amendment be adopted.

The amendment was carried.

The PRESIDENT said that the question of the omission from section 104 of the words ‘certified by the Commissioner of Police to be employed by the owners for municipal or police purposes,’ had been very carefully considered by the Select Committee, and it was decided finally to recommend the following alteration,—that the word ‘staff’ should be omitted, that the word ‘military’ should be inserted between the words ‘other’ and ‘duty,’ and that after the word ‘presidency’ there should be inserted the words ‘or to mounted officers of Volunteer Corps.’ He moved that these amendments should be adopted.

The amendments were carried.

On the motion of the PRESIDENT, the words ‘rate-payer during office hours’ were inserted in section 108, instead of the words ‘persons interested therein.’

The Honourable Mr. ROY moved that the words ‘and of the protection of the city from fire’ be omitted from section 138, clause 2, line 2.

The President said that so long as the Fire Brigade was a portion of the Police Force, and worked by the Police, it was considered advisable to leave the law as it stands.

The amendment was lost.

On the motion of the PRESIDENT, the words ‘Presidency Magistrate of’ were inserted in section 222, in lieu of the words ‘Court of Petty Session at.’

On the motion of the PRESIDENT, the following amendments were made in section 271:—The word ‘printed’ was inserted before the word ‘copy’; the words ‘or any part thereof,’ after the word ‘thereof,’ were omitted; the words ‘one rupee’ were inserted after the words ‘payment of’; and the following words were omitted, viz.:—four annas for every one hundred words and portion of one hundred words so to be copied.

Also on the motion of the PRESIDENT, the following verbal alterations were made:—In section 245E, line 67, for ‘and’ read ‘or’; in the 92nd line of the same section, for ‘and’ read ‘or’; in line 82 of the same section, after ‘or part of the house,’ insert ‘or article’; in section 245F, omit the words ‘woollen articles,’ and for ‘*et cetera*’ substitute ‘or other articles which have become infected’; for the words ‘are likely to retain infection,’ substitute ‘have been exposed to infection from any dangerous infectious disease’; in section 245I insert the words ‘has been’ after ‘person’ in line 191, and omit the words ‘has been’ in lines 192 and 193, and for ‘the premises’ in line 193, read ‘such house or other building or part thereof.’

The Honourable Mr. LANG said the Chamber of Commerce had prepared a letter to send to Government on the subject of town refunds; but they had no idea that the Bill was going to be considered in detail at that meeting.

The PRESIDENT—You could bring forward any proposal you may have to make at the third reading, or when consideration of the Bill in detail is resumed by the Council.

The Honourable Mr. LANG said that would be more convenient, and in the meantime the Chamber's letter should be printed, and each member of the Council supplied with a copy.

The PRESIDENT said there were some alterations to be made in the schedule. In section 256, the words 'after this Act shall come into force' should be omitted, and in sections 284, 289 and 290, the words 'the Presidency Magistrate' should be substituted for the words 'Court of Petty Sessions.'

These alterations were adopted.

The PRESIDENT said the Bill would now be printed as settled by the Committee of the whole Council, and would then come up for the third reading, or for further consideration in detail.

The Honourable Mr. ROGAY moved that section 41 of the Council Rules be amended

Mr. Rogay moves that Section 41 of the Council Rules be amended. by adding at the end of that section the following sentence :—

'The Secretary shall immediately upon the receipt of a petition or a translation of a petition having reference to a Bill introduced into the Legislative Council, cause such petition or translation of a petition to be printed and shall send a printed copy to each member of the Council.' Mr. Rogay said—There would have been no necessity for this motion had it not been for the disinclination shown by His Excellency the Governor, at the last meeting of the Council, to allow certain petitions to be read, after frequent applications were made to him to do so.

The Honourable Mr. RAVENSCROFT—I beg to observe that by section 28 the power which the honourable member proposes should be exercised by this Council is vested only in the Governor of the Presidency.

The PRESIDENT—The Honourable the Advocate General has given an opinion that the power given to the Governor according to section 37 was to make the rules before the Council was first established, after it had once been formed the rules may be added to or amended by the Council.

The Honourable Mr. RAVENSCROFT—But that change is subject to the assent of the Governor.

The PRESIDENT—Yes, any amendment is subject to the sanction of the Governor after it has been passed. The point was referred to the Honourable the Advocate General, who gave an opinion that the motion was quite in order, but that the proposed amendment, if carried, could not come into operation until it had been assented to by the Governor.

