Registered No. 42 of 1876.

THE

Bombay Government Gazette.

Published by Authority.

THURSDAY, 3RD FEBRUARY 1876.

☞ *Separate paging is given to this Part, in order that it may be filed as a separate compilation.*

PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Extract from the Proceedings of the Governor of Bombay, in the Legislative Department, is published for general information:—

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

The Council met at Bombay on Tuesday, the 4th January 1876, at noon.

PRESENT.

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *Presiding.*
The Honourable A. ROGERS.
The Honourable J. GIBBS.
The Honourable the ADVOCATE GENERAL.
The Honourable MAJOR-GENERAL M. K. KENNEDY.
The Honourable E. W. RAVENSCROFT, C.S.I.
The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK.
The Honourable NACODA MAHOMED ALI ROGAY.
The Honourable KHAN BAHADUR PADAMJI PESTONJI.
The Honourable RAO BAHADUR BECHERDASS AMBAIDASS, C.S.I.

Papers presented to the Council.

The following papers were presented to the Council:—

Telegram from the Secretary to the Government of India, dated 13th October 1875, informing this Government that His Excellency the Viceroy and Governor General has assented to the "Bill to empower the Municipal Corporation of the City of Bombay to aid in the reception of His Royal Highness the Prince of Wales on the occasion of his visit to India."

Letter from the Secretary to the Government of India, Legislative Department, No. 808, dated 21st December 1875, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the "Bill for enabling Government to Levy Tolls on Public Roads and Bridges in the Presidency of Bombay."

Report of the Select Committee on Bill No. 2 of 1875—A Bill to amend the Law relating to the Land Revenue Administration of the City of Bombay.

Report of the Select Committee on Bill No. 5 of 1875—A Bill to consolidate and amend the Law relating to the powers and procedure of Mámlatdárs' Courts.

Mr. Gibbs moves the first Reading of Bill No. 6 of 1875 (a Bill to amend the Ferries Act of 1868).

The Honourable Mr. GIBBS moved the first reading of Bill No. 6 of 1875—a Bill to amend (Bombay) Act II. of 1868 (The Ferries Act). He said—The principal reason for bringing forward this Bill is on account of opinions which the Government have received from their law officers, that the Act of 1868 does not empower them to declare certain ferries to come within the meaning of that Act. I believe the reason is that these are not ferries from one side of a river to the other, but across the sea. This has given rise to much public inconvenience. There are some other small alterations which may be commented upon when the Bill comes a second time before the Council, and which I need not allude to now. I do not think it necessary to refer the matter to a Select Committee, and I will therefore move the first reading of the Bill.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK said—I think, so far as the Bill proposes to give Government the power to regulate ferries of the kind mentioned in this Bill, it will be an improvement, and so far I would support its introduction. But when the Bill comes before the Council, Section 4 will require very careful consideration. There is a large trade between Bombay and the ports mentioned in this Bill, particularly Bánkote and Rewadanda, and Mahád too, being connected with the ferry system, and this will be unduly, and I think injudiciously, affected by the Bill. The coasting trade cannot be all provided for by the ferries, and it will require to be protected. The ferry to Bánkote does not ply at all seasons of the year. I think it would be well to have placed before the Council a statement of the trade of places affected by this Bill before the Council proceeds to discuss the Bill in detail. Excepting in that respect I have not the slightest objection to the Bill, and the other sections are doubtless intended to explain and make amendments that are needed.

The Honourable Mr. ROGERS said—With regard to the honourable member's remarks, I may say that these ferries are principally for the convenience of passengers. The immediate necessity for this Bill has arisen from the circumstances of the Bombay and Mahád ferry, with regard to which I am informed that the steamer which plies to Bankote has already proved of great advantage to passengers from the Ratnágiri District, who are saved a long land march to Dhurumtur and reach Bombay cheaply and safely.

The Honourable Major-General KENNEDY—There is great force in what has fallen from the honourable member; but the question he alludes to is one that should be settled independently of this Bill.

The Honourable Mr. GIBBS—I think so.

