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APPENDIX I.

BILL No. XXVII OF 1937.

A Bill to provide for the extension of the term of office of the members of the Bombay Municipal Corporation.

(As published in the "Bombay Government Gazette" of the 31st December 1937.)

WHEREAS it is expedient to provide for the extension of the term of office of the members of the Municipal Corporation of the City of Bombay; It is hereby enacted as follows:—

1. *Short title and duration.*—(1) This Act may be called the City of Bombay Municipal Corporation (Extension of Term) Act, 1938.

(2) It shall remain in force up to and inclusive of the first day of April 1939.

2. *Extension of term of office of councillors and retirement of members of certain Committees.*—(1) Notwithstanding anything contained in section 7 or 9 of the City of Bombay Municipal Act, 1888, hereinafter called "the said Act", the term of office of councillors which by reason of the provisions of either of the said section would have expired at noon on the first day of April 1938 is hereby extended to noon on the first day of April 1939 which day for the purposes of the said Act shall be deemed to be "the day for retirement", and no general elections shall be held or made and no appointments shall be made to fill the vacancies of the said councillors on the expiry of the triennium in 1938, notwithstanding anything in the said Act contained. Bom.
III of
1888.

(2) Notwithstanding anything contained in sections 39, 45 and 49E, of the said Act, those members of the following Committees, who came into office on 1st April 1936, namely:—

- (1) the Schools Committee,
- (2) the Standing Committee, and
- (3) the Improvements Committee,

shall retire from office at noon on the first day of April 1938 and their seats shall be filled by election or by appointment, as the case may be, in accordance with the provisions of the said Act.

Explanation 1.—Save as otherwise provided in this section, the words and expressions used therein shall have the meanings assigned to them in the said Act.

[Appendix 1—*contd.*]

Explanation 2.—For the purposes of this section, any person elected or appointed to fill a casual vacancy shall be deemed to have been in office for the period for which the member in whose place he was elected or appointed would have held office if the vacancy had not occurred.

STATEMENT OF OBJECTS AND REASONS.

Suggestions have been made to Government to widen and readjust the existing franchise of the Bombay Municipal Corporation and to revise its constitution with the object of placing the same on a more democratic basis. The period of the members of the present Corporation expires on 31st March 1938 and fresh elections will have to be held before that date. As it is not possible within the short time available to revise the City of Bombay Municipal Act for the purpose of giving effect to the various suggestions made, it is proposed to extend the life of the present members of the Corporation by one year, so that the Bombay Municipal Act may be revised during the interval for the purpose of giving effect to the suggestions made. The Corporation which was consulted agrees that the period of office of the present members of the Corporation may be extended for that purpose. The object of this Bill is to carry out the said purpose.

L. M. PATIL.

29th December 1937.

APPENDIX 2.

BILL No. XXVI OF 1937.

A Bill to amend the City of Bombay Municipal Act, 1888.

(As published in the "Bombay Government Gazette" of the 31st December 1937).

Bom. III of 1888. WHEREAS it is expedient to amend the City of Bombay Municipal Act, 1888, for the purpose hereinafter appearing: It is hereby enacted as follows:—

1. *Short title and commencement.*—(1) This Act may be called the City of Bombay Municipal (Amendment) Act, 1938.

(2) It shall come into force from the 1st day of April 1938.

Bom. III of 1888. 2. *Amendment of section 39 of Bom. III of 1888.*—Sub-section (8A) of section 39 of the City of Bombay Municipal Act, 1888, hereinafter referred to as the said Act shall be repealed.

[Appendix 2—contd.]

3. *Insertion of new heading and new sections 78-A and 78-B in Bom. III of 1888.*—After section 78 of the said Act, the following heading and sections shall be inserted, namely :—

“ *Municipal Chief Auditor.*

78-A. *Appointment of municipal chief auditor.*—(1) The Corporation shall from time to time appoint a fit person to be Municipal Chief Auditor, who shall

(a) perform such duties as he is directed by this Act to perform and such other duties with regard to the audit of the accounts of the Corporation as shall be required of him by the Corporation or by the standing committee ;

(b) devote his whole time and attention to the duties of his office ;

(c) receive such monthly salary not exceeding rupees fifteen hundred and not less than rupees twelve hundred as the Corporation shall from time to time determine ;

(d) be removeable at any time from office for misconduct or for neglect of, or incapacity for the duties of his office on the votes of not less than two-thirds of the members present at a meeting of the Corporation.

(2) The municipal chief auditor shall not be eligible for further office under the Corporation after he has ceased to hold his office.

78-B. *Appointment, salaries, fees, allowances and duties of assistant auditors, clerks and servants subordinate to the municipal chief auditor.*—

(1) The standing committee may from time to time—

(a) appoint such assistant auditors, clerks and servants to be immediately subordinate to the municipal chief auditor as they think fit ;

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

(c) prescribe or delegate to the municipal chief auditor the power of prescribing the duties of the said assistant auditors, clerks and servants.

(2) *Control, etc., of the said assistant auditors, clerks and servants.*—Subject to the orders of the standing committee, the municipal chief auditor, shall exercise supervision and control over the acts and proceedings of the said assistant auditors, clerks and servants, and the standing committee, subject to the regulations at the time being in force under section 81, shall dispose of all questions relating to the service of the said assistant auditors, clerks and servants and their pay, privileges and allowances.”

[Appendix 2—*contd.*]

4. *Amendment of section 80 of Bom. III of 1888.*—In section 80 of the said Act, for the word and figures “ or 78 ” the figures, letters and word “ 78, 78A or 78B ” shall be substituted.

5. *Amendment of section 83 of Bom. III of 1888.*—In sub-section (2) of section 83 of the said Act in clause (b) for the word and figures “ or 77 ” the figures, word and letter “ 77 or 78A ” and in clause (c) for the word and figures “ or 77 ” the figures, word and letter “ 77 or 78A ” shall be substituted.

6. *Amendment of section 84 of Bom. III of 1888.*—In section 84 of the said Act,—

(1) in sub-section (1) after the words “ municipal secretary ” the words “ or the municipal chief auditor ” shall be inserted ; and

(2) in clause (a) of sub-section (2) after the figures “ 78 ” the words, figures and letter “ or to any assistant auditor, clerk or servant appointed under section 78B ” shall be inserted.

7. *Amendment of sections 135, 136 and 137 of Bom. III of 1888.*—For sections 135, 136 and 137 of the said Act, the following sections shall be substituted, namely :—

“ 135. *Weekly scrutiny of accounts by municipal chief auditor and scrutiny of accounts by the standing committee.*—(1) The municipal chief auditor shall conduct a weekly examination and audit of the municipal accounts and shall report thereon to the standing committee who shall publish weekly an abstract of the receipts and expenditure of the week last preceding, signed by not less than two members of the said committee and by the municipal chief auditor. The standing committee may also from time to time and for such period as they think fit conduct independently an examination and audit of the municipal accounts.

(2) For these purposes the standing committee and the municipal chief auditor shall have access to all the municipal accounts and to all records and correspondence relating thereto, and the Commissioner shall forthwith furnish to the standing committee or the municipal chief auditor any explanation concerning receipts and disbursements which they may call for.

136. *Duties and powers of the municipal chief auditor.*—The municipal chief auditor in addition to any other duties or powers imposed or conferred upon him under this Act shall perform the duties and may exercise the powers specified in Schedule EE.

137. *Report by the municipal chief auditor.*—(1) The municipal chief auditor shall

(a) report to the standing committee any material impropriety or irregularity which he may at any time observe in the expenditure or in the recovery of moneys due to the Corporation or in the municipal accounts ;

[Appendix 2—*contd.*]

(b) furnish to the standing committee such information as the said committee shall from time to time require concerning the progress of the audit.

(2) The standing committee shall cause to be laid before the Corporation every report made by the municipal chief auditor to the standing committee and every statement of the views of the municipal chief auditor on any matter affecting the pursuance and exercise of the duties and powers assigned to him under this Act which the municipal chief auditor may require the standing committee to place before the Corporation, together with a report stating what orders have been passed by the standing committee upon such report or statement, and the Corporation may take such action in regard to the matters aforesaid as the Corporation may deem necessary.

(3) As soon as may be after the commencement of each official year the municipal chief auditor shall deliver to the standing committee a report upon the whole of the municipal accounts for the previous official year.

(4) The Commissioner shall cause the said report to be printed and forward a printed copy thereof along with the printed copy of the Administration Report and Statement of Accounts which he is required by sub-section (3) of section 124 to forward to each councillor."

8. *Amendment of section 133 of Bom. III of 1888.*—In sub-section (2) of section 133 of the said Act for the words "an auditor appointed by the Corporation" the words "the municipal chief auditor" shall be substituted.

9. *Insertion of new schedule EE in Bom. III of 1888.*—In the schedules to the said Act, after schedule DD, the following schedule EE shall be inserted, namely:—

"SCHEDULE EE.

(See section 136.)

Duties and Powers of the Municipal Chief Auditor.

1. (1) The municipal chief auditor shall audit the accounts of the Corporation, as hereinafter provided, with the assistance of the assistant auditors, clerks and servants appointed under section 78B of this Act.

(2) In the discharge of his functions under this article the municipal chief auditor shall—

(i) audit the accounts of all expenditure from the revenue of the Corporation, all expenditure on account of loan works and all expenditure incurred out of special funds and shall ascertain whether moneys shown therein as having been disbursed were legally available for, and applicable to, the service or purpose to which they have been applied or charged, and whether the expenditure conforms to the authority which governs it,

[Appendix 2—*contd.*]

(ii) audit the accounts of all debt, deposit, sinking funds, advances, suspense and remittance transactions of the Corporation and report upon those accounts and upon the results of verification of the balances relating thereto.

(3) The municipal chief auditor shall examine and audit the statements of accounts relating to the commercial services conducted in any department of the Corporation, including the trading, manufacturing and profit and loss accounts, and the balance sheets where such accounts are maintained under the orders of the Corporation or the standing committee; and shall certify and report upon these accounts.

(4) The municipal chief auditor shall, in consultation with the standing committee, and subject to any directions given by the Corporation, determine the form and manner in which his reports on the accounts of the Corporation shall be prepared and shall have authority to call upon any officer of the Corporation to provide any information necessary for the preparation of these reports.

2. (1) The municipal chief auditor may make such queries and observations in relation to any of the accounts of the Corporation which he is required to audit and call for such vouchers, statements, returns and explanations in relation to such accounts as he may think fit.

(2) Every such query or observation as aforesaid shall be promptly taken into consideration by the officer or authority to whom it may be addressed and returned without delay with the necessary vouchers, documents or explanations to the chief auditor.

(3) The powers of the municipal chief auditor with regard to disapproval of, and the procedure with regard to settlement of objections to expenditure from the revenues of the Corporation shall be such as may be prescribed by rules or orders made by the standing committee in consultation with the chief auditor and sanctioned by the Corporation.

3. If the municipal chief auditor considers it desirable that the whole or any part of the audit applied to any accounts which he is required to audit shall be conducted in the offices in which these accounts originate, he may require that these accounts, together with all books and documents having relation thereto, shall at all convenient times be made available in the said offices for inspection.

4. The municipal chief auditor shall have power to require that any books or other documents relating to the accounts he is required to audit shall be sent for inspection by him :

Provided that if the documents are confidential he shall be responsible for preventing disclosure of their contents.

5. The municipal chief auditor shall have authority to frame rules and to give directions on all matters relating to audit, particularly in respect of the method and the extent of audit to be applied and the raising and pursuing of objections.

[Appendix 2—concl'd.]

6. Sanctions to expenditure accorded by the municipal chief auditor shall be audited by an officer to be nominated by the Corporation after consultation with the chief auditor."

STATEMENT OF OBJECTS AND REASONS.

Experience has shown that the existing provisions of the City of Bombay Municipal Act, [III of], 1888, with regard to the audit of municipal accounts are unsatisfactory, as the audit under the present arrangement does not reach the standard of efficiency which is desirable in the audit of the accounts of an important public body. Under the present arrangement two auditors are appointed annually by the Corporation and, although such appointments are frequently renewed from year to year, the short term for which each appointment is made results in insecurity of office and a lack of continuity in the system of audit. It is also desirable that there should be proper control over the number and qualifications of the staff engaged by the person or persons in charge of the audit. The object of this Bill is to introduce new provisions under which the audit of the municipal accounts will be conducted by a separate department under the charge of a municipal chief auditor to be appointed by the Corporation. The nature of the appointment will be such as to attract a man of the required qualifications and due provision is made for security of tenure of the office and for the appointment of an adequate staff to assist in the audit. Special provisions have been introduced specifying in detail the duties and powers of the municipal chief auditor. These provisions have been modelled upon the provisions regulating the duties and powers of the Auditor-General under the Government of India Act, 1935.

L. M. PATIL.

28th December 1937.

APPENDIX 3.

BILL No. XXV OF 1937.

A Bill to provide for immediate effect being given for a limited period to provisions in Bills relating to the imposition or increase of taxes.

(As published in the "Bombay Government Gazette" of the 23rd December 1937).

WHEREAS it is expedient to provide for immediate effect being given for a limited period to provisions in Bills relating to the imposition or increase of taxes; It is hereby enacted as follows:—

1. *Short title.*—This Act may be called the Bombay Provisional Collection of Taxes Act, 1938.

[Appendix 3—*contd.*]

2. *Definitions.*—In this Act—

(1) a “declared provision” means a provision in a Bill in respect of which a declaration has been made under section 3 ;

(2) “tax” includes any rate, cess, duty, fee, toll or other impost, whether general or local or special.

3. *Power to make declarations under this Act.*—Where a Bill to be introduced in the Bombay Legislative Assembly on behalf of the Provincial Government provides for the imposition or increase of a tax, the Provincial Government may cause to be inserted in the Bill a declaration that it is expedient in the public interest that any provision of the Bill relating to such imposition or increase shall have immediate effect under this Act.

4. *Effect of declarations under this Act, and duration thereof.*—
(1) A declared provision shall have the force of law on the day on which the Bill containing it is introduced or published whichever day is earlier.

(2) A declared provision shall cease to have the force of law under the provisions of this Act—

(a) when it comes into operation as an enactment, with or without amendment, or

(b) when the Provincial Government, in pursuance of a motion passed by the Bombay Legislative Assembly, directs by notification in the Official Gazette, that it shall cease to have the force, of law, or

(c) if it has not already ceased to have the force of law under clause (a) or clause (b), then on the expiry of the sixtieth day after the day on which the declared provision has the force of law under sub-section (1).

5. *Certain refunds to be made when declarations cease to have effect.*—

(1) Where a declared provision comes into operation as an enactment in an amended form before the expiry of the sixtieth day after the day on which such provision has the force of law under sub-section (1) of section 4, refunds shall be made of all taxes collected which would not have been collected if the provision adopted in the enactment had been the declared provision :

Provided that the rate at which refunds of any tax may be made under this sub-section shall not exceed the difference between the rate of such tax proposed in the declared provision and the rate in force immediately prior to the day on which the declared provision has the force of law under sub-section (1) of section 4.

(2) Where a declared provision ceases to have the force of law under clause (b) or clause (c) of sub-section (2) of section 4, refunds shall be made of all taxes collected which would not have been collected if the declaration in respect of it had not been made.

[Appendix 3—concl'd.]

STATEMENT OF OBJECTS AND REASONS.

Whenever new taxation is proposed, taxpayers try to avoid it by taking all possible action between the publication of the proposals and the passing of the necessary Act. A typical instance is the sale of large quantities of a commodity on the introduction of a Bill to impose a Sales or Turn-over Tax but before the Bill becomes a Law to avoid the imposition of that tax. The object of this Bill is to prevent such evasion in suitable cases. It is based on a similar law enacted by the Government of India in their Act No. XVI of 1931.

A. B. LATTHE.

18th December 1937.

APPENDIX 4.

BILL No. VII OF 1937.

A Bill to provide for Recognition of Registered Trade Unions in the Presidency of Bombay.

(As published in the "Bombay Government Gazette" of the 21st October 1937.)

WHEREAS it is expedient to make provision for the Recognition of Registered Trade Unions ; It is hereby enacted as follows :—

1. *Short title.*—(a) This Act may be called the Bombay Trade Unions Recognition Act, 1937.

(b) *Extent.*—It extends to the whole of the Presidency of Bombay.

(c) *Commencement.*—It shall come into force on such date as the Local Government may, by Notification in the *Bombay Government Gazette*, appoint.

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context,—

(a) "Registered" means a Trade Union which is registered under the Trade Unions Act ;

(b) "Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between the workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions ;

[Appendix 4—*contd.*]

(c) "Prescribed" means prescribed by regulations made under this Act ;

(d) "Worker" means a person employed, whether for wages or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work whatsoever incidental to or connected with the manufacturing process, but does not include any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on ;

(e) "Executive" means the body, by whatever name called, to which the management of the affairs of a Trade Union is entrusted.

3. *Obligation upon Employer to accept registration of Trade Union.*—There shall be imposed an obligation upon every employer of labour to accept Registration under the Government of India Trade Unions Registration Act as a legal fact expressing the acceptance of the *bona fides* of the existence and activities of the Trade Union.

4. *Recognition of Registered Trade Union as representative organisation of workers.*—Every Registered Trade Union shall be acknowledged by every employer to be a representative organisation of the workers expressing an organised opinion of the workers in the Trade in which the Union is formed.

5. *Every registered representative organisation shall have right to be recognized by employer.*—Every such registered representative organisation shall have a right to be recognised by the employer regardless of the numbers of members joining the Union.

6. *Application for recognition.*—No Trade Union as soon as registered applying for such recognition shall be denied the right by the employer raising the question outside the purview of the Trade Union Registration Act.

7. *No speeches and writings or resolutions passed by a Registered Union shall be deemed a factor against its recognition by employer.*—No speeches delivered or writings made or resolutions passed by such a Registered Trade Union shall be deemed a factor weighing with the employer against recognition as being immaterial and irrelevant to the fact of recognition so long as the Union continues to be registered under the Trade Unions Act.

8. *Production of Copies of Constitution, Rules, Regulations of Union, etc.*—As soon as an application is made by such Union for recognition, the employer shall invite the Union to submit the following for his assurance and guarantee of the *bona fides* of the Union,—

(a) Copy of Constitution, Rules and Regulations containing the aims and objects of the Union.

(b) Original certificate of the Registration of the Union.

[Appendix 4—contd.]

9. *Recognition.*—Recognition shall consist in the employer immediately investigating into all the complaints both individual and general that may from time to time be sent by the Union for his consideration and replying to the Union communicating the results of such investigations.

10. *Right of Union to address communications.*—Every Union so recognised shall have a right to address all communications to the highest member in the workshop, office or any other place of employment and every communication shall be replied to by him except if the powers are delegated by him to his subordinates, notification for which shall be given to the Union from time to time.

11. *Privileges of Union.*—When recognised among others the following privileges shall be accorded to the Union by the employer :—

(a) Right to collect subscriptions within the premises of the place of employment ;

(b) Right to hold meetings of the Union.

12. *Right of Union to meet officer or officers in the matter of complaints, etc.*—Every Union so recognised shall have the right of meeting an officer or officers concerned in the place of employment on behalf of the Union in the matter of complaints forwarded or representations made at times previously appointed and suitable to the officer or officers concerned.

13. *Right of Union to hold joint meetings with employers.*—Every Union so recognised shall have the right of holding joint meetings with the employers in the matter of various grievances, complaints and representations at least once per two months.

14. *No Union shall be refused right of recognition on account of its political persuasion.*—No Union shall be refused the right of recognition whatever its political persuasion, or political colour of its different members.

15. *Withdrawal of Recognition.*—No employer shall withdraw recognition until Government withdraws registration under the Trade Union's Registration Act, or if conditions material to recognition such as those under Clause 8 are not fulfilled.

16. *Obligation on certain employers to conform to the rules of recognition.*—Any employer in an Industry which falls under the heading "Concurrent Subjects" that is falling under the Central Legislatures as well as partially under Provincial Legislatures such as Railway shall conform to the above rules of recognition provided the Head Office of a Union of the employees in that industry is located in one of the principal towns of the Presidency.

[Appendix 4—concl'd.]

17. *Penalty for breach of provisions of the Act.*—Any employer violating any of the above clauses under the Act shall be subject to a fine of Rs. 500 on the first application for recognition made by the Union and six months' imprisonment for the succeeding.

STATEMENT OF OBJECTS AND REASONS.

The Government of India Act of Registration of Trade Unions, 1926, gives a legal and constitutional value to a Union of Workers. But the employers do not recognise such a registered organisation and there is no binding upon them to do so. Under the circumstances the workers having their straight dealings with the employers, do not stand to gain any benefit possible to be derived from joining such a registered Union. Recognition of such a Union at the hand of the employers is bound to create a healthy atmosphere between the employers and the employees. The above Bill is aimed at rehabilitating a registered Trade Union in its constitutional relations with the employers.

S. H. JHABVALA.

APPENDIX 5.

BILL No. VIII OF 1937.