The Honourable Mr. ROGAY—Honourable members will, I have no doubt, remember the time when our late Governor, Sir Philip Wodehouse, not only used to allow petitions to be read at meetings of this Council, but used to take particular care to draw



the attention of honourable members to them, by taking them into his own hands and referring to the objections of the petitioners, when the Bills petitioned against were being considered in detail. Surely, the object of petitioners who send petitions to the Governor in Council regarding any legislative enactment, is that the members of the Council should be made acquainted with their objections and not that their petitions should merely be kept on the table, without honourable members being made aware of the contents. It is not compulsory, under the rules, for petitioners to send copies of their petitions to all the members of the Council for their information, nor is it desirable that it should be so; but if certain petitioners had only sent one copy of their petitions, honourable members would have remained in the dark as to what their objections were. The circulation of petitions by the Secretary would save the time of the Council, would give less trouble to the Secretary, and would give facilities to each member to come prepared to bear in mind what the objections of the petitioners were. As I said before, there would be no objection for this motion, but I would not like to leave it to the discretion of the Governor, who may or may not allow a petition to be read, and in cases of his refusal members will be quite unacquainted with the objections and quite unprepared to take them into consideration. I had intended to propose an amendment to Rule 34, but at the suggestion of the Secretary I have adopted the present motion, by which I think my object will be best attained. The resolution will, of course, be subject to the assent of the Governor, and we must leave it to His Excellency to perform his duty.

The Honourable Mr. ASHBURNER—I beg to oppose the motion. I have first to correct a mis-statement,—or perhaps that is rather too strong an expression, and I will say a wrong impression,—on the part of my honourable friend Mr. Rogay, in saying there was a disinclination on the part of His Excellency the Governor to allow petitions to be read. There was no disinclination to allow petitions to be read. His Excellency understood—and I believe it was the case—that each petition sent in on that occasion was in the hands of members of the Council, and he merely would not permit the time of the Council to be occupied unnecessarily in reading matters which were already before the Council. With regard to the amendment, there is no great harm in the rule proposed by the Honourable Mr. Rogay, but I beg to bring to notice that it is already provided for in rule 31, which says the Secretary shall furnish each member with a List of the Business to be brought forward at each meeting, and with it he naturally sends to each member the papers necessary to elucidate the business.

The PRESIDENT—Pardon me, that is not the case, the papers are not sent.

The Honourable Mr. ASHBURNER—If that is the case, it appears to me that all that is necessary is that the Secretary should be requested to send the papers with the List of Business a reasonable time before the Council meets. But to go and rip up these rules now, which have stood the test of so many years, merely because the Honourable Mr. Rogay imagines that the Governor was unwilling to allow petitions to be read, I think is unreasonable. No practical difficulty has hitherto existed, and I submit that it is unnecessary and uncalled for.

The Honourable Mr. LANG thought there was no objection to the motion, and it would certainly expedite the business of the Council if petitions are all known to honourable members before the meetings at which Bills to which they refer are to be considered, so that they could come prepared to discuss questions on their merits.

The Honourable Mr. RAVENSCROFT—There is, I think, some obscurity in the wording of the rules; and it does not seem to be quite clear whether the assent of the Governor is required before or after the alteration of the rules.

The PRESIDENT—I am bound, I presume, by the opinion of the honourable and learned Advocate General, which is that the assent of the Governor is necessary only after the motion has been passed by the Council.

The Honourable the ADVOCATE GENERAL said it did not appear to him that a previous assent was necessary, but merely that the resolution could have no effect unless it obtained the assent of His Excellency the Governor.

The PRESIDENT said he was informed that in the particular case to which the Honourable Mr. Rogay had alluded, the petitions were placed, by request of the petitioners, before the Select Committee who sat on the Abkrái Bill, and they were put on the table in the ordinary manner when the Council met. They were supposed to have been disposed of by the Select Committee, before whom the petitioners had requested that they might be laid. The letter accompanying one of the petitions says—We have to forward \* \* \* and to request that it be laid before the Select Committee for consideration.

The Honourable Mr. ROGAY—I referred to other petitions, copies of which I asked for. And not only that, but I dare say honourable members will remember I suggested that the Secretary should be asked to read the objections of the petitioners, inasmuch as copies of all the petitions were not supplied to each member, and I conceived that there was a little disinclination shown by His Excellency. I do not admit that it was an imaginary idea on my part, as the Honourable Mr. Ashburner suggests. Mr. Ashburner says it is the duty of the Secretary to forward the petitions with the List of Business. I submit that a "List of Business" merely means a memorandum of the business to be brought forward for consideration before the Council, and that is all that honourable members have hitherto received. My experience has been that an honourable member asks for any papers that he may specially require, and that the petitions have been read by the Secretary before the actual business of the Council commenced. The Secretary does not and will not circulate them unless specially ordered, or unless there is a rule to that effect.

The President put the motion to the vote, when it was lost by 4 to 3; the order of voting being:—

*Ayes.*

The Honourable Sir C. STAVELY.  
The Honourable Mr. ROGAY.  
The Honourable Mr. LANG.

*Noes.*

The Honourable Mr. ASHBURNER.  
The Honourable the ADVOCATE-GENERAL.  
The Honourable Mr. RAVENSCROFT.  
The Honourable Mr. DOSABHOY FRAMJI.

The President then adjourned the Council *sine die*.

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

J. NUGENT,

Under-Secretary to Government.

Bombay, 19th December 1877.