The Honourable VISHVANATH NARAYAN MANDLIK—That is what I have said, but I think the Council should have before it some statement or return of the trade between Bánkote and Mahád and Bombay. Perhaps we may insert some provision which, whilst preserving the convenience to passengers, we might avoid inconveniencing what is also of great importance, viz., the large carrying trade. I want to make some proviso by which we will be able to carry out the intention of the Bill, which is to have some control over the public ferries, without at the same time interfering with our coasting trade, and the large interests connected therewith.

His Excellency the PRESIDENT—The question is, how far can ferries provide for the whole freight of the district?

The Honourable Mr. GIBBS—I suppose it is the safety of the passengers that is the most important part of it, because if the goods go to the bottom it is only a loss to the underwriters, but if the passengers go to the bottom it is their own loss.

It was ordered that a statement should be called for showing how far it is probable that ferry steamers will meet the demand for freight for the coasting trade—the return to be laid before the Council when the Bill comes on for the second reading.

Bill read a first time.

The Bill was then read a first time.

Mr. Rogers moves the first Reading of Bill No. 7 of 1875 (a Bill to amend the Village Police Act of 1867).

The Honourable Mr. ROGERS moved the first reading of Bill No. 7 of 1875—a Bill to amend (Bombay) Act 8 of 1867 (The Village Police Act). He said—I have very few remarks to make. An opinion has been given by the Law Officers of Government that as according to the provisions of the former Act offenders can be punished by dismissal or fine, but they cannot be suspended, the provision for the latter minor form of punishment provided in the Watandaree Act, No. III. of 1874, is ineffectual, and there is thus a conflict of law; it is also necessary, where charges are brought against police officers, in order to give time for inquiries to be made, and in order that they may not exercise a pernicious influence in the meantime in their official position, that power of suspension should be obtained.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—I do not wish to oppose the first reading of the Bill; but I think we should have time to consider this Bill in reference to the other Act, and with a view to how far it will interfere with it.

His Excellency the PRESIDENT—The object of the Bill appears to be to supply a defect in the original Act, and to provide a power for temporary suspension pending inquiry and before dismissal.

The Honourable Mr. GIBBS—The law officer advises us that under the old Act there was no power of suspension pending an inquiry.

The Honourable the ADVOCATE GENERAL—The Act of 1867 merely allows a fine or dismissal, and no suspension.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—I think suspension ought to be possible.

The Honourable the ADVOCATE GENERAL—It might be desirable to introduce some provision providing for the application of the emoluments of the person suspended during suspension to the payment of the person who officiates for him.

The Honourable Mr. ROGERS—That is provided for under the Act of 1874.

His Excellency the PRESIDENT—The penalties are precisely the same as under the Act of 1867, I suppose?

The Honourable the ADVOCATE GENERAL—Yes.

The Honourable Mr. GIBBS—It does not affect them at all. It simply enables the Collector to suspend a man pending an inquiry respecting him.

Bill read a first time.

The Bill was then read a first time, and it was decided that it need not be referred to a Select Committee.

The Council next proceeded to the second reading of Bill No. 2 of 1875 —"A Bill to amend the law relating to the Land Revenue Administration of the City of Bombay."

Mr. Ravenscroft moves the second reading of Bill No. 2 of 1875 (a Bill to amend the law relating to the Land Revenue Administration of the City of Bombay).

The Honourable Mr. RAVENSCROFT moved the second reading of the Bill. He said—The Council is aware that the present law in reference to the land revenue administration in Bombay is regulated by Regulation 19 of 1827, but this Regulation has been found not to be applicable to the City of Bombay in recent times, and therefore it has been thought advisable to introduce this new Bill. The principles of that Regulation are as far as possible carried out in this new Bill, with such alterations as the practical experience of those who have been entrusted with the revenue administration in Bombay have suggested, without in any way affecting the rights of individuals at present existing. The two main points in which this Bill differs from the existing law are in respect to the survey and regarding encroachments. What is proposed now is entirely new; and the reason why it has been deemed necessary to make these alterations in the new Bill is on account of the very great expense, both of labour and money, which was incurred in making the