A Bill to make proper provision for the fixation of Tariff for Vehicles plying for hire in the Presidency of Bombay.

(As published in the "Bombay Government Gazette" of the 21st October 1937.)

WHEREAS it is expedient to make proper provision for the fixation of Tariff for Vehicles plying for hire in the Presidency of Bombay; It is hereby enacted as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Bombay Presidency Vehicles Tariff Fixation Act of 1937.

(2) It shall extend to the whole of the Bombay Presidency; and the Local Government may, by notification, extend to and from a date to be specified in the Notification the whole of the Act to any part of the Presidency.

2. *Definitions.*—In this Act unless there is anything repugnant in the subject or context—

(1) "Vehicles" means a vehicle, carriage or other means of conveyance propelled or which may be propelled on a road by electrical or mechanical power, either entirely or partially, including a tram car or carriage.

[Appendix 5—*contd.*]

(2) "Local authority" includes a Cantonment Authority within the meaning of the Cantonments Act, 1924.

(3) "Prescribed" means prescribed by rules made under the Act.

(4) "Presidency" means the Presidency of Bombay excluding Sind.

3. *Constitution of Vehicles Tariff Control Board.*—There shall be constituted a Vehicles Tariff Control Board by the Minister in charge of Local Government.

4. *Term of Office.*—It shall hold permanent office :

provided that from time to time as particular vehicles are added to the existing kinds or diminished therefrom, they shall be represented or their representation removed from time to time as the case may be.

5. *Control Board.*—The Control Board shall consist of—

- (a) Minister of Local Government ;
- (b) one representative of the Tramway Company ;
- (c) one representative of the Victoria Owner Drivers ;
- (d) one representative of the Taxi Owner Drivers ;
- (e) one representative of the Bombay Municipality ;
- (f) one representative of the Passenger public preferably from Passengers and Traffic Relief Association ;
- (g) one representative of the Private Bus Owner Drivers ;
- (h) one representative of the Lorry Owner Drivers ;
- (i) the Commissioner of Police, Bombay.

6. *Certain Representatives of the Board shall be elected.*—The representatives of the Board

excepting (a) in (5)

shall be elected by their respective representative bodies or organisations :

provided that wherever such an organisation or organisations do not exist legally and constitutionally the Minister of Local Government shall nominate a representative or representatives from such an organisation or organisations.

7. *President of the Control Board.*—The Minister of Local Government shall *ipso facto* be the President of the Control Board.

8. *Location of the office of Control Board.*—The office of the Control Board shall be located in the office of the Minister of Local Government.

9. *Work of the Control Board.*—All work pertaining to and arising from the Control Board shall be transacted by the office of the President of the Control Board.

[Appendix 5—concl'd.]

10. *Meetings of the Control Board.*—The Control Board shall meet once a year :

provided that the President is requisitioned by a one-third part of the representatives to call for meetings more than once for business under section 11.

11. *Control Board to fix annual Tariff of vehicles plying for hire.*—It shall be the duty of the Control Board to fix the Tariff of all vehicles plying for hire in the Presidency from year to year.

12. *Publication of the annual Tariff in the "Bombay Government Gazette."*—The annual tariff so fixed shall be the official Scheduled Rate for all vehicles in the Presidency and shall be published in the *Government Gazette* : Provided that the Tariff so fixed is objected to and revision is granted by the President of the Control Board on requisition being received under section 10 hereof ; but under no circumstances shall a revision be effected within 3 months at least of the annual decision arrived at.

13. *Bye-laws.*—The President of the Board shall be empowered to prepare Bye-laws under this Section for the proper holding of the Annual Meeting and guidance thereof.

STATEMENT OF OBJECTS AND REASONS.

The control of tariff as at present laid down is vested in different hands while there is joint responsibility in the matter of mutual burdens. Sometimes even Rate war settles in due to unhealthy competition at the hand of rich and able private companies. The Bill contemplates the avoidance of such a kind of individual option as may cut out the weaker sections engaged in the driving trade in the Bombay Presidency and also gives the right of fixing the tariff of all with mutual agreement.

S. H. JHABVALA.

APPENDIX 6.

BILL No. I OF 1938.

A Bill to amend the Bombay Local Boards Act, 1923.

(As published in the "Bombay Government Gazette" of the 5th January 1938.)

WHEREAS it is expedient to amend the Bombay Local Boards Act, 1923, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the Bombay Local Boards (Amendment) Act, 1938.

[Appendix 6—*contd.*]

2. *Amendment of section 3 of Bom. VI of 1923.*—In section 3 of the Bombay Local Boards Act, 1923, hereinafter called “the said Act”, after clause (c), the following shall be inserted, namely :—

“(cc) ‘Backward tribe’ means a tribe specified in Part II of the Thirteenth Schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936.

(dd) ‘Harijan’ means a person belonging to any of the Scheduled Castes as defined in the Government of India (Scheduled Castes), Order, 1936.”

3. *Amendment of section 5 of Bom. VI of 1923.*—In section 5 of the said Act,

(1) for sub-section (1), the following shall be substituted, namely :—

“(1) Every district and taluka local board shall, subject to the provisions of sub-section (5), consist of elective members.”

(2) sub-sections (3) and (4) shall be deleted.

4. *Amendment of section 6 of Bom. VI of 1923.*—For section 6 of the said Act, the following section shall be substituted, namely :—

“6. *Elective members of local boards by whom to be elected.*—

(1) The elective members of local boards shall be elected by general and Muhammadan constituencies. The number of members to be elected by each constituency, and the number of seats to be reserved in general constituencies for the representation of women or of any caste, community or tribe shall be as prescribed by orders made by the Provincial Government under clause (a) of section 133 :

Provided that no seat shall be reserved for the representatives of any caste, community or tribe,

(a) other than—

(i) Harijans,

(ii) a backward tribe, or

(iii) any community the members of which are, under the Fifth Schedule to the Government of India Act, 1935, entitled to separate constituencies for electing representatives to the Bombay Legislative Assembly, and

(b) unless the Provincial Government is of opinion that the reservation of such seats is necessary having regard to the population of such caste, community or tribe in the area constituting the general constituency.

(2) Notwithstanding anything contained in sub-section (1), the Muhammadans in the area constituting a Muhammadan constituency

[Appendix 6—*contd.*]

who have attained the age of 21 years may either unanimously or by majority declare in the manner prescribed under clause (a¹) of section 133 that the said Muhammadan constituency be abolished.

(3) On such declaration, the Provincial Government shall direct that the said Muhammadan constituency be abolished from such date as may be specified in the notification in the Official Gazette and may make orders under clause (a²) of section 133 for the purpose of securing representation in general constituencies of the Muhammadans in the area constituting the said Muhammadan constituency."

5. *Insertion of new section 15A in Bom. VI of 1923.*—After section 15 of the said Act, the following section shall be inserted, namely :—

"15A. *Provisions of section 15(3), clauses (a) and (b) to cease to be in force.*—From the date specified in the notification under sub-section (3) of section 6 the provisions of clauses (a) and (b) of sub-section (3) of section 15 shall cease to be in force and for the purpose of any election of persons to fill the places of persons whose term of office has expired under section 28 and for all subsequent elections, lists for constituencies shall be prepared and finally published as if the said provisions have not been in force."

6. *Amendment of section 130 of Bom. VI of 1923.*—In section 130 of the said Act, the words "by such nominations and elections as may be necessary" shall be deleted.

7. *Amendment of section 133 of Bom. VI of 1923.*—In section 133 of the said Act,—

(1) in clause (a) for the words beginning with the words "the proportion" and ending with the words "each constituency" the words and figure "the number of members to be elected by each constituency and the reservation of seats in general constituencies for women or for any caste, community or tribe specified in section 6" shall be substituted :

(2) after clause (a) the following clauses shall be inserted, namely :—

"(a¹) prescribing the manner in which the Mahomedans in any area for which a Mahomedan constituency is constituted may declare that the said constituency be abolished ;

(a²) determining the mode in which the representation of the Mahomedans in the area for which a Mahomedan constituency is abolished under section 6 shall be secured."

8. *Saving.*—(1) Nothing in this Act shall affect the local boards constituted immediately before the commencement of this Act and no appointment, notification, notice, tax, order, scheme, licence, permission, rule, by-law or form made, issued or imposed by or in respect of such

[Appendix 6—concl'd.]

local board shall be deemed to be invalid by reason only of the fact that this Act has come into force.

(2) Notwithstanding anything contained in this Act, any casual vacancy in a local board constituted immediately before the commencement of this Act shall, subject to the provisions of section 33, be filled in the manner provided by the said Act, as if this Act had not been passed.

STATEMENT OF OBJECTS AND REASONS.

It is proposed that nominations in the case of all local boards should be abolished and that elective representation should be given by means of reservation of seats in joint electorates to Harijans and backward tribes and, where necessary, to women and to minority communities for whom separate constituencies have been formed in the legislatures under the Government of India Act, 1935. The intention is that the reservation of seats for Harijans, backward tribes, and, where necessary, for other minority communities should be on a population basis, as far as possible. It is also proposed to give an option to the Muhammadans in any Muhammadan constituency in a district (a) to declare that the said Muhammadan constituency be abolished and (b) to have representation in general constituencies.

The Bill is intended to achieve the above objects.

4th January 1938.

L. M. PATIL.

APPENDIX 7.

BILL No. III OF 1938.

A Bill to provide for the release on probation of offenders.

(As published in the "Bombay Government Gazette" of the 7th January 1938).

WHEREAS it is expedient to provide for the release on probation of offenders in certain cases and for other matters incidental thereto; It is hereby enacted as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Bombay Probation of Offenders Act, 1938.

(2) It extends to the whole of the Province of Bombay.

(3) This Act shall come into force in such area and on such date as the Provincial Government may, by notification in the Official Gazette, direct.

[Appendix 7—contd.]

2. *Definition.*—In this Act, unless there is anything repugnant in the subject or context,—

V of
1898.

(a) the “Code” means the Code of Criminal Procedure, 1898;

(b) “Probation order” means an order made under sub-section (1) of section 5;

(c) “supervision order” means an order made under sub-section (2) of section 5; and

(d) words and expressions used but not defined in this Act shall have the meanings assigned to them in the Code.

3. *Courts empowered to pass orders under the Act.*—(1) The following courts are hereby empowered to exercise powers under this Act, namely:—

(a) the High Court,

(b) a Court of Session,

(c) a District Magistrate,

(d) a Sub-Divisional Magistrate,

(e) a salaried Presidency Magistrate,

(f) a Magistrate of the first class,

(g) any other Magistrate specially empowered in this behalf.

(2) The powers conferred under sub-section (1) may be exercised by such Courts, whether the case comes before them originally or on appeal or in revision.

(3) Where any offender is convicted by a magistrate not empowered to exercise powers under this Act, and such magistrate is of opinion that the powers conferred by section 4 or 5 should be exercised, he shall record his opinion to that effect and submit the proceedings to a Magistrate of the first class or Sub-Divisional Magistrate forwarding the offender to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by section 380 of the Code.

4. *Power of Courts to release certain convicted offenders after admonition.*—In any case in which a person is convicted of any offence punishable with not more than two years' imprisonment and no previous conviction is proved against him, the Court by which he is so convicted, may, if it thinks fit and if it is empowered to exercise powers under this Act, instead of sentencing him to any punishment, release him after due admonition, having regard—

(a) to the age, character, antecedents or physical or mental condition of the offender, and

[Appendix 7—*contd.*]

(b) to the nature of the offence or any extenuating circumstances under which the offence was committed.

5. *Power of Court to release certain convicted offenders on probation of good conduct.*—(1) Notwithstanding anything contained in any enactment for the time being in force, when

(a) any male person is convicted of an offence not punishable with death or transportation for life, or

(b) any woman is convicted of an offence of any kind,

if it appears to the Court by which the offender is convicted, that regard being had to the age, character, antecedents or physical or mental condition of the offender, or to circumstances in which the offence was committed, it is expedient that the offender should be released on probation of good conduct, the Court may, if it is empowered to exercise powers under this Act, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties to appear and receive sentence when called upon during such period (not being less than one year and not exceeding three years) as the Court may direct, and in the meantime to keep the place and be of good behaviour :

Provided that the Court shall not pass a probation order under this section unless it is satisfied that the offender or one of his sureties (if any) has a fixed place of abode or regular occupation and is likely to continue to have such place of abode or such occupation, within the local limits of its jurisdiction during the period of the bond.

(2) Where the offender appears to the Court to be under the age of twenty-five years, the Court may make an order, hereinafter called a supervision order, directing that the bond to be entered into under subsection (1) shall contain a condition that the offender shall be under the supervision of a probation officer named in the order during the period specified therein and such other conditions as in the opinion of the Court may be necessary for securing such supervision :

Provided that the period so specified shall not extend beyond the date on which, in the opinion of the Court, the offender shall attain the age of twenty-six years.

(3) While making a supervision order the Court may also direct that the bond shall contain such additional conditions with respect to residence, abstention from intoxicants and any other matters which the Court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or a commission of other offences by the offender.

(4) A Court making a supervision order shall furnish the offender with a written statement of the conditions which he is required to observe.

[Appendix 7—*contd.*]

6. *Power of Court to require released offender to pay damages and costs and recovery of such damages and costs.*—(1) A Court directing the release of an offender under section 4 or section 5 may order the offender to pay such damages for injury or compensation for loss caused to any person by the offender in committing the offence and such costs of the proceedings as the Court thinks reasonable, and if the offender is under the age of sixteen years, and it appears to the Court that the parent or guardian of the offender has condoned by his neglect or in any other way to the commission of the offence, the Court may order payment of such damages or compensation and costs by such parent or guardian.

(2) The amount paid by way of damages or compensation to a person under this section shall be taken into account in awarding damages to such person in any subsequent civil suit relating to the same matter.

(3) The amount ordered to be paid under this section may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

7. *Power of Court of appeal or revision.*—When an order has been made by a Court under section 4 or 5 in respect of any offender, the Court of Session, on appeal, or the High Court, either on appeal or in the exercise of its power of revision, when under the provisions of the Code there is a right of appeal to such court or such power of revision, may set aside such order and in lieu thereof pass sentence on such offender according to law :

Provided that such other Court shall not under this section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

8. *Provision in case of offender failing to observe condition of release.*—(1) If the Court before which an offender is bound by his bond under section 5 to appear and receive sentence when called upon, or any Court which could have dealt with the offender in respect of his original offence, has reason to believe that the offender has failed to observe any of the conditions of his bond, it may issue a warrant for his arrest or may, if it thinks fit, issue a summons to the offender and his sureties, if any, requiring him or them to attend before it at such time as may be specified in the summons.

(2) The Court before which an offender is brought or appears under sub-section (1) may either remand him to custody until the case is heard or admit him to bail, with or without sureties, to appear on the date of hearing.

(3) If the Court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of his bond, including any conditions which may have been imposed under sub-section (2) or sub-section 3 of section 5, it may forthwith—

[Appendix 7—*contd.*]

(a) sentence him for the original offence, or

(b) without prejudice to the continuance in force of the bond, impose upon him a fine not exceeding one hundred rupees.

(4) If a fine imposed under clause (b) of sub-section (3) is not paid within such period as the Court may fix, the Court may sentence the offender for the original offence.

9. *Provisions as to bonds.*—The provisions of sections 122, 126A, 406A, V of 514, 514A, 514B and 515 of the Code, shall, so far as may be, apply in the ^{1898.} case of sureties given under this Act.

10. *Appointment of probation officers.*—(1) A probation officer named in a supervision order may be—

(a) any person appointed to be a probation officer by the Provincial Government, or

(b) any person nominated for this purpose by a society recognised in this behalf by the Provincial Government, or

(c) any other person who, in the opinion of the Court, is a fit person to act as a probation officer in the special circumstances of the case.

(2) In naming a probation officer in a supervision order the Court shall be guided by any general or special instructions the Provincial Government may issue in this behalf.

(3) A probation officer, in the exercise of his duties under any supervision order, shall be subject to the control of the District Magistrate of the district in which the offender for the time being resides.

(4) The Court before which an offender is bound by his bond under section 5 to appear and receive sentence when called upon, may at any time appoint another probation officer in place of the person named in the supervision order.

Explanation.—In this section, in a presidency town “District Magistrate” means the Chief Presidency Magistrate, and “district” means the presidency town.

11. *Duties of probation officers.*—A probation officer shall, subject to the provisions of section 10 and rules made under this Act—

(a) visit or receive visits from the offender at such reasonable intervals as may be specified in the supervision order or, subject thereto, as the probation officer may think fit;

(b) see that the offender observes the conditions of the bond;

(c) report to the Court as to the behaviour of the offender;

[Appendix 7—*contd.*]

(d) advise, assist and befriend the offender, and, when necessary, endeavour to find him suitable employment; and

(e) perform any other duty which may be prescribed by rules made under this Act.

12. *Variation of conditions of probation on application by probation officer.*—(1) The Court before which any person is bound by a bond under section 5 to appear and receive sentence may at any time upon the application of the probation officer or of its own motion, if it thinks that it is expedient that the terms or conditions of the bond should be varied, summon the offender to appear before it, and, if he fails to show cause why such variation should not be made, vary the terms of the bond by extending or diminishing the duration thereof or by altering any of the conditions thereof or by inserting additional conditions therein :

Provided that, in no case, shall the duration of the bond be less than one year or more than three years from the date of the original order where a supervision order has been made under sub-section (2) of section 5, the duration of the period of supervision extend beyond the date on which, in the opinion of the Court, the offender shall attain the age of 26 years :

Provided further that in the case of a bond with a surety or sureties, no such variation shall be made without the consent thereto of such surety or sureties and that in the absence of such consent the Court shall in all such cases require the offender to enter into a new bond with or without sureties.

(2) Such Court may also, on the application made by the probation officer or of its own motion, on being satisfied that the conduct of the offender has been such as to make it unnecessary that he should be kept any longer under supervision, discharge the bond.

13. *Power to make rules.*—(1) The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules—

(a) regulating the appointment, resignation and removal of probation officers ;

(b) prescribing and regulating the duties of probation officers ;

(c) regulating the remuneration and expenses payable to probation officers ; and

(d) specifying conditions on which societies may be recognised for the purposes of clause (b), of sub-section (1) of section 10.

(3) All rules made under this section shall be subject to the condition of previous publication.

[Appendix 7—concl'd.]

14. *Barring of operation of section 562 of Act V of 1898.*—In any area in which this Act is in force, no Court shall make an order under section 562 of the Code in respect of any first offender.

15. *Saving of the Bombay Children Act and the Bombay Borstal Schools Act.*—Nothing in this Act shall affect the provisions of the Bombay Children Act, 1924, or the Bombay Borstal Schools Act, 1929.

STATEMENT OF OBJECTS AND REASONS.

The need to provide for a regular system of probation of offenders on the lines of the English Probation of Offenders Act, 1907, is being increasingly felt in this Province. Experience in England shows that the system has proved itself not only efficacious in checking crime but also a great economy by reducing the population of the jails.

2. The Bill incorporates the provisions of section 562 of the Criminal Procedure Code for the release on probation of offenders and provides particularly for the supervision of those under 25 years of age by a probation officer named by the Court. The success of the scheme ever depends on the efficiency of the supervision imposed during probation. Government therefore propose to restrict for the present the scope of the Bill to certain places only where local conditions are favourable and there are prospects of the system being worked properly. The Act will only come into operation in any area by notification and Government will require to be satisfied that the necessary machinery to work the system exists before notifying the extension of the Act to any area.

K. M. MUNSHI.

4th January 1938.

APPENDIX 8.

BILL No. IV OF 1938.

A Bill to amend the City of Bombay Municipal Act, 1888.

(As published in the "Bombay Government Gazette" of the
8th January 1938.)

WHEREAS it is expedient to amend the City of Bombay Municipal Act, 1888, for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. *Short title*—This Act may be called the City of Bombay Municipal (Amendment) Act, 1938.

Bom.
III of
1888.

[Appendix 8—contd.]

Bom. 2. *Amendment of section 3 of Bom. III of 1888.*—After clause (kk) in
III of section 3 of the City of Bombay Municipal Act, 1888, hereinafter called
1888. “the said Act”, the following new clause shall be added, namely:—

“(ll) ‘Market’ includes any place where persons assemble for the sale of, or for the purpose of exposing for sale, meat, fish, fruit, vegetables, animals intended for human food or any other articles of human food whatsoever, with or without the consent of the owner of such place, notwithstanding that there may be no common regulation of the concourse of buyers and sellers and whether or not any control is exercised over the business of or the persons frequenting the market by the owner of the place or any other person”.

3. *Amendment of section 15 of Bom. III of 1888.*—In section 15 of the said Act, hereinafter called the said Act, for the words “he resides in the city”, the following shall be substituted, namely:—

“he has resided in the city for six months immediately preceding the date of the election.

Explanation.—A fellow shall be deemed to have resided in the city if he resides in any dwelling in the city which he uses from time to time as a sleeping apartment and the fellow shall not be deemed to cease ‘to reside’ in the city if there is the liberty of returning to any such dwelling and no abandonment of the intention of returning thereto even though he is absent therefrom or has elsewhere another dwelling in which he resides.”