suvey and erecting the survey boundary marks. These matters are of great importance to the landowners and also to the State, and I think it is quite fair that the rules that have been introduced into the new Bill should be made law. It has been found necessary to arm the Collector with some powers which will enable him at once to deal with recent encroachments, and also to give him power, instead of ordering abatements or removal of such encroachments, to place a double revenue on the land that has been so encroached on. This Bill, after the first reading, was referred to a Select Committee, and the Select Committee had two or three meetings, and considered all the points with the great attention the subject deserved. One of the chief things that came before the Committee was as to the advisability of investing the Collector with power to levy or to enhance assessments in certain cases; and it was desirable according to the opinion of the Committee not to introduce any harsh provision into the Act with reference to assessments. Therefore, thinking the words were not sufficiently clear as they stood, the Committee added a section by which they succeeded in guarding against the introduction of any clause into the Bill which might seem to alter the existing law in regard to this matter. The Select Committee also made an alteration in Section 3 with reference to boundary marks. The reason of this was that they thought it only fair to compel people to maintain those boundary marks only that have been erected by Government orders; but not to compel men to re-erect walls that might have tumbled down through want of care on the part of somebody else. With reference to the encroachments, there was some difficulty as to what we should take as the basis on which to declare that encroachments had been made. The survey that was carried out with very great care and attention under the superintendence of Colonel Laughton, and the accuracy of which has been testified to, not only by our Government officers but by landowners and others, was adopted by the Select Committee after a good deal of consideration as the best *primâ facie* basis on which it could be determined, whether an alleged encroachment was an encroachment or not. This, I think, is a fair proposal, because it does not lay down a fixed basis of encroachment, but a *primâ facie* basis which may assist any attempt to arrive at a just conclusion. With regard to Section 37, it was originally ordered that the Collector might issue summonses requiring any person to appear at his (the Collector's) office, either in person or by deputy, and to produce to the Collector all such documents as might be required by him. The Select Committee thought that was not in accordance with the usual practice in law in reference to the titles to land. I think it is unheard of in England that a man may be compelled to bring his title deeds into a court of justice, or to produce them to any one who might take advantage of the occasion against himself. We therefore altered the words to the effect that a man might be required to bring to the Collector "such information as might be in his possession." This we thought was less harsh and would enable him to object to bring any documents which might be prejudicial to him or anybody else. There is only one other point on which I wish to make any observations, and that is in reference to the petition which the Bombay Law Society presented to His Excellency the President. We read that petition carefully, and considered it; but we did not think it was necessary on its perusal to offer any addition to the Bill as it had been already framed. But we hope—and I express the hope now—that as the Bill is being passed through Council, those portions which are discussed by the Bombay Law Society in their petition will receive the attention which they deserve. With these few remarks, I beg to move the second reading of the Bill.

The Honourable Mr. Rogers—I beg to call the attention of the Council to the important amendment in Section 24. The Select Committee made an important alteration in that section in making it refer only to unoccupied lands and unoccupied portions of the foreshore. Otherwise it would have been hardly fair to persons already in possession of land and portions of the foreshore.

The Honourable Rao Saheb Vishvanath Narayan Mandlik—There is one remark that I should like to make, as being a party to the report. I may say that I have contributed my quota to the discussion in the Committee, where I think we very carefully considered those portions that have been touched upon by the Honourable Messrs. Ravenscroft and Rogers. It is in regard to the *primâ facie* basis on which encroachments are to be decided that I wish to make a remark. I think in adopting this section as it now stands we have given the Collector of Bombay a basis which will serve in future for his guidance; and for my own part, having reason to believe that this city survey was very carefully made, I have

considered it only fair that this should be the basis for deciding what may be in fact titles to land in Bombay. In the future, this will be the *primâ facie* evidence on which the Collector will either eject a party or on which he may be sued for having ejected a person in the High Court, or elsewhere.