4. *Amendment of section 17 of Bom. III of 1888.*—In section 17 of the said Act, after clause (c), the word “or” and the following new clauses shall be inserted, namely:—

“(d) absents himself from or is unable to attend the meetings of the Corporation during twelve successive months from any cause whatever, whether approved by the Corporation or not, or

(e) being elected by a chamber or association mentioned in sub-section (1) of section 5, ceases to be a member of such chamber or association or to be a person entitled to exercise the rights and privileges of membership on behalf and in the name of any firm, company or corporation registered as a member of such chamber or association, as the case may be.”

5. *Amendment of section 30 of Bom. III of 1888.*—For sub-section (1) of section 30 of the said Act, the following shall be substituted, namely:—

“(1) An election of a councillor by fellows shall be made, subject to the provisions of section 15, in accordance with the statutes made by the Senate of the University of Bombay in this behalf:

Provided that no fellow who has not resided in the city for six months immediately preceding the date of the election shall be entitled to vote at such election.

[Appendix 8—*contd.*]

Explanation.—A fellow shall be deemed to have resided in the city if he resides in any dwelling in the city which he uses from time to time as a sleeping apartment and the fellow shall not be deemed to cease 'to reside' in the city if there is the liberty of returning to any such dwelling and no abandonment of the intention of returning thereto, even though he is absent therefrom or has elsewhere another dwelling in which he resides."

6. *Amendment of section 31 of Bom. III of 1888.*—For sub-section (1) of section 31 of the said Act, the following shall be substituted, namely :—

"(1) An election of a councillor by a chamber or association mentioned in sub-section (1) of section 5 shall be made by the members for the time being of the said chamber or association, as the case may be, subject to the provisions of section 15, in accordance with the rules made by the said chamber or association in this behalf."

7. *Amendment of section 39 of Bom. III of 1888.*—In section 39 of the said Act—

(a) in sub-section (1-C) for the word "he" the following shall be substituted, namely :—

"or absents himself during three successive months from the meetings of the committee, except on account of temporary illness or other cause to be approved by the committee, or absents himself from or is unable to attend the meetings of the committee during eight successive months from any cause whatever, whether approved by the committee or not, such person";

(b) in sub-section (1-D) after the word "office" where it occurs for the second time, the words, brackets, figure and letter "or of his seat becoming vacant under sub-section (1-C)", shall be inserted.

8. *Insertion of a new section 46A in Bom. III of 1888.*—After section 46 of the said Act the following new section shall be inserted, namely :—

"46A. *Member of Standing Committee absenting himself for three months from meetings to vacate seat.*—Any member of the standing committee who absents himself during three successive months from the meetings of the committee, except on account of temporary illness or other cause to be approved by the committee, or absents himself from or is unable to attend the meetings of the committee during eight successive months from any cause whatever, whether approved by the committee or not, shall cease to be a member of the standing committee and his seat shall thereupon be vacant."

9. *Amendment of section 47 of Bom. III of 1888.*—In section 47 of the said Act, after the word "office" where it occurs for the second time, the words, figures and letter "or of his seat becoming vacant under section 46A" shall be inserted.

[Appendix 8—*contd.*]

10. *Amendment of section 49G of Bom. III of 1888.*—In section 49G of the said Act, after the word “office” where it occurs for the second time, the words, figures, letters and brackets “or of his office becoming vacant under clause (j) of section 49I^a”, shall be inserted.

11. *Amendment of section 49I of Bom. III of 1888.*—In clause (j) of section 49I of the said Act after the word “committee” where it occurs for the third time, the following shall be inserted, namely:—

“or absents himself from or is unable to attend the meetings of the committee during eight successive months, from any cause whatever, whether approved by the committee or not.”

12. *Amendment of section 110A of Bom. III of 1888.*—In section 110A, of the said Act—

(a) in sub-section (1)—

(i) for the words “wholly or partly lost or destroyed”, the words “lost, stolen or destroyed either wholly or in part” shall be substituted;

(ii) after the word “loss” where it occurs at both the places, the word “theft” shall be inserted; and

(iii) for clauses (a) and (b) the following clauses shall be substituted, namely:—

“(a) if the debenture alleged to have been lost, stolen or destroyed is payable more than six years after the date of publication of the notification referred to in sub-section (2)—

(i) for the payment of interest in respect of the debenture pending the issue of a duplicate debenture, and

(ii) for the issue of a duplicate debenture payable to the applicant, or

(b) if the debenture alleged to have been lost, stolen or destroyed is payable not more than six years after the date of publication of the notification referred to in sub-section (2)—

(i) for the payment of interest in respect of the debenture without the issue of a duplicate debenture, and

(ii) for the payment to the applicant of the principal sum due in respect of the debenture on or after the date on which the payment becomes due”;

(b) in sub-section (2)—

(i) after the word “loss” the word “theft” shall be inserted, and

[Appendix 8—*contd.*]

(ii) after the word "lost" the word "stolen" shall be inserted; and

(c) for sub-section (3) the following shall be substituted, namely :—

"(3) A list of the debentures in respect of which an order is passed under sub-section (1) shall be published in the Official Gazette";

(d) the following new sub-section shall be added, namely :—

"(4) If at any time before the Corporation becomes discharged under the provisions of section 110AD from liability in respect of any debenture the whole of which is alleged to have been lost, stolen or destroyed, such debenture is found, any order passed in respect thereof under this section shall be cancelled."

13. *Insertion of new sections 110AA, 110AB, 110AC, 110AD and 110AE in Bom. III of 1888.*—After section 110A of the said Act, the following new sections shall be inserted, namely :—

"110AA. *Renewal of debentures.*—Subject to the provisions of section 110AB, a person claiming to be entitled to a debenture issued under this Act or any previous Act relating to the municipal govern-^{Bom. IV of}ment of the city or under the City of Bombay Improvement Act, 1898, 1898. or the City of Bombay Improvement Trust Transfer Act, 1925, may on^{Bom. XVI of} applying to the Commissioner and on satisfying him of the justice of his claim and delivering the debenture received in such manner and^{1925.} paying such fee as may be prescribed by the Commissioner obtain a renewed debenture payable to the person applying.

110AB. *Renewal of debentures in case of dispute as to title.*—
(1) Where there is a dispute as to the title to a debenture issued under this Act or any previous Act relating to the municipal government of^{Bom. IV of} the city or under the City of Bombay Improvement Act, 1898, or the^{1898.} City of Bombay Improvement Trust Transfer Act, 1925, in respect of^{Bom. XVI of} which an application for renewal has been made, the Commissioner^{of} may—^{1925.}

(a) where any party to the dispute has obtained a final decision from a Court of competent jurisdiction declaring him to be entitled to such debenture, issue a renewed debenture in favour of such party, or

(b) refuse to renew the debenture until such a decision has been obtained, or

(c) after such inquiry as is hereinafter provided and on consideration of the result thereof, declare by order in writing which of the parties is in his opinion entitled to such debenture and may, after the expiration of three months from the date of such declaration, issue a renewed debenture in favour of such party in accordance

[Appendix 8—*contd.*]

with the provisions of section 110AA, unless within that period he has received notice that proceedings have been instituted by any person in a Court of competent jurisdiction for the purpose of establishing a title to such debenture.

Explanation.—For the purposes of this sub-section the expression 'final decision' means a decision which is not appealable or a decision which is appealable but against which no appeal has been filed within the period of limitation allowed by law.

(2) For the purposes of the inquiry referred to in sub-section (1) the Commissioner may himself record, or may request the District Magistrate to record or to have recorded, the whole or any part of such evidence as the parties may produce. The District Magistrate to whom such request has been made may himself record the evidence or may direct any Magistrate subordinate to him to record the evidence and shall forward the record of such evidence to the Commissioner.

(3) The Commissioner or any Magistrate acting under this section may, if he thinks fit, record evidence on oath.

110AC. *Liability in respect of debenture renewed.*—(1) When a renewed debenture has been issued under section 110AA in favour of any person, the debenture so issued shall be deemed to constitute a new contract between the Corporation and such person and all persons deriving title thereafter through him.

(2) No such renewal shall affect the rights as against the Corporation of any other person to the debenture so renewed.

110AD. *Discharge in certain cases.*—When a duplicate debenture has been issued under section 110A, or when a renewed debenture has been issued under section 110AA or section 110AB, or when the principal sum due on a debenture in respect of which an order has been made under section 110A for the payment of the principal sum without the issue of a duplicate debenture has been paid on or after the date on which such payment became due the Corporation shall be discharged from all liability in respect of the debenture in place of which a duplicate or renewed debenture has been so issued, or in respect of which such payment has been made, as the case may be—

(a) in the case of a duplicate debenture, after the lapse of six years from the date of the publication of the notification referred to in sub-section (3) of section 110A or from the date of the last payment of interest on the original debenture, whichever date is later,

(b) in the case of a renewed debenture, after the lapse of six years from the date of the issue thereof, and

[Appendix 8—*contd.*]

(c) in the case of payment of the principal sum without the issue of a duplicate debenture, after the lapse of six years from the date of the publication of the notification referred to in sub-section (3) of section 110A.

110AE. *Indemnity*.—Notwithstanding anything in section 110AA or 110AB, the Commissioner may in any case arising under either of those sections—

(1) issue a renewed debenture upon receiving such indemnity in favour of the Corporation and the Commissioner as he shall think fit against the claims of all persons claiming under the original debenture, or

(2) refuse to issue a renewed debenture unless such indemnity is given”.

14. *Amendment of section 110DD of Bom. III of 1888*.—To section 110DD of the said Act the following new sub-sections shall be added, namely :—

“(3) The Corporation may from time to time make, alter or rescind rules prescribing :—

(a) the amounts for which stock certificates may be issued ;

(b) the fees to be levied in respect of the issue of stock certificates ;

(c) the form of keeping a register of the holders of stock ;

(d) the mode in which payment of interest to holders of stock is to be made, recorded and acknowledged ;

(e) the form of transfer to be used, the formalities to be observed and the fees to be levied on a transfer of stock ;

(f) the circumstances and manner in which duplicate stock certificates may be issued and the fees to be levied or the indemnity to be required on any such issue ;

(g) generally the measures to be adopted for carrying out the objects of this section.

(4) No rule, or alteration or rescission of a rule, shall have effect until the same shall have been approved by Government, and such approval shall have been published in the Official Gazette ; and no rule, or alteration or rescission of a rule, shall be approved by Government until, the same shall have been published for three weeks successively in the said Gazette.”

15. *Amendment of section 115 of Bom. III of 1888*.—In sub-section (3) of section 115 of the said Act, for the word, letter and brackets “ clause (b) ” the word, figure and brackets “ sub-section (1) ” shall be substituted.

[Appendix 8—*contd.*]

16. *Amendment of section 117 of Bom. III of 1888.*—In section 117 of the said Act—

(1) after the word “ of ” where it occurs for the first time, the words, figure and brackets “ sub-section (2) of ” shall be inserted ;

(2) after the word “ under ” where it occurs for the second time, the words, figure and brackets “ sub-section (2) of ” shall be inserted ; and

(3) after the word and figures “ section 131 ”, the words, figures and brackets “ or under sub-section (1) of section 133 ”, shall be inserted.

17. *Amendment of section 123A of Bom. III of 1888.*—In sub-section (3) of section 123A of the said Act, the word “ half ” shall be omitted.

18. *Insertion of a new section after section 125 of Bom. III of 1888.*—After section 125 of the said Act, the following new section shall be inserted, namely :—

“ 125A. *Classification of budget heads.*—The expenditure side of a budget estimate shall be classified under major heads, minor heads, subordinate heads and primary units.

(a) ‘Major head’ means the principal head of accounts corresponding to the different services under which expenditure is classified in the budget estimate, and may be divided into two or more minor heads.

(b) ‘Minor head’ means the head of accounts immediately subordinate to a major head under which each major head is classified, and may be further sub-divided into two or more subordinate heads.

(c) ‘Subordinate head’ means the head of accounts immediately subordinate to a minor head under which each minor head is classified and may be further sub-divided into two or more primary units.

(d) ‘Primary unit’ means the ultimate group or groups into which individual items of expenditure in the budget estimates are arranged.”

19. *Substitution of new section 130 in Bom. III of 1888.*—For section 130 of the said Act, the following shall be substituted, namely :—

“ 130. *Budget grant defined.*—The total sum entered under a major head, which has been adopted by the Corporation shall be termed a ‘ budget grant ’.”

20. *Substitution of new section 133 in Bom. III of 1888.*—For section 133 of the said Act, the following shall be substituted, namely :—

“ 133. *Reductions or transfers.*—(1) Subject to the provisions of sub-section (1) of section 131, the Corporation may on the recommendation of the Standing Committee from time to time during an

[Appendix 8—*contd.*]

official year sanction the transfer of any amount from one budget grant to another.

(2) The Standing Committee may at any time during an official year—

(a) reduce the amount of a budget grant ;

(b) sanction the transfer of any amount within a budget grant from one minor head to another or from a subordinate head under one minor head to a subordinate head under another minor head ; or

(c) sanction the transfer of any amount exceeding rupees five thousand within a minor head from one subordinate head to another or from one primary unit to another.

(3) The Commissioner may, at any time during an official year, sanction the transfer of any amount not exceeding rupees five thousand within a minor head from one subordinate head to another or from one primary unit to another, if such transfer does not involve a recurring liability :

Provided that every transfer of an amount exceeding rupees five hundred made under sub-section (3) shall be reported forthwith by the Commissioner to the Standing Committee and that the said Committee may pass with regard thereto such order as they may think fit ; and it shall be incumbent on the Commissioner to give effect to such order.

(4) When making any transfer under sub-sections (1), (2) and (3), due regard shall be had to all the requirements of this Act.

(5) If any such reduction as is referred to in clause (a) of sub-section (2) is of an amount exceeding five hundred rupees, the Corporation may pass with regard thereto such order as they may think fit, and it shall be incumbent on the Standing Committee and the Commissioner to give effect to such order."

21. *Insertion of new section 260A in Chapter X of Bom. III of 1888.*—In Chapter X of the said Act, the following new section shall be inserted at the commencement, namely :—

"260A. *Definitions.*—In this chapter, unless there is anything repugnant in the subject or context—

(a) 'Communication pipe' means a pipe extending from a municipal water main up to and including the municipal stop-cock.

(b) 'Consumer' means any person who uses or is supplied with water from a municipal water work or on whose application such water is supplied and includes any person liable to the Corporation under the provisions of this Act for the payment of water tax or any sum for the water supplied from a municipal water work.

[Appendix 8—*contd.*]

(c) 'Consumer's pipe' means a pipe used in connection with the supply of water from any municipal water work and which is not the property of the Corporation.

(d) 'Distributing pipe' means any pipe not subject to water pressure from a municipal water main.

(e) 'Fitting' includes a pipe, coupling, flange, branch, bend, stop, ferrule, stop tap, bib tap, spring tap, pillar tap, globe tap, ball cock, boiler, pump, meter, hydrant and any other apparatus or article used for the purpose of conveying or storing water supplied by the Corporation.

(f) 'Municipal stop cock' means the stop cock which controls the supply of water from a municipal water main.

(g) 'Supply pipe' means the pipe extending from a municipal stop cock up to the ball cock of the storage tank, if any, and any pipe subject to pressure from a municipal water main."

22. *Amendment of section 269 of Bom. III of 1888.*—In sub-section (3) of section 269 of the said Act, for the words "private use and not for sale" the words "personal or domestic use and not for the purpose of business or sale" shall be substituted.

23. *Amendment of section 271 of Bom. III of 1888.*—In section 271 of the said Act—

(a) in sub-section (1)—

(i) for the words "Communication pipes" the words "Supply pipes" shall be substituted, and

(ii) for the words "a water main or other municipal water-work" the words "a municipal water work" shall be substituted, and

(iii) for the words "ordinarily be connected with the main or other water-work" the words "be connected with such water-work" shall be substituted;

(b) for sub-section (2) the following shall be substituted, namely :—

"(2) *Commissioner may in certain cases require owners to obtain private water supply.*—But if it shall appear to the Commissioner that any premises situate within any portion of the city in which a public notice has been given by the Commissioner under clause (b) of section 141, are without a supply of pure water, adequate to the requirements of the person usually occupying or employed upon the said premises, the Commissioner shall, by written notice, require the owner of the said premises or the person primarily liable for the payment of property-taxes thereon, to obtain a supply adequate as

[Appendix 8—*contd.*]

aforesaid from a municipal water work and to provide supply and distributing pipes, cisterns and fittings and do all such works as may in the opinion of the Commissioner be necessary for that purpose."

24. *Amendment of section 272 of Bom. III of 1888.*—In section 272 of the said Act—

(a) In sub-section (2) for the words "from and including the ferrule on the supply main up to and including the stop-cock nearest the supply main," the word "thereon" shall be substituted.

(b) In sub-section (3) for the words "Every such new connection or renewed connection with its communication-pipes and fittings up to and including its stop-cock as aforesaid shall thereafter vest" the words "Every such communication pipe and fittings thereon shall vest" shall be substituted.

(c) For sub-section (4) the following shall be substituted, namely:—

"(4) All supply and distributing pipes and cisterns and fittings not being the property of the Corporation shall be laid and applied under the supervision and to the satisfaction of a municipal officer appointed by the Commissioner in that behalf, who shall give and sign a certificate, free of charge, when such supply and distributing pipes, cisterns and all necessary fittings have been laid, applied and executed in a satisfactory manner and when proper and sufficient arrangements have been made for draining off waste water."

(d) For sub-section (5) the following shall be substituted, namely:—

"(5) Where any supply or distributing pipe, cistern or such fitting is laid, applied, added to or altered, or any connection is made in contravention of this section the Commissioner may, with the previous approval of the Standing Committee, remove such supply or distributing pipe, cistern, fitting or connection, or additions or alterations thereto, and make good such pipe, cistern, fitting or connection; and the owner and occupier of the premises in which or for supply to which such supply or distributing pipe, cistern or fitting has been laid, applied, added to or altered or such connection has been made, shall be jointly and severally liable to pay the expenses incurred by the Commissioner in so doing."

25. *Amendment of section 273 of Bom. III of 1888.*—In section 273 of the said Act for the words "all communication-pipes and fittings of any existing private service connected with any municipal water-works up to and including the stop-cock nearest the supply main for the said service", the words "all or any consumer's pipes and fittings" shall be substituted.

[Appendix 8—contd.]

26. *Amendment of section 273A of Bom. III of 1888.*—For section 273A of the said Act, the following shall be substituted, namely :—

“273A. *Power of Commissioner to alter position of connections.*—The Commissioner may, if at any time he deems it expedient to alter the position of an existing connection with any municipal water-works or of any consumer’s pipe or fitting thereof, and after giving to the owner of such connection, pipe or fitting not less than four days previous notice of his intention so to do, cause the said connection, pipe or fitting to be moved to such other position as he thinks fit and relaid and applied, or others to be laid and applied in lieu thereof, in such position as he may direct ; and in every such case all such work shall be carried out at the expense of the municipal fund and such new connection, pipe and fitting shall thereafter vest in the Corporation and be maintained at the charge of the municipal fund as a municipal water-work.”

27. *Amendment of section 274 of Bom. III of 1888.*—In section 274 of the said Act—

(a) For sub-section (1) the following shall be substituted, namely :—

“(1) *Provisions as to cisterns and other fittings, etc., to be used for connections with water-works.*—The Commissioner may, whenever it shall appear to him to be necessary, by written notice require the owner of any premises furnished with a private water supply from any municipal water-work to provide such premises within a reasonable period which shall be prescribed in the said notice, with cisterns and fittings of such size, material, quality and description and placed in such position and with such safe and easy means of access as he thinks fit.”

(b) After sub-section (1), the following new sub-section shall be added :—

“(1A) The Commissioner may also in the like manner require the owner of any premises to provide such safe and easy means of access as he thinks fit to any existing cistern which on an examination under section 278 is found to be not easily accessible.”

(c) In sub-section (2)—

(i) for the words “pipes, taps, cocks, and other fittings,” the words “pipes and fittings” shall be substituted ;

(ii) for the word “purposes” the word “purpose” shall be substituted.

(d) In sub-section (3) for the words “pipes, taps, cocks and other fittings”, wherever they occur, the words “pipes, cisterns and fittings” shall be substituted.

[Appendix 8—contd.]

28. *Insertion of new section 274A in Bom. III of 1888.*—After section 274 of the said Act, the following new section shall be inserted, namely :—

“274A. *Provision for keeping cisterns locked.*—(1) The Commissioner may, by written notice, require the owner of any premises furnished with a cistern or in respect of which the Commissioner has required a cistern to be furnished, to provide such cistern with a lock and key of such pattern, material and quality as the Commissioner shall in such notice prescribe, and may in like manner require any lock or key found to be defective on an inspection under section 278 to be replaced.

(2) Every cistern so provided with a lock shall be kept permanently locked and the key shall then be delivered to the Commissioner.”

29. *Amendment of section 275 of Bom. III of 1888.*—In section 275 of the said Act—

(a) in sub-section (1)—

(i) for the words “to keep in efficient repair every pipe” the words “to keep in a thoroughly clean condition and to maintain and keep in efficient repair every supply and distributing pipe” shall be substituted; and

(ii) for the words “every tap, cock or other fitting and every storage cistern” the words “every cistern and fitting” shall be substituted.

(b) in sub-section (2)—

(i) for the word “five” the word “three” shall be substituted; and

(ii) after the word “due” the words “or to become due” shall be inserted.

30. *Amendment of section 278 of Bom. III of 1888.*—In section 278 of the said Act—

(a) in sub-section (1) for clause (b) the following shall be substituted, namely :—

“(b) to examine any supply or distributing pipe, cistern, lock or fitting; or”

(b) for sub-section (2) the following shall be substituted, namely :—

“(2) The Commissioner may, by written notice, require the owner or occupier of the premises to remedy any defect which shall be found to exist in or to clean, any such meter, not being a municipal meter let to him for hire, or any such supply or distributing pipe, cistern, lock or fitting.”

[Appendix 8—*contd.*]

31. *Amendment of section 279 of Bom. III of 1888.*—In section 279 of the said Act—

(1) in sub-section (1)—

(a) in clause (a) after the words “sum due for water” the words “or hire of meter” shall be inserted;

(b) for clauses (b) and (c) the following shall be substituted, namely:—

“(b) if the owner of the premises neglects within the period prescribed in this behalf in any notice given under sub-section (1) or (1A) of section 274 or under section 274A, to comply with any requisition made to him by the Commissioner regarding the provision of any cistern, fitting, lock or key or any means of access to such cistern;

(c) if the owner or occupier of the premises fails, within the period prescribed in this behalf in any notice given under sub-section (2) of section 278, to comply with the terms of such notice or fails to use articles of the kind prescribed under sub-section (3) of section 274;”

(c) for clause (e) the following clause shall be substituted, namely:—

“(e) if the owner or occupier of the premises wilfully or negligently injures or damages any meter, pipe, cistern or fitting or lock thereof in such premises;”

32. *Amendment of section 284 of Bom. III of 1888.*—In section 284 of the said Act—

(a) In clause (b) for the words “or engine” the words “, engine, cistern or fitting” shall be substituted.

(b) After clause (e) the following new clause shall be inserted, namely:—

“(f) except with the permission of the Commissioner, open, break, injure or tamper with any lock furnished under section 274A.”

33. *Amendment of section 286 of Bom. III of 1888.*—For section 286 of the said Act, the following shall be substituted, namely:—

“286. *What persons to be liable for offences under certain provisions of this Chapter.*—If it shall be shown that an offence against some provision of this Chapter or against some bye-law made under this Act at the time in force relating to water supply has occurred on any premises to which a private supply of water is furnished by the

[Appendix 8—contd.]

Corporation, the owner, the person primarily liable for the payment of water tax and the occupier of the said premises shall be jointly and severally liable for the same."

34. *Amendment of section 287 of Bom. III of 1888.*—For section 287 of the said Act, the following shall be substituted, namely :—

"287. *When materials and works may be supplied and done under this Chapter for any person by the Commissioner.*—On the written request of any person who is required under any of the provisions of this Chapter to supply any materials, fittings, cistern or lock and key or to do any work, the Commissioner may, on such person's behalf, supply the necessary materials, fittings, cistern or lock and key, as the case may be, or cause the necessary work to be done ; but he shall not do so in any case to which the provisions of section 493 or 495 will not apply, unless a deposit is first of all made by the said person of a sum which will, in the opinion of the Commissioner, suffice to cover the cost of the said material, fitting, cistern, lock and key or work."

35. *Amendment of section 287A of Bom. III of 1888.*—In section 287A of the said Act—

(a) in sub-section (1)—

(i) after the word "executed" where it occurs for the first time, the words "or any cistern to be supplied with a lock and key" shall be inserted, and

(ii) after the word "executed" where it occurs for the second time, the words "or supplied" shall be inserted ;

(iii) after the word "doing" the words "or supplying" shall be inserted.

(b) in sub-section (2)—

(i) after the word "done" the words "or of supplying such lock and key" shall be inserted ;

(ii) after the words "such work" the words "or the supply of such lock and key" shall be inserted.

36. *Amendment of section 287B of Bom. III of 1888.*—In section 287B of the said Act—

(1) in sub-section (1) after the word "chapter" the words and brackets "(other than the provision of a lock and key)" shall be inserted ;

(2) for sub-section (3) the following shall be substituted, namely :—

"(3) Where any person causes or permits any pipe, cistern or fitting or other work necessary for conveying a private supply of water from a municipal water-work into any premises to be laid, applied or executed in contravention of sub-section (1), he shall, in addition to being liable to the penalty prescribed for such

[Appendix 8—contd.]

contravention, not be entitled to an independent or branch connection until the defects, if any, in such pipe, cistern, fitting or work are removed to the satisfaction of the Commissioner."

37. *Insertion of new section 313B in Bom. III of 1888.*—After section 313A of the said Act, the following new section shall be inserted, namely :—

"313B. *Licences for use of skill in handicraft or rendering services for purposes of gain in public place or street.*—Except under and in conformity with the terms and provisions of a licence granted by the Commissioner in this behalf, no person shall, for purposes of gain, use his skill in any handicraft or in rendering services to and for the convenience of the public in any public place or public street."

38. *Amendment of section 314 of Bom. III of 1888.*—After clause (c) of section 314 of the said Act, the following new clause shall be inserted, namely :—

"(d) any tools, implements or other articles used or intended to be used in any public place or in any public street by any person acting in contravention of the provisions of section 313B."

39. *Amendment of section 402 of Bom. III of 1888.*—To sub-section (2) of section 402 of the said Act, the following shall be added, namely :—

"The owner or occupier of a place in which a private market is established shall, for the purposes of this sub-section, be deemed to have established such market."

40. *Amendment of section 402 of Bom. III of 1888.*—In sub-section (1) of section 403 of the said Act—

(i) in clause (a) after the word "open" the words "or permit to be kept open" shall be inserted; and

(ii) in clauses (b) and (c) after the word "use" the words "or permit to be used" shall be inserted.

41. *Amendment of section 471 of Bom. III of 1888.*—In the table appended to section 471 of the said Act—

(a) after the entry relating to section 270, sub-section (2), the following entry shall be inserted, namely :—

"Section, sub-section or clause. 1	Subject. 2	Fine which may be imposed. 3
Section 271, sub-section (2).	Requisition to obtain private water supply and to provide supply and distributing pipes, etc.	Two hundred rupees."

[Appendix 8—contd.]

(b) in column 2 of the entry relating to section 274 for the words "storage cisterns and other fittings to be used for connection with water-works" the words "cistern and fittings or means of access to any cistern" shall be substituted;

(c) in column 2 of the entry relating to section 275 for the words "Communication pipes" the words "Supply or distributing pipes" shall be substituted;

(d) in column 2 of the entry relating to section 278, sub-section (2), for the words "communication-pipe" the words "supply or distributing pipe" shall be substituted;

(e) in column 3 of the entry relating to section 280 for the word "Twenty" the words "One hundred" shall be substituted.

(f) after the entry relating to section 313A the following entry shall be inserted, namely :—

" Section 313B	.. Prohibition in a public place or street, of use of skill in handicraft or in rendering services without licence.	Fifty rupees."
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42. *Amendment of section 472 of Bom. III of 1888.*—In the table appended to section 472 of the said Act, after the entry relating to section 313A the following entry shall be inserted, namely :—

" Section 313B	.. Prohibition in a public place or street, of use of skill in handicraft or in rendering services without licence.	Fifty rupees."
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43. *Amendment of section 489 of Bom. III of 1888.*—In sub-section (2) of section 489 of the said Act, after the entry "Section 271, sub-section (2)" the following entries shall be inserted, namely :—

"Section 272, sub-section (5).

Section 274, sub-sections (1) and (1A).

Section 274A, sub-sections (1) and (2)".

44. *Amendment of section 492 of Bom. III of 1888.*—In section 492 of the said Act—

(1) in sub-section (1)—

(a) after the words "building or land" where they occur for the second time, the words, figures, letter and brackets "or in respect of some work executed or thing done or measure taken for giving

[Appendix 8—contd.]

effect to any requisition or order made under sub-section (1A) of section 377" shall be inserted;

(b) after the words "building or land" where they occur for the third time, the words, figures, letter and brackets "or of the premises referred to in sub-section (1A) of section 377, as the case may be," shall be inserted;

(c) for the words "building or land" where they occur for the fourth time, the words "building, land or premises" shall be substituted.

(2) in sub-section (2) for the words "land or building" wherever they occur in clause (a) and for the words "building or land" where they occur in clause (c), the words "building, land or premises" shall be substituted.

45. *Amendment of section 514 of Bom. III of 1888.*—In clause (b) of section 514 of the said Act—

(a) after the figures and brackets "272 (1)", the figures and brackets "272 (5), 274 (1), 274 (1A)" shall be inserted.

(b) after the figures "284" the figures, letters and brackets "287B (1), 287B (2)" shall be inserted;

(c) after the figures "390" the words, figures, brackets and letter "or any bye-laws framed under section 461 (b)" shall be inserted.

46. *Amendment of section 518 of Bom. III of 1888.*—In sub-section (1) of section 518 of the said Act after the figures "225" the figures and letter "381, 381A" shall be inserted.

STATEMENT OF OBJECTS AND REASONS.

The Bill is intended to make various amendments in the several sections of the City of Bombay Municipal Act, 1888, which have been found expedient by the Corporation from the past experience of the working of the Act. The more important of them are designed (1) to give power to take measures for the eradication of malaria as a result of the recommendations of Major G. Covell, who was ordered by Government in 1928 to hold an enquiry into malarial conditions of the City, (2) to rectify certain defects in connection with the water supply which stand urgently in need of removal in order to carry out effectively anti-malarial measures, (3) to give power to the Corporation to issue revised debentures in any case and (4) to extend the powers of the Standing Committee and the Municipal Commissioner in the matter of reappropriation of budget grants. The objects of the various clauses of the Bill are explained in the following notes on clauses.

[Appendix 8—contd.]

Notes on Clauses.

Clauses 2, 39 and 40.—The City of Bombay Municipal Act, 1888, does not contain a definition of the term “market”. In the absence of such definition, the term is given its ordinary meaning and is held to imply common regulation of sellers and control by the owner or occupier of the place (*Bombay Municipality v. Yenkanna Ellappa Balaram*, I.L.R. 52 Bom. 780). The result is that where a place is found to have been used unauthorisedly for the purpose of a market, it is not possible to take action against the owner or occupier of the place under the provisions of the Act, as the said person cannot be proved to have established a market within the meaning of the Act. The Corporation has represented that this defect in the Act should be removed.

Clauses 3, 5 and 6.—The procedure laid down in sub-section (1) of section 30 and sub-section (1) of section 31 of the Act for the election of a councillor by fellows of the University of Bombay or by a chamber or association mentioned in sub-section (1) of section 5 necessitates the convening of a meeting of the Senate of the University or of the chamber or association, as the case may be. This procedure is found to be inconvenient and cumbersome. The Corporation has, therefore, suggested that the procedure for holding these elections should be left to be determined by the bodies concerned in accordance with the statutes or the rules made by them in this behalf. In the case of election of a councillor by fellows of the University, it is further proposed to restrict the right of voting to those fellows who have resided in the city for at least six months preceding the date of the election, and to prescribe a similar residential qualification for candidates at such election.

Clause 4 [section 17 (e)].—Under section 7 of the Act a councillor of the Corporation elected by the Bombay Chamber of Commerce or the Indian Merchants' Chamber or the Bombay Millowners' Association can at present continue to hold office until the day for retirement of councillors, although in the meanwhile he may have ceased to be connected with the association or the chamber, as the case may be. It is therefore proposed to remove this anomaly by further amending section 17 of the Act on the lines of the amendment effected by Bombay Act X of 1936 under which a councillor elected by the fellows of the Bombay University ceases to be a councillor as soon as he ceases to be a fellow.

Clauses 7 to 11.—Under section 17 (b) of the Act a councillor who absents himself during three successive months from the meetings of the Corporation except on account of temporary illness or other cause to be approved by the Corporation, ceases to be a councillor. The effect of this provision is that a councillor can be absent for any length of time on account of illness or other cause approved by the Corporation. It is now proposed to limit the total absence of a councillor to not more than one year as it is not desirable that a constituency should be deprived of representation in the Corporation for an undue length of time by reason

[Appendix 8—*contd.*]

of the absence of its representative from whatever cause. It is proposed to make similar provisions in the Act for the members of the three Statutory Committees, the Standing Committee, the Schools Committee and the Improvements Committee.

Clauses 12 to 14.—There is no provision in the Act empowering the Corporation to issue a renewed debenture in any case. In *Mascarenhas v. Mercantile Bank of India Limited*, I.L.R. 56 Bom. 1, the Judicial Committee of the Privy Council observed that renewed debentures issued by the Board of Trustees for the Improvement of the City of Bombay constituted in form and substance a new and independent obligation and would not protect the Trustees against any claim made in respect of the original debentures in lieu of which the renewed debentures were issued. These observations apply with equal force to all debentures referred to in section 110-A of the Act. Section 110-A is also defective inasmuch as it does not purport to deal with cases in which debentures may be stolen. The Corporation has represented that the Act should be amended so as to give the corporation a similar protection to that given to Government under the Indian Securities Act, 1920. It is intended to give effect to these proposals of the Corporation. It is also considered necessary that the Corporation should have power to prescribe fees on payment of which and the conditions subject to which stock certificates may be issued under section 110-DD of the Act.

Clauses 15 and 16.—These are consequential amendments due to the substitution of a new section 133 for the existing one *vide* clause 20.

Clause 17.—Under sub-sections (1) and (2) of section 123-A of the Act the accounts relating to improvement schemes are required to be kept under a separate heading in the municipal accounts, in accordance with the rules contained in schedule BB and under sub-section (3) of the said section such accounts are required to be published in the *Bombay Government Gazette* every half year. It has been pointed out by the Corporation that since the amalgamation of the Bombay Improvement Trust with the Bombay Municipal Corporation there are several items in the General Municipal accounts and in the Improvements schemes accounts which are interdependent and that if the provisions of section 123-A (3) are to be complied with, necessary adjustments have to be made every six months. This means the closing of municipal accounts also every six months which involves considerable labour and expense. It is, therefore, proposed to amend section 123-A (3) of the Act so as to provide for the publication of the Improvement schemes accounts *once a year* only in the *Bombay Government Gazette*.

Clause 18.—In Government accounts, the Revenue and Expenditure are first classified under a number of major heads. Each major head is divided into minor heads, each of which has a number of subordinate heads which are further divided into what are known as primary units of accounts. The financial transactions of the Corporation on the expenditure side are proposed to be classified on similar lines.

[Appendix 8—contd.]

Clause 19.—The definition of a budget grant in section 130 of the Act as it stands at present is unsatisfactory, for, it includes every item on the expenditure side of a budget estimate and would thus comprise detailed sub-heads of primary units of accounts into which a sub-head might be divided. The result is that reappropriations from one primary unit of account to another require the sanction of the Standing Committee and further if the amount to be reappropriated exceeds Rs. 500, the reappropriation has to be confirmed by the Corporation. Variations in the sub-heads of accounts are bound to occur, however carefully the budget estimates may be prepared. Owing to the large number of such variations and the routine nature of most of them the sanction of the Standing Committee and the Corporation tends to become a matter of form. In consequence the more important items which should require the careful supervision of the Corporation or the Standing Committee are likely to pass unnoticed in the mass of detail. It is, therefore, proposed to amend the definition of “budget-grant” in section 130 to mean the total provision under a major head of municipal service sanctioned by the Corporation.

Clause 20.—The object of the amendment is to simplify the procedure for the reappropriation of budget grants and subordinate heads of accounts and to confer larger powers of transfer within such budget grants upon the Standing Committee and the Commissioner. Having regard to the large number of budget transfers and to the routine nature of most of them, it is proposed that the work of sanctioning such transactions should be distributed according to their nature and importance as is done by Government. This clause gives effect to the suggestion of the Corporation that the Standing Committee may be empowered to sanction reappropriation of a grant from one major, minor or subordinate head to another and the Commissioner to sanction any reappropriation within a grant between heads subordinate to a minor head which does not involve a recurring liability, provided that all transfers between Rs. 500 and Rs. 5,000 made by the Commissioner shall be reported to the Standing Committee, who may pass with regard thereto such order as they may think fit, it being incumbent on the Commissioner to give effect to such order.

Clause 23 (b).—Under the existing law so long as the owner furnishes premises with an adequate supply of water for the persons occupying the same, it is left entirely to his discretion whether such supply is furnished on the ground floor or at any particular place in the building accessible to all the inhabitants. This does not meet the needs of a modern city when structures four and five storeys high with modern sanitary arrangements are erected, and it is essential that the Corporation should be given power to compel the owners of such premises to furnish an adequate supply of water to all parts of the premises. The proposed amendment of section 271 (2) of the Act and the consequential amendments of other sections relating to water supply are intended to give the necessary power to the Commissioner.

[Appendix 8—*contd.*]

Clause 27.—This contains provisions enabling the Municipal Commissioner to insist on cisterns being made easily accessible for inspection purposes.

Clause 28.—It is intended to authorise the Commissioner to call upon the owner of premises furnished with a cistern to provide a lock and key of approved pattern for the same, and to deposit the key with the Commissioner. Unless such a provision is inserted in the Bill there will be no effective means of ensuring that a cistern, although provided with a lock and key, will in fact be kept closed.

Clause 29.—This is intended to remedy an omission in the Act by requiring private water pipes, cisterns, fittings, etc., to be kept clean as well as in efficient repair.

Clause 30 (b).—This is also intended to remedy an omission in the Act by enabling the Commissioner to call upon the owner or occupier of premises to remedy any defect in, or to clean, a private meter or any supply or distributing pipe, cistern or fitting.

Clause 31.—This is intended to empower the Commissioner to cut off the water supply from the premises in cases of (1) failure to pay meter hire for a meter on the premises and (2) failure to provide safe and easy access to a cistern or to provide a lock and key for the same.

Clause 32 (b).—This makes the unauthorised opening or breaking of a lock provided for a cistern under the orders of the Commissioner an offence under the Act.

Clause 33.—This makes the owner of premises and the person primarily liable for payment of water tax also responsible for any offence under the part of the Act which relates to water supply. The object of the clause is to prevent evasion of the provisions of the Act.

Clauses 34 and 35.—These enlarge the power of the Commissioner to have certain works executed by municipal agency.

Clause 36.—The object of the clause is to prevent defective works being carried out in contravention of the provisions of section 287B.

Clauses 37 and 38.—Under section 313A of the Act a licence from the Municipal Commissioner is necessary for hawking or exposing for sale in any public place or in any public street any article whatsoever, whether it be for human consumption or not. Licences to petition-writers, barbers, shoe-blacks, cobblers and others, who use, for purposes of gain, their skill in any handicraft or in rendering services to and for the convenience of the public in public places or public streets in the City have hitherto been issued by the Commissioner under section 313A but a doubt has arisen whether the grant of such licences is covered by the provisions of the said section.

The Corporation consider it expedient that the Commissioner should have the necessary power to require the aforesaid persons to obtain licences and have recommended to Government that legislation should be undertaken with a view to give effect to this proposal of the Corporation.

[Appendix 8—concl'd.]

Clause 41.—This provides appropriate penalties for offences against the new provisions for the eradication of malaria and increases the penalty for an offence under section 280 of the Act.

Clause 44.—Sub-section (1A) of section 377 of the Act provides that if it shall appear to the Commissioner that any private street is overgrown with rank and noisome vegetation or is otherwise in an unwholesome or filthy condition, he may by written notice require the owners of the several premises fronting or adjoining the said street or abutting thereon to cleanse or clear the same, or with the approval of the Standing Committee require them to take such other order with the same as the Commissioner may think necessary. If the requisition is not complied with by any one of the said owners, the Commissioner is empowered under section 489 of the Act to take such measures or to cause such work to be executed or such thing to be done as shall, in his opinion, be necessary for giving due effect to the requisition made by him and to recover the expenses thereof from the defaulting owner or owners.

The Corporation have represented that a considerable time generally elapses from the time the Commissioner makes any requisition as aforesaid to the time when the expenses incurred by him become legally recoverable from the owners with the result that it often becomes difficult to realise the said expenses from the owners of the premises owing to the ownership of the premises having changed hands or the owner or owners being not found or, if found, being unable to pay the said expenses. It is, therefore, proposed to empower the Corporation to recover the said expenses from the person or persons occupying such premises.

Clause 46.—This provides for a complaint to Government if the Commissioner's powers to deal with nuisances under sections 381 and 381A of the Act are not duly exercised.

L. M. PATIL.

8th January 1938.

APPENDIX 9.

BILL No. V OF 1938.

A Bill to remove disabilities of Harijans in regard to worship in temples.

(As published in the "Bombay Government Gazette" of the
8th January 1938.)

WHEREAS it is expedient to provide for the removal of disabilities of Harijans in regard to worship in temples; It is hereby enacted as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the Bombay Harijan Temple Worship (Removal of Disabilities) Act, 1938.

[Appendix 9—*contd.*]

(2) This Act extends to the whole of the Province of Bombay and shall come into force at once.

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context,—

(1) “ Court ” means the Court of the District Judge or within the limits of the ordinary jurisdiction of the High Court of Bombay, the Court of the Judge of the Presidency Small Causes Court ;

(2) “ District ” means a district constituted under section 3, of the Bombay Civil Courts Act, 1869, and include the City of Bombay ;

XIV
of
1869.

(3) “ Harijan ” means a member of a caste, race or tribe deemed to be a Scheduled caste under the Government of India (Scheduled Castes) Order, 1936 ;

(4) “ Hindu Community ” includes Jains ;

(5) “ Person having interest ” means a person who is entitled to enter or attend for the purpose of the performance of worship in a temple or who is in the habit of entering or attending for such purpose or of receiving any share in the gifts thereto ;

(6) “ Prescribed ” means prescribed by rules ;

(7) “ Rule ” means a rule made under this Act ;

(8) “ Temple ” means a place by whatever designation known used as a place of public religious worship and dedicated to or for the benefit of or used as of right by, the Hindu Community or any such section thereof, as a place of religious worship ;

(9) “ Trustee ” means a person by whatever designation known in whom the administration of a temple is vested and includes any person who is liable as if he were a trustee ;

(10) “ Worship ” includes attendance at a temple for the purpose of darshan of a diety or deities installed in or within the precincts thereof.

3. *Declaration by trustees opening the temple to Harijans.*—(1) A trustee, or if there are more than one trustee, the majority of the trustees, of a temple which, by anything contained in the terms of instrument of trust, the terms of dedication or a decree of a competent Court relating to such temple or by any custom, usage or law for the time being in force, is not open for the performance of worship to any Harijan may, of his or their own motion or on the requisition of any person having interest in such temple, notwithstanding anything contained in the terms of such instrument, the terms of the dedication, the decree, custom, usage or law, declare in writing that such temple shall from the date specified in the declaration be open to the Harijans to whom such temple was not

[Appendix 9—*contd.*]

open, for the performance of worship, subject to such conditions and the observance of such ceremonies as may be specified in the declaration ;

Provided that the conditions imposed as aforesaid shall not be made applicable to Harijans only.

(2) The declaration shall be in such form and shall contain such particulars as may be prescribed.

(3) The declaration shall be forwarded to the Court within the local limits of whose jurisdiction it is situate.

(4) The declaration forwarded to the Court shall be accompanied by an affidavit made by the trustee or the majority of the trustees, as the case may be, that he is the trustee or they are the majority of the trustees of the temple in respect of which the declaration is made and also in the case of a temple which is a public trust to which the provisions of the Bombay Public Trusts Registration Act, 1935, apply, by a certified copy of an entry in the Register of Public Trusts maintained under section 7 of the said Act relating to the names and addresses of the trustees of such public trust.

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of
1935.

4. *The publication of declaration.*—On receipt of such declaration, the Court to which it is forwarded shall cause public notice to be given at convenient places on or near the temple in respect of which the declaration has been made and shall cause the declaration to be published in the *Official Gazette* and in a newspaper published in the principal vernacular of and circulating in the district. The declaration so published shall subject to the provisions of section 6 be irrevocable and the publication of the declaration in the *Official Gazette* shall be conclusive evidence that the temple from the date specified therein shall be open to the performance of worship to the Harijans to whom it was not so open and the instrument of the trust, the terms of dedication, the decree, custom, usage or law relating to the temple shall be deemed to have been amended accordingly.

5. *Exclusion of Jurisdiction of other Courts.*—No Court shall entertain any suit or proceeding or shall pass an order or decree or execute wholly or partially any order or decree, if the claim involved in such suit or proceeding or if the passing of such order or decree or if such execution would be inconsistent with the declaration published under section 4.

6. *Suit for the declaration under section 4 being set aside.*—(1) Notwithstanding anything contained in section 5 any person interested in the temple in respect of which a declaration is made under section 4 may obtain a declaration from a competent Court :

(a) that the trustee or any of the trustees making the declaration was not entitled to act as such at the time the declaration was made ;
or

(b) that the trustees making the declaration did not form a majority of the trustees thereof at the time the declaration was made.

[Appendix 9—concl'd.]

(2) On such Court holding that the declaration so made had not been made by a trustee entitled to act as a sole trustee or by a majority of trustees for the time being entitled to act as such the Court shall set aside the declaration made under section 4.

(3) A trustee who has acted as such uninterruptedly for a period of three years prior to the date of the declaration made under section 4 shall be deemed to be a trustee entitled to act as such for the purposes of this Act.

7. *Penalty.*—Whoever obstructs or causes or tends to cause obstruction to any Harijan from the performance of worship in a temple in contravention of the declaration made under section 4, shall, on conviction, be punishable with fine which may extend to Rs. 200 and in the case of a continuing offence, with an additional fine which may extend to Rs. 20 for every day after the first during which he has persisted in the offence.

8. *Power of the Provincial Government to make rules.*—(1) The Provincial Government may make rules for the purpose of carrying out the provisions of this Act.

(2) Rules made under this section shall be subject to the condition of previous publication.

STATEMENT OF OBJECTS AND REASONS.

This is only an enabling Bill. Its object is to remove all legal difficulties in the way of those trustees of public temples, who are convinced of the justice of the claim of Harijans to make use of Hindu public temples and who desire to throw open their temples to them. It enables them to do so, notwithstanding anything contained in the instrument of trust, or the terms of dedication or a decree of a competent court or any custom, usage or law, by filing a declaration in the proper court.

K. M. MUNSHI.

8th January 1938.

APPENDIX 10.

BILL No. VI OF 1938.

A Bill to provide for the temporary relief of small holders in the Province of Bombay.

(As published in the "Bombay Government Gazette" of the 15th January 1938.)

WHEREAS it is expedient to provide for the temporary relief of small holders in the Province of Bombay and for certain other purposes specified herein ; It is hereby enacted as follows :—

1. *Short title, extent and duration.*—(1) This Act may be called the Bombay Small Holders Relief Act, 1938.

[Appendix 10—*contd.*]

(2) It shall extend to the whole of the Province of Bombay.

(3) It shall remain in force up to and inclusive of the 31st March 1939.

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context—

(1) "Person" includes an undivided Hindu family.

(2) "Small holder" means—

(a) an individual—

(i) who holds land not exceeding five acres of irrigated land or fifteen acres of other land, and

(ii) who cultivates land himself or is an inferior village servant,

(b) an undivided Hindu family—

(i) which holds land not exceeding the limits specified in clause (a) (i), and

(ii) at least one member of which personally cultivates land.

Explanation.—For the purposes of this clause, in the case of a person who holds irrigated as well as other land, one acre of irrigated land shall be deemed to be equal to three acres of other land and *vice versa*.

(3) The words and expressions used in this Act, but not defined, shall have the meanings assigned to them in the Code of Civil Procedure, 1908, and the Bombay Land Revenue Code, 1879, as the case may be.

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1908.
Bom.
V of
1879.

3. *Stay of decrees transferred to the Collector.*—(1) Notwithstanding any law for the time being in force, all proceedings pending at the date of the commencement of this Act or which may be instituted during the period for which this Act remains in force, for the sale of land belonging to a small holder for the recovery of any debt under a decree, the execution of which has been or may hereafter be transferred to the Collector under section 68 of the Code of Civil Procedure, 1908, shall, on the application of the small holder and on the amount of the interest, as specified under sub-section (2) being paid to the decree-holder or deposited with the Collector, be stayed :

Provided that such proceedings shall not be stayed if the Collector for reasons to be recorded in writing is of opinion on the application by the decree-holder that such stay will cause substantial loss to such decree-holder.

[Appendix 10—*contd.*]

(2) The interest under sub-section (1) shall be the amount of interest, if any, due under the decree on the sum for the recovery of which the land is sought to be sold for a period of one year from the date on which the said sum became payable or for a period from the said date up to the date of the application by the small holder for the stay of execution under sub-section (1), whichever period is shorter.

(3) If the Collector, on the application of the decree-holder, is of opinion that any rights of such decree-holder to the said land or to the proceeds of the sale of such land are likely to be prejudiced by reason of any proceedings taken under any law for the time being in force relating to the said land, the Collector may direct that the proceedings in execution stayed under sub-section (1) shall continue.

XVII
of
1879.

4. *Possession of property under section 22 of the Dekkhan Agriculturists' Relief Act, 1879.*—(1) Notwithstanding anything in section 22 of the Dekkhan Agriculturists' Relief Act, 1879, every order under the said section directing the Collector to take possession of land belonging to a small holder passed before or after the commencement of this Act shall not take effect before 31st day of March 1939.

(2) Nothing in this section shall affect the power of the Collector to deal under the said section with any land, the possession of which has been taken before the commencement of this Act.

5. *Restriction on private transfer by small holder.*—Notwithstanding anything contained in any law for the time being in force, no private transfer of any land belonging to a small holder, the proceedings for the sale of which have been stayed under this Act or of any interest therein made by him after this Act comes into force, shall be valid except with the previous sanction of the Collector of the district in which such land is situate :

Provided that no such sanction shall be given unless the Collector is of opinion—

(a) that such transfer will enable the small holder to effect a composition in satisfaction of the debts due to all his creditors ; or

(b) (i) that substantial loss will be caused to such small holder if such transfer of such land or interest therein is not sanctioned ; and

(ii) that such transfer does not adversely affect the interests of any creditor of the small holder.

6. *Collector's decision to be final in certain cases.*—If in any proceedings under any of the three preceding sections, a question arises whether a person is a small holder such question shall be decided by the Collector and the decision of the Collector shall, notwithstanding anything contained in any law for the time being in force, be final.

[Appendix 10—concl'd.]

7. *Bar against eviction of tenant.*—Notwithstanding any law for the time being in force or any contract between the parties, no tenant who has been in possession of land used for the purpose of agriculture uninterruptedly from the first day of January 1932 shall, in pursuance of any decree or order of any Court, be evicted from such land, if such tenant tenders to the landlord or any person acting on his behalf all rent due in respect of the land for the year ending with the 30th day of June 1938, and is willing to hold the land thereafter as a tenant on the same terms and conditions on which he was holding the same at the date when the cause of action arose to the landlord for the purpose of evicting him.

8. *Revival of rights, liabilities and obligations after the expiry of the Act.*—Any right, privilege, obligation or liability acquired, accrued or incurred under any enactment, decree or order of any Court, or any contract between the parties immediately before the commencement of this Act or which may be acquired, accrued or incurred, during the period for which this Act remains in force, but the enforcement of which has been stayed by the provisions of this Act, shall immediately on the expiration of this Act, revive and be enforceable as if this Act had not been passed.

9. *Delegation of powers of Collector.*—All powers exercisable by the Collector under this Act may be exercised by the Assistant or Deputy Collector or by such officer as may be empowered by the Collector in this behalf.

10. *Rules.*—The Provincial Government may, by notification in the Official Gazette, make rules to carry out the purposes and objects of this Act.

STATEMENT OF OBJECTS AND REASONS.

The Government have under consideration the question of the relief of agricultural indebtedness and the regulation of tenancies, but the framing of a complete scheme for this purpose requires very careful consideration and the detailed working out of the necessary measures. This obviously requires time. But in the meanwhile Government consider that it is necessary to prevent the sale of the lands of small agriculturists whose redemption from heavy indebtedness is one of the most important responsibilities of Government. The present legislative measure is intended to serve this purpose and to prevent the proposed remedies from being frustrated before the necessary legislation becomes operative.

K. M. MUNSHI.

15th January 1938.

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APPENDIX 11.

BILL No. VII OF 1938.

A Bill to regulate the transactions of money-lending in the Province of Bombay.

(As published in the "Bombay Government Gazette" of the 17th January 1938.)

WHEREAS it is expedient to make better provision for the regulation and control of transactions of money-lending; It is hereby enacted as follows :—

CHAPTER I.

1. *Short title, extent and commencement.*—(1) This Act may be called the Bombay Money-lenders Act, 1938.

(2) It extends to the whole of the Province of Bombay.

(3) It shall come into force on such date as the Provincial Government may by notification in the Official Gazette appoint in this behalf.

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context—

VII of 1913. (1) "Bank" means a Banking Company as defined in section 277F of the Indian Companies Act, 1913, whether incorporated in or outside British India;

(2) "Capital" means a sum of money which a money-lender invests in the business of money-lending;

VII of 1913. (3) "Company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament, or by a Royal Charter or Letters Patent, or by an Act of the Legislature of a British Possession;

(4) "Competent Court" means a Court empowered under section 3 to entertain proceedings under this Act and to pass orders therein;

Bom. VII of 1925. II of 1912. (5) "Co-operative Society" means a society registered or deemed to have been registered under the Bombay Co-operative Societies Act, 1925, or the Co-operative Societies Act, 1912, or any Act of any other Provincial Legislature relating to such society;

(6) "Interest" includes any sum by whatsoever name called, in excess of the principal paid or payable to a money-lender in consideration of or otherwise in respect of a loan, but does not include any sum lawfully charged in accordance with the provisions of this Act, or any other law for the time being in force by a money-lender for or on account of costs, charges or expenses;

[Appendix II—*contd.*]

(7) "Licence" means a licence or a supplementary licence granted under section 10 and includes a licence granted under section 14 ;

(8) "Licence duty" means the duty payable in respect of a licence ;

(9) "Loan" means an advance, whether of money or in kind and includes any transaction which is in substance a loan but does not include—

(a) a deposit of money or other property in a Government Post Office Bank or any Bank or in a company or with a co-operative society ;

(b) a loan to, or by, or a deposit with any society or association ^{XXI} registered under the Societies Registration Act, 1860, or any other of 1860. enactment relating to a public, religious or charitable object ;

(c) a loan advanced by Government or by any local authority authorised by Government ;

(d) a loan advanced by a co-operative society ;

(e) an advance made on the basis of a negotiable instrument ^{XXVI} as defined in the Negotiable Instruments Act, 1881, other than of 1881. a promissory note ;

(10) "Money-lender" means an individual or an undivided Hindu family or an unincorporated body of individuals or body corporate incorporated under any law in British India, or any place outside British India, or stands to any such body corporate in the relation of a subsidiary body, who or which—

(i) carries on the business of money-lending in the Province ; or

(ii) has his or its principal place of such business in the Province ; and includes a pawn-broker ;

(11) "Money-lending business" or "business of money-lending" means the business of advancing loans either solely or in common with any business ;

(12) "Pawn-broker" means a pawnee as defined in section 172 ^{IX of} of the Indian Contract Act, 1872 ; 1872.

(13) "Prescribed" means prescribed by rules under this Act ;

(14) "Principal" means in relation to a loan the amount actually lent to the debtor ;

(15) "Proceedings under this Act" means proceedings under sub-section (3) of section 10, or sub-section (3) of section 15, or under section 16, 17, 35 or 36 ;

(16) "Province" means the Province of Bombay ;

[Appendix 11—*contd.*]

(17) "Register" means a register of money-lenders maintained under section 7 ;

(18) "Registrar" means the Registrar of money-lenders appointed under section 6 ;

(19) "Rules" means rules made under this Act ;

(20) "Schedule" means the schedule appended to this Act ; and

(21) "Suit to which this Act applies" means any suit or proceeding—

(a) for the recovery of a loan made after the commencement of this Act ;

(b) for the enforcement of any security taken or any agreement whether by way of settlement of account or otherwise, made after the commencement of this Act in respect of any loan made either before or after the commencement of this Act ; or

(c) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act.

CHAPTER II.

CONSTITUTION AND POWERS OF COURTS IN PROCEEDINGS UNDER THIS ACT.

3. *Competent Courts under the Act.*—The Courts referred to herein as Competent Courts, having jurisdiction to entertain proceedings under this Act and to pass orders therein are :—

(a) In the City of Bombay—

(i) the Court of the Presidency Small Causes Court—in proceedings under this Act to which a money-lender (who carries on the business of money-lending in the City and whose capital is or is intended to be, as the case may be, less than Rs. 10,000 in the year in which the proceedings are held) is a party ;

(ii) the High Court in its ordinary original jurisdiction—in proceedings under this Act to which a money-lender (who carries on the business of money-lending in the City and whose capital is or is intended to be, as the case may be, Rs. 10,000 or more in the year in which the proceedings are held) is a party ;

(b) Outside the City of Bombay—

(i) the Court of the Second Class Subordinate Judge—in proceedings under this Act to which a money-lender (who carries on or intends to carry on the business of money-lending within the

[Appendix 11—*contd.*]

local limits of such Court and whose capital is or is intended to be, as the case may be, less than Rs. 10,000 in the year in which such proceedings are held) is a party;

(ii) the Court of the First Class Subordinate Judge—in proceedings under this Act to which a money-lender (who carries on the business of money-lending within the local limits of the jurisdiction of such Court and whose capital is or is intended to be, as the case may be; Rs. 10,000 or more in the year in which such proceedings are held) is a party.

4. *Procedure in Competent Courts.*—Subject to the provisions of this Act, a Competent Court in regard to proceedings under this Act shall have the same powers and shall follow the same procedure as it has and follows in regard to civil suits.

5. *Appellate Courts.*—(1) Any person aggrieved by a decision or order in proceedings under this Act may appeal—

(a) to the High Court in its appellate jurisdiction from a decision or order passed by the High Court in its ordinary original jurisdiction or by the Court of the Presidency Small Causes Court ;

(b) to the District Court from a decision or order passed by the Court of a Second Class or First Class Subordinate Judge.

(2) Any person aggrieved by a decision or order of a District Court in appeal under sub-section (1) may, subject to the provisions of section 100 of the Code of Civil Procedure, 1908, appeal to the High Court in its appellate jurisdiction. v of
1908.

(3) (a) The period of limitation for appeals under sub-section (1) shall be 30 days and for appeals under sub-section (2) 90 days ;

(b) The provisions of the Indian Limitation Act, 1908, applicable to appeals shall, so far as may be, apply to appeals under this section. IX of
1908.

CHAPTER III.

REGISTRATION AND LICENSING OF MONEY-LENDERS.

6. *Appointment of Registrar.*—The Provincial Government may appoint Registrars of money-lenders for the purposes of this Act and may define the areas within which each Registrar shall exercise his powers and perform his duties.

7. *Register of money-lenders.*—The Registrar shall maintain a register of money-lenders in such form as may be prescribed.

8. *Money-lender not to carry on business of money-lending except for area under licence and except in accordance with terms of licence.*—No

[Appendix 11—*contd.*]

money-lender shall carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence.

9. *Application for licences.*—(1) Every money-lender shall annually before such date as may be prescribed make an application in the prescribed form for the grant of a licence to the Registrar of the area within the limits of which he intends to carry on the business of money-lending. Such application shall contain the following particulars, viz.—

(a) the name in which such money-lender intends to carry on business ;

(b) if the application is by or on behalf of—

(i) an individual, the name and address of such individual,

(ii) an undivided Hindu family, the names and addresses of the manager and the adult co-parceners of such family,

(iii) a body corporate, the names and addresses of the director, managers or officers thereof,

(iv) an unincorporated body of individuals, the names and addresses of such individuals ;

(c) the area and the place or principal place of the business of money-lending in the Province ;

(d) the name of any other place in the Province where the business of money-lending is carried on or intended to be carried on ;

(e) whether the person signing the application has himself, or any of the adult co-parceners of an undivided Hindu family, or any member of the body corporate or unincorporated on behalf of which such application has been made has, or have carried on the business of money-lending in the Province in the year ending on the 31st day of March immediately preceding the date of the application either individually, or in partnership, or jointly with any other co-parcener or any other person in the same or any other name ;

(f) the total amount of the capital which such person intends to invest in the business of money-lending in the year for which the application has been made.

(2) The application shall be in writing and shall be signed by the individual, or, if the application is made on behalf of an undivided Hindu family, by the manager and the adult co-parceners of such family, or, if the application is made by a body corporate or unincorporated by the managing director or any other person having control of its principal place of business in British India or of its place of business in the area in which it intends to carry on the business or by an agent authorised in this behalf by the individual money-lender himself, or the family, or the body corporate or unincorporated, as the case may be.

[Appendix 11—*contd.*]

(3) The application shall also contain such other particulars as may from time to time be prescribed.

(4) A money-lender may apply for the grant of a licence to the Registrars of more than one area within the limits of which he intends to carry on the business of money-lending.

(5) If during the pendency of the year for which a licence has been granted to a money-lender such money-lender intends to invest additional capital in the business of money-lending in any particular area he may apply to the Registrar for the grant of a supplementary licence.

10. *Entry in Register and grant of licences.*—(1) On the receipt of an application under section 9 and on payment in the prescribed manner of such licence duty as is specified in the Schedule, the Registrar may, subject to the provisions of section 14 and after making a summary inquiry, enter the name of such applicant in the Register and grant the applicant a licence in such form and subject to such conditions as may be prescribed.

(2) If, at any time during a year for which a licence has been granted, the Registrar has reason to believe that a money-lender has invested capital in the business of money-lending in excess of that for which he has paid the licence duty, the Registrar may, after making a summary inquiry, determine the additional amount of the licence duty which the money-lender is liable to pay and may recover the same from the money-lender.

(3) For the purpose of sub-sections (1) and (2), the Registrar shall have ^{V of} and may exercise the same powers as are vested in a Civil Court under 1908. the Code of Civil Procedure, 1908, in respect of the following matters :—

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents and material objects;
- (c) issuing commissions for the examination of witnesses; and
- (d) proof of facts by affidavits.

(4) The provisions of this section shall apply *mutatis mutandis* to application for a supplementary licence under sub-section (5) of section 9.

11. *Licences to be annual.*—Every licence shall be granted annually but shall expire on the 31st day of March in each year immediately following the date on which it was granted.

12. *Money-lender not to carry on money-lending business for area for which he does not hold licence.*—No money-lender shall after the commencement of this Act carry on or continue to carry on the business of money-lending in any area in the Province for which he does not hold a licence.

[Appendix 11—*contd.*]

13. *Stay of suits by money-lenders not holding licence.*—(1) After the expiry of six months from the date on which this Act comes into force, no Court shall pass a decree in favour of a money-lender in any suit to which this Act applies, and filed by a money-lender, unless the Court is satisfied that at the time when the loan or a part of the loan to which the suit relates was advanced, the money-lender held a licence which was not suspended, cancelled, or which had not expired.

(2) If during the trial of any such suit, the Court finds that the money-lender had not held such licence, the Court may, on the application of the money-lender, stay the hearing of the suit and may require the money-lender within a period of three months to produce a licence on payment to the Registrar of all the arrears of the licence duty payable by him under this Act for the period commencing from the date from which he started money-lending business, or after the expiry of six months from the date on which this Act comes into force, whichever is later, together with penalty not exceeding three times the licence duty payable by the money-lender for the year in which such licence should have been obtained :

Provided that when the Court is satisfied that the failure of the money-lender to obtain a licence was due to any reasonable cause, the Court may direct that no penalty as aforesaid or part of such penalty shall be paid by the money-lender.

(3) The Court may, on sufficient cause being shown, from time to time extend the period during which the money-lender shall be required to produce a licence.

(4) If the money-lender fails to produce the licence required under sub-section (2) within the period specified therein or within such period as may be extended under sub-section (3), the Court shall dismiss the suit. If the money-lender produces such licence within the aforesaid period, the Court shall proceed to hear the suit.

(5) The provisions of this section shall apply to a claim for a set off on behalf of a money-lender.

(6) Nothing in this section shall—

(a) bar suits in respect of loans advanced by a money-lender before the expiry of six months from the date on which this Act comes into force ; or

(b) affect the powers of a Court of Wards, or a manager of an estate taken under management under the Broach and Kaira Incumbered Estates Act, 1881, or the Gujarat Talukdars Act, 1888, or an Official Assignee, a receiver, or a Court under the provisions of the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, or of a liquidator under the Indian Companies Act, 1913, to realize the property of a money-lender in respect of loans advanced by such money-lender before this Act comes into force.

[Appendix 11—*contd.*]

14. *Entry in register and grant of licence to a money-lender directed to obtain licence under section 8.*—Any money-lender who is required under sub-section (2) of section 13 to produce a licence shall make an application to the Registrar in the manner specified in section 9 and on receipt of such application and on payment of the arrears of licence duty and penalty, if any, directed by the Court to be paid, the Registrar may, subject to the provisions of section 15, and after making a summary inquiry in the manner specified in section 10 enter the name of the money-lender in the Register and grant him the licence in the form and subject to the conditions specified in the section.

15. *Refusal of issue of licence.*—(1) The grant of a licence shall not be refused except on one or more of the following grounds:—

(a) that the applicant, or any person responsible or proposed to be responsible for the management of his business as a money-lender is by order of a Competent Court disqualified for holding a licence;

(b) that the applicant has not complied with the provisions of this Act or the rules in respect of an application for the grant of a licence;

(c) that the applicant has made wilful default in complying with or knowingly acted in contravention of any requirement of this Act;

(d) that satisfactory evidence has been produced that the applicant or any person responsible or proposed to be responsible for the management of his business of money-lending has—

(i) knowingly participated in or connived at any fraud or dishonesty in the conduct of his business, or

(ii) has been found guilty of an offence under Chapter XVII or XLV of offences under section 465, 477 or 477-A of Chapter XVIII of the ^{of} 1860. Indian Penal Code.

(2) The Registrar refusing a licence under sub-section (1) shall record the evidence adduced before him and his reasons in writing for such refusal.

(3) An appeal shall lie from the order of the Registrar refusing a licence to the Competent Court.

16. *Application for cancellation of licence.*—(1) Any person may file an application to the Competent Court for the cancellation of the licence issued to a money-lender on the ground that such money-lender has been guilty of any act or conduct for which the Registrar under section 15 may refuse him the grant of a licence.

(2) On the receipt of such application, the Court shall hold an inquiry and shall ascertain whether the money-lender has been guilty of such act or conduct.

(3) Any person making an application under this section, which is frivolous or vexatious shall be liable to pay to the money-lender against

[Appendix 11—*contd.*]

whom such application has been made, compensation of such amount as shall, in the opinion of the Court, be sufficient.

17. *Court's power to cancel or suspend a licence.*—(1) (i) The Court passing an order of conviction against a money-lender for an offence under this Act, or

(ii) the Court trying a suit to which this Act applies, or

(iii) a Competent Court in a proceeding under this Act,

if such Court is satisfied that such money-lender has committed such contravention of the provisions of this Act or the rules as would, in its opinion, make him unfit to carry on the business of money-lending—

(a) may order that the licence held by such money-lender be suspended for such time as the Court may think fit, or cancelled ;

(b) may also, if the Court thinks fit, declare any such money-lender, or if any such money-lender is an undivided family, the manager or any adult coparceners thereof, or if such money-lender is a body corporate, or unincorporated, any person responsible for the management of business of money-lending carried on by such money-lender be disqualified from holding a licence for such time as the Court may think fit ;

(c) shall cause the particulars of the conviction and of any order made by the Court under this section to be endorsed on the licence held by the money-lender convicted or by any other person affected by the order and shall cause copies of its order to be sent to the Registrar by whom the licence was granted for the purpose of entering such particulars in the Register :

Provided that where a licence held by any money-lender is suspended or cancelled or any money-lender is disqualified from holding a licence under this section, he may, whether or not he is a person convicted, appeal against such order to the Court to which an appeal ordinarily lies from the decision of the Court passing the order ; and the Court which passed the order or the Court of appeal may, if it thinks fit, pending the appeal, stay the operation of the order under this section.

(2) Any licence required by a Court for endorsement in accordance with sub-section (1) shall be produced in such manner and within such time as may be directed by the Court by the person by whom it is held and any person who, without reasonable cause, makes default in producing the licence so required shall, in respect of each offence be liable on conviction, to a fine not exceeding Rs. 500 for each day for the period during which the default continues.

(3) Powers conferred on a Court under this section may be exercised by any Court in appeal or in revision.

[Appendix 11—*contd.*]

18. *No compensation for suspension or cancellation of licence.*—Any person to whom a licence has been granted shall not be entitled to any compensation for the suspension or cancellation of a licence under this Act, nor to refund of any licence duty paid or deposit made in respect thereof.

19. *Persons whose licence is cancelled or suspended debarred from doing business of money-lending.*—Any person whose licence has been cancelled or suspended in accordance with the provisions of this Act shall, during the period for which such order of cancellation has effect or during the period of suspension, as the case may be, be deemed to be disqualified for holding a licence.

20. *Person whose licence is cancelled or suspended not to apply without giving particulars of endorsement or of disqualification.*—No person whose licence has been endorsed under section 17 or who has been disqualified from holding a licence shall apply for, or hold a licence, without giving particulars of such endorsement or disqualification.

21. *Licence duty recoverable as an arrear of land revenue.*—All licence duty including the balance of such duty due on the suspension or cancellation of a licence shall be recoverable as an arrear of land revenue.

CHAPTER IV.

REGULATION OF ACCOUNTS.

22. *Duty of money-lender to keep accounts.*—(1) Every money-lender shall keep and maintain at least a cash book and a ledger in such form as may be prescribed and shall write the same in regular course of business.

(2) Every money-lender shall—

(a) deliver to the debtor within a reasonable time after a loan is made, a statement in the language in which he keeps his accounts showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the debtor and of the money-lender and the rate of interest charged ;

(b) give to the debtor a plain and complete receipt for all payments made on account of any such loan within a reasonable time after such payments are made ;

(c) upon repayment of the loan in full, mark indelibly every paper signed by the debtor with words indicating payment or cancellation and discharge any mortgage, restore any pledge, return any note and cancel any assignment given by the debtor as security.

23. *Furnishing of statement of accounts by money-lender.*—(1) Every money-lender shall furnish every debtor every year with a legible statement of accounts signed by the money-lender or his agent of any

[Appendix 11—*contd.*]

balance or the amount that may be outstanding against such debtor and such statement shall show—

(i) the amounts of the principal and interest due to the money-lender at the commencement of the year ;

(ii) the amount of any payment already received by the money-lender in respect of the loan during such year and the date on which it was made ;

(iii) the amount of every sum due to the money-lender remaining unpaid, and the date upon which it became due and the amount of interest accrued due and unpaid in respect of every such sum ;

(iv) the amount of every sum not yet due which remains outstanding and the date upon which it will become due.

The statement shall be signed by the money-lender, or his agent, and shall be in the language in which the accounts of the money-lender are ordinarily kept. It shall be in such form and shall be supplied on such date as may be prescribed.

(2) In respect of any particular loan, whether advanced before or after the commencement of this Act, the money-lender shall, on any reasonable demand in writing being made by the debtor at any time during the period when the loan or any part thereof has not been repaid, and on payment of the prescribed fee supply to the debtor, or if the debtor so requires to any person specified in that behalf in the demand a statement in the language in which the accounts of the money-lender are ordinarily kept signed by the money-lender or his agent and showing all or any of the particulars specified in sub-section (1). Such statement shall be supplied in the English language, if the debtor pays the money-lender a fee of Rs. 2 or in any other recognised language of the Province if the debtor pays a fee of Rs. 4.

For the purposes of this sub-section the recognised languages of the Province mean any of the following languages, namely, Gujarati, Marathi, Kanarese, Urdu and Hindi.

(3) A money-lender shall, on a demand in writing by the debtor, and on tender of a prescribed sum of expenses, supply a copy of any document relating to a loan made by him or any security therefor to the debtor, or if the debtor so requires to any person specified in that behalf in the demand.

(4) For the purposes of this section "year" shall mean the year for which the accounts of the money-lender are ordinarily maintained in his own books.

24. *Debtor not bound to admit correctness of accounts.*—A debtor to whom a statement of accounts has been furnished under section 23 shall

[Appendix 11—*contd.*]

not be bound to acknowledge or deny its correctness and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the account.

25. *Procedure of Court in suits regarding loans.*—Notwithstanding anything contained in any law for the time being in force in any suit to which this Act applies—

(a) a Court shall, before deciding the claim on merits, frame and decide the issue whether the money-lender has complied with the provisions of section 22 or 23 ;

(b) if the Court finds that the provisions of section 22 or section 23 have not been complied with by the money-lender, it may, if the plaintiff's claim is established, in whole or in part, disallow the whole or any portion of the interest found due as may seem reasonable to it in the circumstances of the case and may disallow costs ; or in computing the amount of interest due upon the loan, may exclude any period for which the money-lender omitted to comply with the provisions of either of the said sections ;

Provided that if the money-lender has, after the time specified in the said sections, given the receipt or furnished the account, as the case may be, and he satisfies the Court that he had sufficient cause for not furnishing it earlier, the Court may, notwithstanding such omission, include any such period or periods for the purpose of computing the interest.

Explanation.—A money-lender who has given the receipt or furnished a statement of accounts in the prescribed form and manner, shall be held to have complied with the provisions of section 22 or section 23, as the case may be, in spite of any errors and omissions, if the Court finds that such errors and omissions are not material or not made fraudulently.

26. *Provisions of this Chapter not to apply to loans made by Bank, Company, or body corporate, or unincorporated.*—Nothing in this Chapter shall apply to loans advanced by a Bank, or a Company, or any body corporate or unincorporated which the Provincial Government may by notification in the Official Gazette exempt from the operation of this Chapter.

CHAPTER V.

MISCELLANEOUS.

27. *Power of the Court to limit interest recoverable in certain cases.*—Notwithstanding anything contained in any agreement or any law for the time being in force, no Court shall in respect of any loan advanced before or after this Act comes into force, decree, on account of arrears of interest, a sum greater than the principal of the original loan.

[Appendix 11—*contd.*]

V of 1908. 28. *Power of the Court to direct payment of decretal amount by instalments.*—Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Court may, at any time, on application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after the Act comes into force, in respect of a loan, shall be paid in such number of instalments and subject to such conditions, and payable on such dates, as, having regard to circumstances of the judgment-debtor and the amount of the decree, it considers fit.

29. *Limitations as to rate of interest.*—Notwithstanding anything contained in any law for the time being in force, no agreement between a money-lender and a debtor for payment of interest at the rate exceeding 9 per cent. per annum in the case of a secured loan and 12 per cent. per annum in the case of an unsecured loan shall be valid and no Court shall in any suit to which this Act applies award interest exceeding the said rates.

30. *Prohibition of compound interest and provision as to defaulting.*—Any agreement made after the commencement of this Act for the loan of money by a money-lender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest :

Provided that provision may be made in any such agreement that if default is made in the payment upon the due date of any sum payable to the money-lender under the contract, whether in respect of principal or interest, or both, the money-lender shall, subject to the provisions of section 29, be entitled to charge simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan.

31. *Prohibition of charge for expenses on loans by money-lenders.*—Any agreement between a money-lender and a debtor or intending debtor for the payment by the debtor or intending debtor to the money-lender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be illegal and if any sum is paid to a money-lender by the debtor or intending debtor as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the debtor or intending debtor, or, in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and the amount shall be deemed to be reduced accordingly.

Exception.—Nothing in this section shall debar a money-lender from recovering costs of investigating title to the property, costs of stamp, registration of documents and other usual out of pocket expenses in cases where the contract includes a stipulation that property is to be given as security or by way of mortgage and where both parties have

[Appendix 11—*contd.*]

agreed to such costs and reimbursement thereof; or where such costs, charges or expenses are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force.

IV of
1882.

32. Notice and information to be given on assignment of loans.—Where a loan advanced, whether before or after the commencement of this Act, or any interest of such loan or the benefit of any agreement made or security taken in respect of such loan or interest is assigned to any assignee, the assignor (whether he is the money-lender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made—

(a) give the assignee notice in writing that the loan, agreement or security is affected by the operation of this Act; and

(b) supply to the assignee all information necessary to enable him to comply with the provisions of this Act relating to the obligation to supply information as to the state of loans and copies of documents relating thereto,

and any person acting in contravention of any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention.

33. Application of Act as respects assignees.—(1) Save as hereinafter provided, the provisions of this Act shall continue to apply as respects any debt to a money-lender in respect of money lent by him after the commencement of this Act or in respect of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and, except, where the context otherwise requires, references in this Act to a money-lender shall accordingly be construed as including any such assignee as aforesaid:

Provided that—

(a) notwithstanding anything in this Act—

(i) any agreement with, or security taken by, a money-lender in respect of money lent by him after the commencement of this Act shall be valid in favour of any *bona fide* assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him; and

(ii) any payment or transfer of money or property made *bona fide* by any person, whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such agreement or security, without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid.

(2) Nothing in this section shall render valid for any purpose any agreement, security, or other transaction which would, apart from the provisions of this Act, have been void or unenforceable.

[Appendix 11—*contd.*]

34. *Reopening of transactions.*—Notwithstanding anything contained in any law for the time being in force, the Court shall, in any suit to which this Act applies, whether heard *ex parte* or otherwise—

(a) reopen any transaction, or any account already taken between the parties ;

(b) take an account between the parties ;

(c) release the debtor of all liability in respect of any excessive interest ;

(d) if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof :

Provided that in the exercise of these powers, the Court shall not—

(i) reopen any adjustment or agreement purporting to close previous dealings and to create new obligations which have been entered into by the parties or any person through whom they claim at a date more than three years from the date of the suit ;

(ii) do anything which affects any decree of a Court.

Explanation.—For the purpose of this section.

(1) In the case of a suit brought on a series of transactions, the expression “ transaction ” shall mean the first of such transactions.

(2) Excessive interest means the rate of interest which contravenes any of the provisions of sections 29 and 30.

35. *Inquiry for taking accounts and declaring the amount due.*—(1) Any debtor may make an application at any time to the Competent Court whether the loan to which the suit relates has or has not become payable for taking accounts and for declaring the amount due to the money-lender. Such application shall be in the prescribed form and shall be accompanied by a prescribed fee.

(2) On receipt of such application, the Court shall cause a notice of the application to be given to the money-lender.

(3) On the date fixed for the hearing of the application or on such date to which the hearing may be adjourned from time to time, the Court shall make an inquiry and shall after taking an account of the transactions between the parties pass an order declaring the amount, if any, still payable by the debtor to the money-lender, in respect of the principal and interest, if any. In taking accounts under this section the Court shall follow the provisions of Chapter IV and this Chapter.

36. *Deposit in Court of money due to money-lender.*—(1) At any time after a debtor has sent to a money-lender any sum of money due from him to the money-lender in respect of a loan by way of principal, interest

[Appendix 11—*contd.*]

or both, if the money-lender refuses to accept the sum, the debtor may apply to the Competent Court to deposit the said sum in Court to the account of the money-lender.

(2) The Court shall thereupon cause written notice of the deposit to be served on the money-lender, and the money-lender may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the sum then due in respect of the loan, and his willingness to accept the money so deposited, receive the sum.

(3) If the money-lender withdraws the sum deposited by a debtor under sub-section (1), he shall not be bound by any statement made by the debtor in depositing the sum.

(4) When the debtor has deposited in the Court under this section the sum due in respect of the loan, if such money is in payment of the principal or any part thereof, the interest on such principal or part shall notwithstanding any agreement between the parties cease from the date of the service of notice on the money-lender under sub-section (2).

(5) Nothing in this section shall affect the operation of the provisions of sections 83 and 84 of the Transfer of Property Act, 1882, in regard to loans to which the said provisions apply. IV of
1882.

37. Entry of a sum in a bond, etc., greater than the loan advanced to be an offence.—(1) No money-lender shall obtain a decree, whether *ex parte* or by consent or otherwise or an award to which the debtor is a party, or take any power of attorney, any note, promise to pay, or security, which does not state the actual amount of the loan, or which states such amount wrongly or which does not state the time for which it is made and the rate of interest charged, or any instrument in which blanks are left to be filled after execution.

(2) Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punishable with fine which may extend to Rs. 1,000.

(3) Notwithstanding anything in any law in force, any such decree, award, power of attorney, note, promise or security shall be void and shall not be enforceable.

38. Penalty for molestation.—(1) Whoever molests, or abets the molestation of, a debtor for the recovery of a debt owed by him to creditor shall be punishable with imprisonment of either description which may extend to three months or with fine which may extend to five hundred rupees or with both.

Explanation.—For the purposes of this section, a person who, with intent to cause another person to abstain from doing or to do any act which he has a right to do or to abstain from doing—

(a) obstructs or uses violence to or intimidates such other person,
or

[Appendix 11—*contd.*]

(b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in, the use thereof, or

(c) loiters or does any similar act at or near a house or other place where such other person resides or works, or carries on business, or happens to be,

shall be deemed to molest such other person :

Provided that a person who attends at or near such house or place in order merely to obtain or communicate information or to make a demand for a loan due shall not be deemed to molest.

V of
1898. (2) Notwithstanding anything contained in the Second Schedule to the Code of Criminal Procedure, 1898, an offence under this section shall be cognizable offence as defined in the Code and the rest of the provisions of the Code shall have effect accordingly.

39. *General provision regarding penalties.*—Whoever makes default in complying with or acts in contravention of any provision of this Act and if the money-lender is—

(i) an individual, such individual, or

(ii) an undivided Hindu family, the manager and all adult co-parceners of such family,

(iii) a body corporate, the Director, Manager or any officer of such body, or

(iv) an unincorporated body, all members of such body,

who is or are knowingly a party to such contravention, shall, if no specific penalty has been provided in this Act, be punishable—

(a) for the first offence with fine which may extend to Rs. 200,

(b) for the second offence with fine which may extend to Rs. 500, and

(c) for any subsequent offence to rigorous imprisonment which may extend to three months.

XLV
of
1860. 40. *Every officer to be public servant.*—Every officer of the Crown acting under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

41. *Protection to persons acting under the Act.*—No suit or proceeding shall lie against any officer of the Crown for anything which is in good faith done or intended to be done under this Act.

42. *Rules.*—(1) The Provincial Government may make rules for carrying out the purposes of this Act.

[Appendix 11—*contd.*]

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for the following matters :—

- (a) the form of the register under section 7 ;
- (b) the form of the application for a licence and the further particulars to be included therein under section 9 ;
- (c) the form and conditions of the licence, the manner of payment of licence duty and the procedure for a summary inquiry under section 10 ;
- (d) the language, form, manner of the statement of accounts and the details to be included therein under section 23 and the sum of money to be paid for a copy of a document ;
- (e) the fee and the sum of expenses to be paid under section 23 ; and
- (f) any other matter which is or may be prescribed under this Act or any matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the Provincial Government, necessary for giving effect to the provisions of this Act.

(3) Rules made under this section shall be subject to the condition of previous publication in the Official Gazette.

Schedule of licence duty.

(Section 10.)

The amount of capital advanced in the previous year ending on 31st of March, immediately preceding the date of the application.	The amount of licence duty payable.
	Rs.
Not exceeding Rs. 2,000	1
Not exceeding Rs. 5,000	10
Not exceeding Rs. 10,000	25
Not exceeding Rs. 50,000	50
Not exceeding Rs. 1,00,000	100
Not exceeding Rs. 10,00,000	500
Exceeding Rs. 10,00,000	1,000

[Appendix 11—*contd.*]

STATEMENT OF OBJECTS AND REASONS.

The money-lenders at present are not regulated by any enactment. There are certain enactments such as the Dekkhan Agriculturists' Relief Act, the Usurious Loans Act, which control some aspects of the transactions of money-lenders. It has been generally recognised that there must be some legislation which will enable Government to have some control over persons who play such a large part in the economic life of the population. Government have, therefore, brought forward this Bill.

2. Broadly it is divided into five Chapters :

Chapter I deals with definitions.

Chapter II deals with power of Courts.

Chapter III deals with the registration and licensing of money-lenders.

Chapter IV deals with the regulation of accounts.

Chapter V is miscellaneous.

3. *Chapter III.*—Every money-lender is required to take out a licence from a Registrar of Money-Lenders, appointed by the Provincial Government for defined areas. From the scope of the Bill are excluded, by the definition of money-lender read with that of loan, deposits of money or other property in a Government Post Office Bank, or any other Bank, or in a Company, or with a Co-operative Society. Loans advanced by or deposits with societies registered under the Act of 1860 are similarly excluded. It is proposed to enforce the Act after the expiry of six months from the commencement thereof. Money-lenders not holding a licence under the Act are precluded from getting a decree from any Court in a suit to which the Act applies. The failure to obtain a licence would not necessarily non-suit the plaintiff money-lender; the Court may require him to produce a licence within three months and may give him more time for such production. Such licence would be obtainable on payment of all the arrears of the licence duty and penalty, subject to a maximum of three times the licence duty payable for the year. The grounds for the refusal of licence by the Registrar are limited to four cases only—

(i) when the applicant is disqualified by the Court to hold a licence ;

(ii) when the applicant has not complied with the provisions of the Act or Rules ;

(iii) when the applicant has made wilful default in complying with the requirements of this Act ;

(iv) when satisfactory evidence has been produced that the applicant has knowingly participated in fraud or dishonesty in the

[Appendix 11—*contd.*]

conduct of his business or has been guilty of an offence under Chapter XVII or section 465, 477 or 477A of the Indian Penal Code.

4. Provision has been made for any person filing an application for cancellation of a licence granted to a money-lender on any of the grounds on which a licence could have been refused as above. Power is given to Court passing an order of conviction against a money-lender to order a licence to be suspended or cancelled.

5. *Chapter IV.*—An important feature of the Bill is the requirement of keeping accounts by money-lenders. Every money-lender is to deliver to the debtor a statement of accounts; a plain and complete receipt for every payment; and on repayment of the loan in full he is required to mark indelibly every paper signed by the debtor indicating payment or cancellation and discharge of any mortgage, etc.

6. Provision is also made for special procedure in Courts in suits regarding loans. In every suit to which a money-lender is a party a duty is imposed upon Courts to see that the money-lender has complied with the provisions of sections 22 and 23. Where he has not, the Court has been given power to disallow the whole or any portion of the interest found due. The provisions regarding accounts are not to apply to banks, or companies, or bodies corporate or unincorporated which may be exempted by the Provincial Government.

7. *Chapter V.*—This chapter deals with general provisions. Interest exceeding in amount the principal of the original loan is prohibited. The Court is also given power to order the amount of any decree to be paid in instalments or subject to such conditions as the Court deems fit, having regard to the circumstances of the judgment-debtor and the amount of the decree.

8. The rate of interest, notwithstanding any agreement between the money-lender and debtor, is limited to 9 per cent. in the case of secured loans and 12 per cent. in the case of unsecured loans. Compound interest is prohibited. Similarly charges on account of expenses incurred by money-lenders in respect of loans are prohibited. It is, however, provided that reasonable costs for the inspection of revenue and registration records including examination of title may be charged by a money-lender.

9. Where a loan is assigned the Bill provides for notice and information to be given to the assignee of the assignment of the loan, to enable the assignee to comply with the provisions of the Act regarding supply of information, copies of documents, etc. The provisions of the Act are made applicable to such assignees.

10. Power is given to the Court to reopen transactions. It is, however, provided that any agreement or adjustments shall not be reopened unless they have been entered into within three years of the date of the suit. It is also provided that the Court shall not reopen a transaction if it affects a decree of a Court.

[Appendix 11—concl'd.]

11. A summary remedy is provided by which a debtor may apply to the Court for taking accounts and for a declaration regarding the amount due to the creditor. It is also provided that if the Court finds that the money-lender has been overpaid the Court shall order refund to the debtor of the sum so overpaid. The order is to be deemed to be a decree and shall be executable as such.

12. If a money-lender enters in a bond a sum in excess of the actual loan advanced, it is proposed that he shall be deemed to have committed an offence punishable with fine up to Rs. 1,000.

13. Another important feature of the Bill is that molestation of a debtor by a money-lender is made an offence punishable with imprisonment of either description up to three months or with fine up to Rs. 500 or with both. Molestation is defined as obstructing or using violence or intimidating or persistently following the debtor, or loitering at or near his house, so as to cause him to abstain from doing or doing any act which he has a right to do or to abstain from doing and it is made a cognizable offence.

14. When the money-lender who commits an offence under this Act is an undivided Hindu family, the manager and all adult co-parceners of such family, when it is a body corporate, the director, manager or any officer of such body, and when it is an unincorporated body, all members of such body are to be deemed to have committed the offence.

K. M. MUNSHI.

15th January 1938.

APPENDIX 12.

BILL No. V OF 1938.

(A Bill to remove disabilities of Harijans in regard to worship in temples.)

REPORT OF THE SELECT COMMITTEE.

We, the members* of the Select Committee appointed to consider Bill No. V of 1938 (A Bill to remove disabilities of Harijans in regard to worship in temples), have the honour to report as follows:—

We have carefully considered the Bill and have made several changes therein. The reasons for the principal changes are given below, against the clauses in which they occur.

Clause 1, sub-clause (2).—As it will be necessary to make rules under the Act before it comes into force, we have amended this clause so as to provide that the Act shall come into force on 1st April 1938.

*Note.—The signatures of Mr. R. B. Thorat and Mr. S. G. Songavkar will be notified when received.

[Appendix 12—contd.]

Clause 2.—We consider that the declaration made under section 3 in the City of Bombay should be filed in the High Court only. We have accordingly amended the definition of the term “Court”.

We have also revised the definition of “Trustee” in order to include within this term persons who actually administer the temple.

Clause 4.—We have amended this clause in order to provide that the Court shall not give public notice of the declaration made under section 3 unless it is satisfied that the conditions specified in the declaration do not contravene the requirements of the proviso to sub-section (1) of section 3.

We have also added a new sub-clause giving power to the trustees to alter the conditions specified in the declaration made under section 3 with the previous sanction of the court.

Clause 5.—We consider that it is necessary to lay down the procedure to be followed by the court in making an inquiry under this Act. We are also of the opinion that the decision of the court should be final and conclusive for the purposes of this Act. We have accordingly redrafted this clause.

Clause 6.—This corresponds to original clause 5.

Clause 7.—We are of the opinion that the declaration made under section 3 should take effect on the expiry of three months from the date of its publication by the court under section 4 or, if an application to set aside the declaration is made under section 5, from the date of the decision of the Court on such application. We have accordingly inserted this new clause making this provision.

Clauses 8 and 9.—These correspond to original clauses 7 and 8.

As the Report is to be submitted to the Assembly tomorrow, we are of the opinion that the translation of the Report and of the Bill as amended may be dispensed with. We are not, therefore, making any recommendation as regards the translation of the Report, the minutes of dissent and the Bill, as amended, in any recognised language of the Province.

(Signed) K. M. MUNSHI.

(„) B. R. RANE.

(„) B. D. LALA.

(„) V. N. JOG.

(„) LAXMIBAI THUSE.

(„) R. N. MANDLIK.

(Subject to a minute of dissent.)

(„) S. L. KARANDIKAR.

(Subject to a minute of dissent.)

(„) D. W. RAUT.

(„) B. U. VAGHELA.

(„) DINKARRAO N. DESAL.

[Appendix 12—*contd.*]

(*Minute of Dissent by Mr. R. N. Mandlik, M.L.A., and
Mr. S. L. Karandikar, M.L.A.*)

The provision in the Bill to give full license to the Trustee or majority of them, to ride roughshod over the wishes of the author of the Trust, notwithstanding that they are clearly expressed in the trust-deed, that the temple should be reserved for worship to the Caste Hindus alone, is to say the least immoral. No Government worth the name, least of all the Congress Government under the guidance of Mahatma Gandhiji, the Apostle of Truth, Love and Non-violence, ought to encourage Trustees to commit a breach of trust of this sort. If an Orthodox Hindu desired to build a temple for the exclusive use of the Caste Hindus and entrust same to the Trustees with a stipulation to that effect, this Bill will debar him from doing so. This is a clear invasion of his fundamental civil rights. If the Congress Government really stands for them and respects them, they ought to be the last to force a man by law not to follow his religious principles, as he honestly understands them. One may dislike those principles and even consider them silly! But nobody can have any legal right to prevent him from following them, so long as he causes no actual harm to anybody or transgresses morality or public order, in doing so.

The Bill invests the trustee or majority of them with almost dictatorial powers. We read in the Bible that God said "let there be light" and there was light! Similarly under this Bill, if a trustee or majority of them said "let the temple be open to Harijans" and it will be opened to them, notwithstanding the wishes to the contrary either of the author of the trust or of the bulk of the usual worshippers at the temple. Dictatorship always breeds irresponsibility. Legislature, therefore, ought not to encourage both. A safeguard in the form of referendum, if included in the Bill, will go a long way to satisfy the orthodox Hindus and will also prove a valuable check on the irresponsible tendencies of the trustee.

A trustee is after all human and liable to err. He cannot always be above usual temptations. He may at times be carried by his enthusiasm to open a temple to Harijans. But in his calmer moments or after actual experience of how it works he may like to revise his past decision. But this Bill makes no provision to enable him to do so!

A trustee may also be bribed or intimidated, as a result of which he may make a declaration under this Act to open the temple to Harijans. In such a case there ought to be a remedy through a court of law, to set aside the declaration. But the Bill provides no such remedy. This defect in the Bill ought to be done away with.

My amendments were-mostly meant to meet the orthodox Hindu point half-way. I and the Democratic Swaraj Party to which I belong are entirely in favour of the complete eradication of the untouchability and the opening of temples to the Harijans. But we want to carry our orthodox brethren with us, as far as possible. We would not mind

[Appendix 12—*contd.*]

slowing the speed of reform for that purpose. In any case, we would refrain from forcing it on them by legislation. The bulk of the Hindu population is still orthodox. It is not vocal, it is disorganised. But for that very reason we must win them by love and justice, by intensive and vigorous propaganda. A wonderful progress has been made in this respect among the orthodox Hindus during the last five or ten years and I am confident that if further vigorous and intensive propaganda is carried among them for some time more, the orthodox opposition in this matter will completely vanish before long.

I am sorry that none of my amendments have been acceptable to the Select Committee or the Government. I am afraid that if the Bill is passed by the House as it is, it will either remain a dead letter in the rural areas or cause disturbance of peace and tranquillity therein, since the orthodox and illiterate masses in those areas are not yet quite ready for the reform proposed in the Bill. I trust that the Government and the House will give due consideration to my observations in this minute of dissent and do what they think just and right.

(Signed) R. N. MANDLIK.

27th January 1938.

I agree.

(Signed) S. L. KARANDIKAR.

27th January 1938.

BILL No. V OF 1938.

(LEGISLATIVE ASSEMBLY.)

A Bill to remove disabilities of Harijans in regard to worship in temples.

(As amended by the Select Committee.)

WHEREAS it is expedient to provide for the removal of disabilities of Harijans in regard to worship in temples; It is hereby enacted as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Bombay Harijan Temple Worship (Removal of Disabilities) Act, 1938.

[(2) This Act extends to the whole of the Province of Bombay and shall come into force at once.]

(2) *This Act extends to the whole of the Province of Bombay and shall come into force on the 1st day of April 1938.*

[Appendix 12—contd.]

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context,—

[(1) “ Court ” means the Court of the District Judge or within the limits of the ordinary jurisdiction of the High Court of Bombay, the Court of the Judge of the Presidency Small Causes Court ;]

(1) “ Court ” means the Court of the District Judge and includes the High Court in the exercise of its ordinary original civil jurisdiction ;

(2) “ District ” means a district constituted under section 3 of the Bombay Civil Courts Act, 1869, and includes the City of Bombay ;

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of
1869.

(3) “ Harijan ” means a member of a caste, race or tribe deemed to be a Scheduled caste under the Government of India (Scheduled Castes) Order, 1936 ;

(4) “ Hindu Community ” includes Jains ;

(5) “ Person having interest ” means a person who is entitled to enter or attend for the purpose of the performance of worship in a temple or who is in the habit of entering or attending for such purpose or of receiving any share in the gifts thereto ;

(6) “ Prescribed ” means prescribed by rules made under section 9 ;

[(7) “ Rule ” means a rule made under this Act ;]

(7) [(8)] “ Temple ” means a place by whatever designation known used as a place of public religious worship and dedicated to or for the benefit of or used as of right by, the Hindu Community or any section thereof, as a place of religious worship ;

(8) “ Trustee ” means a person by whatever description known in whom the administration of a temple is vested by any law for the time being in force or the terms of the instrument of the trust, or the terms of a decree or order of a competent Court, relating to such temple, or if there is no such person, any person who has administered the temple for a period of one year immediately prior to the date of the declaration made under section 3 and who is liable as if he were a trustee.

[(9) “ Trustee ” means a person by whatever designation known in whom the administration of a temple is vested and includes any person who is liable as if he were a trustee ;]

(9) [(10)] “ Worship ” includes attendance at a temple for the purpose of darshan of a deity or deities installed in or within the precincts thereof.

3. *Declaration by trustees opening the temple to Harijans.*—(1) A trustee, or if there are more than one trustee, the majority of the trustees of a temple which, by anything contained in the terms of instrument of trust, the terms of dedication or a decree or order of a competent Court relating to such temple or by any custom, usage or law for the time being in force, is not open for

[Appendix 12—*contd.*]

the performance of worship to any Harijan may, of his or their own motion or on the requisition of any person having interest in such temple, notwithstanding anything contained in the terms of such instrument, the terms of the dedication, the decree or order, custom, usage or law, declare in writing that such temple shall [from the date specified in the declaration] be open to the Harijans to whom such temple was not open, for the performance of worship, subject to such conditions and the observance of such ceremonies as may be specified in the declaration :

Provided that the conditions imposed as aforesaid shall not be made applicable to Harijans only.

(2) The declaration shall be in such form and shall contain such particulars as may be prescribed.

(3) The declaration shall be forwarded to the Court within the local limits of whose jurisdiction [it] *the temple* is situate.

(4) The declaration forwarded to the Court shall be accompanied by an affidavit made by the trustee or the majority of the trustees, as the case may be, that he is the trustee or they are the majority of the trustees of the temple in respect of which the declaration is made and also in the case of a temple which is a public trust to which the provisions of the Bombay Public Trusts Registration Act, 1935, apply, by a certified copy of an entry in the Register of Public Trusts maintained under section 7 of the said Act relating to the names and addresses of the trustees of such public trust. Bom.
XXV
of
1935.

[4. *The publication of declaration.*—On receipt of such declaration, the Court to which it is forwarded shall cause public notice to be given]

4. (1) *On receipt of such declaration, the Court shall, if it is satisfied that the conditions specified in the declaration do not contravene the requirements of the proviso to sub-section (1) of section 3, cause public notice to be given* at convenient places on or near the temple in respect of which the declaration has been made and shall cause the declaration to be published in the *Official Gazette* and in a newspaper published in the principal vernacular of and circulating in the district. The declaration so published shall subject to the provisions of section 6 be irrevocable and the publication of the declaration in the *Official Gazette* shall be conclusive evidence that the temple [from the date specified therein shall] [be] is open to the performance of worship to the Harijans to whom it was not so open and the instrument of the trust, the terms of dedication, the decree or order, custom, usage or law relating to the temple shall be deemed to have been amended accordingly.

(2) *Alteration of conditions in declaration.*—Any of the conditions specified in the declaration published under section 4 may, on the application of the trustee or if there are more than one trustee of the majority of the trustees of the temple be altered, added to or omitted with the previous sanction of the Court.

[Appendix 12—contd.]

5. *Application to Court to set aside declaration.*—(1) Any person interested in the temple in respect of which a declaration has been published under section 4 may, within three months from the date of such publication, make an application to the Court which has caused the declaration to be published for the following reliefs only:—

(a) that the trustee or any of the trustees making the declaration was not entitled to act as such at the time the declaration was made, or

(b) that the trustees making the declaration did not form a majority of trustees of the said temple at the time the declaration was made.

(2) On receipt of such application, the Court shall cause notice to be served on the trustee or trustees who made the declaration or upon any other person to whom in its opinion notice of the application should be given, specifying the date on which the application is to be heard.

(3) On the date so specified, or on any subsequent date to which the hearing may be adjourned, the Court shall proceed to hear the applicant and the trustees, if any of them appears and any other person who, it considers, ought to be heard, and shall hold an inquiry.

(4) Such inquiry shall be held in the manner provided by rules made, if any, by the High Court in this behalf with the previous sanction of the Provincial Government.

Save as provided by such rules, the provisions of the Code of Civil Procedure, 1908, shall so far as may be apply to such inquiry.

(5) If the Court is satisfied—

(a) that the applicant is a person interested in the temple, and

(b) that person or persons purporting to act as the sole trustee or the majority of trustees was or were not entitled to act as such at the time the declaration was made, or the trustees who made the declaration did not form the majority of trustees entitled to act as such at such time,

it shall set aside the declaration. If the Court is not so satisfied, it shall dismiss the application.

(6) In deciding such application the Court may make such order as to costs as it thinks reasonable. The provisions of the Code of Civil Procedure, 1908, relating to the execution of decrees shall, so far as they are applicable, apply to the execution and order as to costs.

(7) The decision of the Court, under sub-section (5) shall be final and conclusive for the purposes of this Act.

6. *Exclusion of Jurisdiction of other Courts.*—Save as provided in this Act, no civil Court shall entertain any suit or proceeding or shall pass an order or decree or execute wholly or partially any order or decree, if the claim involved in such suit or proceeding or if the passing of such order or

[Appendix 12—*contd.*]

decree or if such execution would in any way affect or be inconsistent with the declaration published under section 4 or the decision of the Court under section 5.

[5. *Exclusion of Jurisdiction of other Courts.*—No Court shall entertain any suit or proceeding or shall pass an order or decree or execute wholly or partially any order or decree, if the claim involved in such suit or proceeding or if the passing of such order or decree or if such execution would be inconsistent with the declaration published under section 4.]

[6. *Suit for the declaration under section 4 being set aside.*—(1) Notwithstanding anything contained in section 5 any person interested in the temple in respect of which a declaration is made under section 4 may obtain a declaration from a competent Court:]

[(a) that the trustee or any of the trustees making the declaration was not entitled to act as such at the time the declaration was made; or]

[(b) that the trustees making the declaration did not form a majority of the trustees thereof at the time the declaration was made.]

[(2) On such Court holding that the declaration so made had not been made by a trustee entitled to act as a sole trustee or by a majority of trustees for the time being entitled to act as such the Court shall set aside the declaration made under section 4.]

[(3) A trustee who has acted as such uninterruptedly for a period of three years prior to the date of the declaration made under section 4 shall be deemed to be a trustee entitled to act as such for the purposes of this Act.]

7. *Date on which declaration to take effect.*—The declaration published under section 4 shall take effect on the expiry of 3 months from the date of its publication, provided that, if an application to set aside the declaration is made under section 5, the declaration shall take effect from the date of the decision of the Court on such application.

8. [7.] *Penalty.*—Whoever obstructs or causes or tends to cause obstruction to any Harijan from the performance of worship in a temple in contravention of the declaration made under section 4, shall, on conviction, be punishable with fine which may extend to Rs. 200 and in the case of a continuing offence, with an additional fine which may extend to Rs. 20 for every day after the first during which he has persisted in the offence.

9. *Power of the Provincial Government to make rules.*—(1) Save in regard to matters for which the High Court is empowered to make rules under section 5, the Provincial Government may make rules for the purpose of carrying out the provisions of this Act.

[Appendix 12—concl'd.]

[8.] [Power of the Provincial Government to make rules.] (1) The Provincial Government may make rules for the purpose of carrying out the provisions of this Act.]

(2) Rules made under this section shall be subject to the condition of previous publication.

H. K. CHAINANI,
Secretary to the Bombay
Legislative Assembly.

Bombay, 27th January 1938.

APPENDIX 13.

BILL No. VI OF 1938.

(A Bill to provide for the temporary relief of small holders in the Province of Bombay.)

REPORT OF THE SELECT COMMITTEE.

We, the members* of the Select Committee appointed to consider Bill No. VI of 1938 (A Bill to provide for the temporary relief of small holders in the Province of Bombay), have the honour to report as follows :—

We have very carefully considered the provisions of the Bill and have made several changes therein. The reasons for the principal changes are given below, against the clauses in which they occur.

Clause 2, sub-clause (2).—We are of the opinion that persons who hold land not exceeding 6 acres of irrigated land or 18 acres of other land or who hold land the total annual agricultural assessment of which does not exceed Rs. 30 should also get the benefit of this Bill. We have accordingly revised the definition of "Small holder".

Clause 3.—We have redrafted sub-clause (2) of this clause in order to make its meaning more clear.

Clause 5.—We consider that the provisions of the Bill should not apply to maintenance decrees. We have accordingly inserted this new clause containing this provision.

Clause 6.—This is also a new clause inserted by us, providing that decrees for the attachment or sale of milch cattle not exceeding two in number, one dwelling house and the standing crop belonging to a small holder should also be stayed.

*Note.—The signatures of Mr. D. J. Ferreira, Mr. D. W. Raut, Mr. S. L. Karandikar, Mr. R. R. Bhole, Mr. Aziz Gaffur Kazi, Mr. Musaji E. Patel and Mr. A. V. Chitre, will be notified when received.

[Appendix 13—*contd.*]

Clauses 7, 8 and 9.—These correspond to original clauses 5, 6 and 7.

Clause 10.—We are of the opinion that in cases in which on account of famine, drought, scarcity or other causes the payment of land revenue is wholly or partially suspended, the payment of interest under clause 3 or of rent under clause 9 should also be suspended in the same proportion in which the land revenue is suspended. We have accordingly inserted this new clause making this provision.

Clause 11.—We have amended this clause in order to provide that in computing the period of limitation for the enforcement of any right or liability, the period during which the proceedings under this Act are stayed shall be excluded.

Clauses 12 and 13.—These correspond to original clauses 9 and 10.

As the Report is to be submitted to the Assembly tomorrow, we are of the opinion that the translation of the Report and of the Bill as amended may be dispensed with. We are not, therefore, making any commendation as regards the translation of the Report, the minutes of dissent and the Bill, as amended, in any recognised language of the Province.

(Signed) K. M. MUNSHI.

(„) MORARJI DESAI.

(„) MORARBHAI KASANJI.

(„) N. G. VINCHURKAR.

(*Subject to a minute of dissent.*)

(„) A. N. PATIL.

(„) S. R. BHARTIYA.

(„) K. S. PATIL.

(„) S. N. KESHWAIN.

(„) K. B. DESHMUKH.

(„) G. H. DESHPANDE.

(„) VASANTRAO NAIK.

(„) L. M. SHRIKANT.

(„) DINKARRAO N. DESAI.

(*Minute of Dissent by Sardar N. G. Vinchurkar, M.L.A.*)

I am of opinion that clause 9 should be deleted.

Clause 9 (nine) is out of place in this Bill as it affects the rights and privileges of a landlord in respect to his land, the more so in the case of holders of alienated lands. Government have also conceded that the provisions of clause 9 amount to a modification of the right of the landlord

[Appendix 13—*contd.*]

under section 299 (3) of Government of India Act of 1935. It would also appear that a question of fundamental right between the landlord and tenant is indirectly brought in by this Bill whereas it would be appropriate to deal with it exhaustively when the larger Bill, which Government propose to introduce, is brought before the Assembly.

Generally this bar against the eviction of the tenant even for one year will lead to considerable hardship and even to the defeating of landlord's rights to that extent. If a landholder wishes to cultivate the land himself, he should rather be encouraged to do so ; whereas now under this clause he is precluded from doing so. Also if for certain urgent reasons a landlord has to use his land for non-agricultural purposes he is precluded from doing so. In cases where landholders have exhausted all remedies and after showing all latitude towards the tenant they feel it necessary to evict the tenant, on account of the conduct of the tenant, it would be inequitable to deprive the landlords of such a right even to the extent of one year.

There is no urgency for a provision like this.

(Signed) N. G. VINCHURKAR, M.L.A.

Note.—Deletions made by the Select Committee are shown in square brackets.

BILL No. VI OF 1938.

(LEGISLATIVE ASSEMBLY)

A Bill to provide for the temporary relief of small holders in the Province of Bombay.

(As amended by the Select Committee.)

WHEREAS it is expedient to provide for the temporary relief of small holders in the Province of Bombay and for certain other purposes specified herein ; It is hereby enacted as follows :—

1. *Short title, extent and duration.*—(1) This Act may be called the Bombay Small Holders Relief Act, 1938.

(2) It shall extend to the whole of the Province of Bombay.

(3) It shall remain in force up to and inclusive of the 31st March 1939.

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context,—

(1) " Person " includes an undivided Hindu family.

[Appendix 13—*contd.*]

(2) "Small holder" means—

(a) an individual—

[(i) who holds land not exceeding five acres of irrigated land or fifteen acres of other land, and]

(i) who holds land not exceeding six acres of irrigated land or eighteen acres of other land, or who holds land of whatever description, the total annual agricultural assessment of which does not exceed Rs. 30, and

(ii) who cultivates land himself or is an inferior village servant ;

(b) an undivided Hindu family—

(i) which holds land not exceeding the limits specified in clause (a) (i), and

(ii) at least one member of which personally cultivates land.

Explanation.—For the purposes of this clause, in the case of a person who holds irrigated as well as other land, one acre of irrigated land shall be deemed to be equal to three acres of other land and *vice versa*.

(3) The words and expressions used in this Act, but not defined, shall have the meanings assigned to them in the Code of Civil Procedure, 1908, [and] or the Bombay Land Revenue Code, 1879, as the case may be.

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V of
1879.

3. *Stay of decrees transferred to the Collector.*—(1) Notwithstanding any law for the time being in force, all proceedings pending at the date of the commencement of this Act or which may be instituted during the period for which this Act remains in force, for the sale of land belonging to a small holder for the recovery of any [debt] money under a decree, the execution of which has been or may hereafter be transferred to the Collector under section 68 of the Code of Civil Procedure, 1908, shall, on the application of the small holder and on the amount of the interest, as specified under sub-section (2), *subject to the provisions of section 10*, being paid to the decree-holder or deposited with the Collector, be stayed ;

V of
1908.

Provided that such proceedings shall not be stayed, if the Collector for reasons to be recorded in writing is of opinion on the application by the decree-holder that such stay will cause substantial loss to such decree-holder.

[(2) The interest under sub-section (1) shall be the amount of interest, if any, due under the decree on the sum for the recovery of which the land is sought to be sold for a period of one year from the date on which the said sum became payable or for a period from the said date up to the date of the application by the small holder for the stay of execution under sub-section (1), whichever period is shorter.]

[Appendix 13—contd.]

(2) *The interest under sub-section (1) shall be the amount of interest if any, due under the decree on the sum for the recovery of which the land is sought to be sold for one year from the date on which the said sum became payable, or if the period from the said date up to the date of the application by the small holder for the stay of execution under sub-section (1) is less than one year, the amount of interest due on the said sum for the said period.*

(3) *If the Collector, on the application of the decree-holder, is of opinion that any rights of such decree-holder to the said land or to the proceeds of the sale of such land are likely to be prejudiced by reason of any proceedings taken under any law for the time being in force relating to the said land, the Collector may direct that the proceedings in execution stayed under sub-section (1) shall continue.*

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1879. 4. *Possession of property under section 22 of the Dekkhan Agriculturists' Relief Act, 1879.—(1) Notwithstanding anything in section 22 of the Dekkhan Agriculturists' Relief Act, 1879, every order under the said section directing the Collector to take possession of land belonging to a small holder passed before or after the commencement of this Act shall not take effect before 31st day of March 1939.*

(2) *Nothing in this section shall affect the power of the Collector to deal under the said section with any land, the possession of which has been taken before the commencement of this Act.*

5. *Serving of decrees for maintenance.—Nothing in section 3 or 4 shall apply to any proceedings in execution of a decree for maintenance.*

6. *Stay of attachment and sale of dwelling houses, milch cattle and standing crop.—Notwithstanding anything in any law for the time being in force, all proceedings in execution of decrees pending at the date of the commencement of this Act or which may be instituted during the period for which this Act remains in force, for the attachment or sale of the following property belonging to a small holder, shall, on the application of such holder, be stayed: namely:—*

(1) *milch cattle, not exceeding two in number,*

(2) *one dwelling house (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for its enjoyment) occupied by him, or*

(3) *standing crop.*

7. *Restriction on private transfer by small holder.—[5.] Notwithstanding anything contained in any law for the time being in force, no private transfer of any land or dwelling house belonging to a small holder, the proceedings for the sale of which have been stayed under this Act or of any interest therein made by him after this Act comes into force, shall be valid except with the previous sanction of the Collector of the district in which such land is situate:*

[Appendix 13—contd.]

Provided that no such sanction shall be given unless the Collector is of opinion—

(a) that such transfer will enable the small holder to effect a composition in satisfaction of the debts due to all his creditors ; or

(b) (i) that substantial loss will be caused to such small holder if such transfer of such land or interest therein is not sanctioned, and

(ii) that such transfer does not adversely affect the interests of any creditor of the small holder.

8. *Collector's decision to be final in certain cases.*—[6.] If in any proceedings under *this Act* [any of the three preceding sections,] a question arises whether a person is a small holder such question shall be decided by the Collector in a proceeding under section 3 or 4 and by the Court in a proceeding under section 6 and the decision of the Collector or the Court, as the case may be, shall, notwithstanding anything contained in any law for the time being in force, be final.

9. *Bar against eviction of tenant.*—[7.] Notwithstanding any law for the time being in force or any contract between the parties, no tenant who has been in possession of land used for the purpose of agriculture uninterruptedly from the first day of January 1932 shall, in pursuance of any decree or order of any Court, be evicted from such land, if such tenant tenders *subject to the provisions of section 10*, to the landlord or any person acting on his behalf [all] rent due in respect of the land for the year ending with the 30th day of June 1938, and is willing to hold the land thereafter as a tenant on the same terms and conditions on which he was holding the same at the date when the cause of action arose to the landlord for the purpose of evicting him.

10. *Interest or rent not to be paid or reduced in cases in which land revenue is suspended wholly or partially.*—(1) In the case of any land in respect of which, on account of famine, drought, scarcity or other causes, the collection of land revenue for the current year is wholly suspended at any time during the period for which *this Act* remains in force under the general or special orders of the Provincial Government, a small holder to whom such land belongs shall not under section 3, or a tenant who is in possession of such land shall not under section 9, be liable to pay any interest or rent, as the case may be.

(2) If in the case of such land the collection of such land revenue is partially suspended, the amount of interest or rent payable by him under section 3 or section 9 shall be reduced in the same proportion.

11. *Revival of rights, liabilities and obligations after the expiry of the Act.*—[8.] Any right, privilege, obligation or liability acquired, accrued or incurred under any enactment, decree or order of any Court, or any contract between the parties immediately before the commencement of *this Act* or which may be acquired, accrued or incurred, during the period for which *this Act* remains in force, but the enforcement of which has been

[Appendix 13—concl'd.]

stayed by the provisions of this Act, shall immediately on the expiration of this Act, revive and be enforceable as if this Act had not been passed.

In computing the period of limitation for the enforcement of any such right, privilege, obligation or liability, the period during which the proceedings in respect thereof are stayed under this Act shall be excluded, notwithstanding anything contained in any law for the time being in force.

12. *Delegation of powers of Collector.*—[9.] All powers exercisable by the Collector under this Act may be exercised by the Assistant or Deputy Collector or by such officer as may be empowered by the [Collector] Provincial Government by general or special order in this behalf.

13. *Rules.*—[10.] The Provincial Government may, by notification in the Official Gazette, make rules to carry out the purposes and objects of this Act.

APPENDIX 14.

AGENDA.

Supplementary Agenda for the first Session of the Bombay Legislative Assembly which commenced on the 10th January 1938
[Vide Standing Order X, 1 (1) (d)].

DISCUSSION OF MATTERS OF GENERAL PUBLIC INTEREST.

Resolutions by Mr. D. W. Raut, M.L.A.

1. "This Assembly recommends to Government that a Committee consisting of members of this Assembly and some agricultural experts should immediately be appointed to suggest ways and means whereby the actual tillers who are owners of lands at present, will not be ousted from their ownership and the landless tillers will come to own some land."

2. "This Assembly recommends to Government to amend the Bombay Land Revenue Code in such a way that cultivators having an annual income of less than rupees two hundred and fifty from agriculture should be exempted from the payment of land revenue assessment."

3. "This Assembly recommends to Government to amend the Bombay Land Revenue Code in such a way that so much portion of the agricultural produce as is necessary, till the next harvest, for the maintenance of an agriculturist and his family should be exempted from being distrained and sold by Government for the recovery of land revenue or from being attached in execution of decrees or orders."

4. "This Assembly recommends to Government that, with a view to solve the problem of unemployment to some extent in this Province, all appointments to Government and semi-Government posts in this

[Appendix 14—contd.]

Province should be strictly restricted to *bona fide* residents of this Province only."

5. "This Assembly recommends to Government to increase the salaries of the menial staff in Government and semi-Government offices in this Province in such a way as to enable the menial staff to live according to its status in life."

6. "This Assembly recommends to Government that the constitutions of the local bodies such as District Local Boards, Municipalities, Village Panchayats etc., should be so amended that every adult person living in their respective areas shall have the right of voting at any election held therefor."

7. "This Assembly recommends to Government to call for the grievances of cultivators about forest matters from the District Forest Advisory Committees and to take necessary steps to remove the same."

Resolutions by Mr. Kanji Govind Kerson, M.L.A.

1. "This Assembly recommends to Government that a Committee should immediately be appointed to draft a Bill providing for the establishment of an Agriculturists' and Labourers' Loan Relief State Bank in the Province with one branch at each taluka place with Taluka Revenue Officer as its head through which alone private money-lenders may issue loans to agriculturists and labourers and which shall charge 6 per cent. interest to agriculturists and labourers but pay only 4 per cent. to money-lenders retaining two per cent. for the expenditure of the Bank."

2. (As No. 5 of Khan Bahadur Sardar Haji Amirsahab Mohidinsaheb Rais) on the Main Agenda.

3. "This Assembly recommends to Government that in view of the fall in prices of agricultural commodities by more than 50 per cent. they should grant remission of land revenue at least to the extent of 50 per cent. so as to provide the agriculturists with adequate relief."

4. "This Assembly recommends to Government to give encouragement to the Ayurvedic and Unani Systems of medicine by

(a) giving them Government recognition and grants;

(b) appointing a Committee consisting of members of the Assembly and other representatives of those systems to make a survey of all institutions doing education and medical relief work;

(c) opening Ayurvedic and Unani Dispensaries all over the Province;

(d) giving grants to such of the Ayurvedic and Unani Dispensaries as are opened by Local Bodies;

[Appendix 14—contd.]

(e) establishing at a suitable place in the province a college of studies in these systems of medicine and arranging for the registration of graduates thereof."

5. "This Assembly recommends to Government that as the incidence of taxation imposed by the Bombay (District) Tobacco Act, 1933, as amended by Bombay Act No. II of 1935, ultimately falls on the agriculturists and labourers, no new Tobacco Bill should be introduced by Government, when the said Act expires on 31st March 1938."

6. "This Assembly recommends to Government that a Committee consisting of members of this Assembly should immediately be appointed to investigate into the causes of industrial, educational and economic condition of Katkari labourers and to suggest adequate and speedy measures for the improvement of their condition."

7. "This Assembly recommends to Government that Government waste lands should be given free of charge to agricultural labourers."

Resolutions by Mr. Jamnadas M. Mehta, M.L.A.

1. (As No. 1 of Mr. K. G. Gokhale on the Main Agenda.)
2. (As No. 2 of Mr. K. G. Gokhale on the Main Agenda.)

Resolutions by Mr. G. K. Phadake, M.L.A.

1. "In view of the inadequacy of the Bombay Nurses, Midwives and Health Visitors Act, 1935, to meet the conditions of the City of Bombay, this Assembly recommends to Government to amend the said Act, at an early date so as to provide for the control of the profession of midwives by the Municipal Corporation of Bombay, the prohibition of working as midwives by unqualified women but safeguarding the interests of the unqualified women at present following this profession and giving instructions to indigenious *dais* and the registration of such *dais* until such time as the profession of trained and registered midwives is financially accessible to all classes of people."

Resolutions by Mr. S. V. Parulekar, M.L.A.

1. "This Assembly recommends to Government to withdraw the Order No. 9639-B (3) issued under the Payment of Wages Act, authorising deductions for payments to the Co-operative Credit Societies registered under the Bombay Co-operative Societies Act, 1925."

2. "This Assembly recommends to Government to withdraw the Order No. 9639-B (1) issued under the Payment of Wages Act, authorising deductions from the wages in respect of the amenities and services supplied by the employer."

[Appendix 14—concl'd.]

Resolution by Mr. V. N. Jog, M.L.A.

1. "This Assembly recommends to Government to move His Majesty's Government to issue an Order in Council creating a new Governor's Province to be called the "Province of Karnatak" by amalgamating all the Kanarese speaking areas of the Provinces of Bombay, Madras and Coorg."

Resolution by Mrs. Lalavati K. Munshi, M.L.A.

1. (As No. 1 of Mr. G. K. Phadke.)

H. K. CHAINANI,
Secretary to the Bombay
Legislative Assembly.

Bombay, 26th January 1938.

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Adjournment Motions—

Principles—

Motions for adjournment are meant for obtaining an immediate debate upon grave and serious matters. The test for determining "urgency" within the meaning of the phrase "definite matter of urgent public importance" occurring in the rule allowing adjournment motions, is whether or not the subject-matter of the motion occurred at a period which did not give the member moving the adjournment motion an opportunity of tabling a resolution and thereby bringing the matter up for discussion before the House.

The right to move an adjournment motion is not an absolute right to be exercised irrespective of and without reference to the rights and convenience of the whole House, but it is a qualified right with corresponding obligation of seeing that a mere desire to discuss a subject on the floor of the House does not interfere, as far as possible, with the fixity of the day's programme. ..

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An adjournment motion to discuss the correctness or otherwise of the view taken by the Chair is not permissible

579

Motions for adjournment to discuss definite matters of urgent public importance must have some relation to the conduct or default of Government and must be in the nature of criticism of the Government either for having done some action or for having failed to do some action which was urgently necessary at the moment; otherwise they are out of order.

829-31

Position explained

829-31

Assembly etiquette—

It is not permissible for any one who is not a member to enter the House, nor is it permissible for any person who is not a member to cross the galleries and go into the Ayes and Noes lobbies.

The members of the House should see that none of their friends or any other persons come within the House itself or into the lobbies.

If any member wants to see any of his friends, there is a separate place provided for that purpose outside, and it is permissible for members to leave the House and to see their friends there

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When any party makes a statement or remark and intimates a walk-out, it would be proper for it to hear what the opponent has to say in reply to any statement or remark made by the leader of that party. A discussion on the question will not be allowed

503-06

Members should not cross the floor when a member is speaking so as to come between the Chair and the speaking member

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A member is entitled to speak in his own language and to be heard without being laughed down

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Rulings of—contd.

Debate Procedure—

Parliamentary Secretaries—

A Parliamentary Secretary has the right of speaking on behalf of the Minister to whom he is attached, whether the Minister is present in the House or not. It will be presumed that the Minister has authorised him to speak on his behalf. If any member questions the authority of the Parliamentary Secretary, a declaration by the latter that he has been authorised by the Minister will be sufficient 772

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