The Honourable the ADVOCATE GENERAL—I understand, Sir, that it will be open to the Council, in considering the Bill in detail, to deal with those matters which have been brought to the attention of your Excellency by the petition of the Bombay Law Society. That petition, I think, is a very important one, and will be a very great assistance to the Council in determining what effect this Bill will have on the rights of owners of land in the island of Bombay. I am quite ready to admit that the survey that was conducted by Colonel Laughton is a very valuable addition to the means of knowledge which we possess as to the position and boundaries, as they at present exist, of estates in the Island of Bombay; but it would be very unwise if we were to go one step further than the Bill has gone, as it now stands, in recognizing the authority of that survey. In the most important case in which that survey has hitherto been referred to in a court of law,—in the case respecting the land about the Parsee Towers of Silence,—it has been found to be absolutely unreliable. In the survey map, certainly land which was absolutely proved by title deeds and other evidence to belong to the defendants was included within the boundaries of a plot which belonged to the Parsi Panchayat surrounding the Towers of Silence. In the face of this case, it would be manifestly unfair that that survey should be taken as more than a *primâ facie* basis. Nor is this the only instance in which the survey has been tested and found wanting. It may be fair that it should be considered *primâ facie* evidence for the purposes of this Act as regards claims by Government; for it was a survey carried out by officers of the Government under the direction of the Government, and the Government may fairly elect to be bound by it. But as regards questions of the ownership of land among private persons I think it would be very unfair that this survey should be made compulsorily even a *primâ facie* basis to work on. It would be unjust if legislative interference were to compel private persons to accept as proof of the boundaries of their property anything less accurate than their own title-deeds and the title-deeds of their neighbours, who may be contesting the right of property with them. As to what my honourable friend Mr. Ravenscroft said about the alterations in Section 37, whereby the Collector is authorised to require persons to attend before him and to give "such information as may be in their possession" with reference to their land, I can only say that I fail, after some study, to perceive the difference between the present clause and the clause as it originally stood. "The hands may be the hands of Esau, but the voice is the voice of Jacob" all the same; and I sincerely hope when the Council comes to deal with that section it will be expunged altogether from the Bill. It is well-established law in England, and also in India, that the owner of land should not be compelled to produce his title-deeds except he is a party to a suit. I cannot see why the Collector should require to look at a man's title-deeds unless he wishes to establish some claim against the land; otherwise it would be merely a matter of idle curiosity. But if Government wishes to establish a claim, it ought to go to law like any one else. I have heard it said by an eminent judge that he did not think there was a title in Bombay which would pass muster with a regular conveyancer. There has been so much laxity in the transfer of land not only from private individuals to each other, but also by the Government to private individuals, during a number of years, that I dare say holes could be picked in every title in the island; and it would be very unfair to men who have acquired landed property in Bombay, to give power to the Collector or to persons who might pull the strings that move the Collector to get the means of disturbing titles that have been hitherto held good. I hope the Council will expunge this clause and leave the Collector in the same position that other persons claiming land occupy under the general provisions of the law throughout India. There are minor matters, though matters of very great importance, which are suggested by the petition of the Law Society, more particularly in regard to the transfer of land, &c., which may be considered when the several sections regarding them are read. I make these few observations now, because I think, although the Bill will go no doubt to settle a great many matters, yet if it is left as it stands it will unsettle a good deal more than it will help to settle.

His Excellency the PRESIDENT—Before the matter drops I should like to ask if in the course of the trial it was explained how Colonel Laughton had been led to embody the entirely erroneous measurement alluded to by the Honourable the Advocate General in his map, because very much of the value of the survey as *primâ facie* evidence would

depend on the rules observed in carrying it out when owners of adjoining properties disputed their boundaries. What steps did he take, or was it in his power to determine authoritatively what was the boundary in such cases? In the case referred to he seems to have adopted what was found to be, according to the Honourable the Advocate General, an entirely erroneous boundary; and if it could be shown how he was led into the mistake, it would be for the benefit of the Council that it should be stated.

The Honourable Mr. RAVENSCROFT—I was Collector of Bombay for some time, and perhaps I can answer the question. When Colonel Laughton was making the survey, so far as Government property and adjoining that of the Government was concerned he had full information, because perfect records of the boundaries were kept; but in regard to the boundaries between property belonging entirely to private persons, he had no means whatever of ascertaining definitely what the proper boundaries were, because in 99 cases out of 100 the owners were not present, and he had to trust to the information of any persons he could get hold of.

The Honourable Mr. GIBBS—I understand this Bill is intended to affect only property in which Government is interested, and not to affect cases between private individuals.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—If so, I think it ought to be clearly defined, because my own impression was that this was a peculiarly scientific survey, when I assented to the provision to make it *primâ facie* evidence.

The Honourable Mr. GIBBS—It may be scientific, but if somebody tells a man that this or that is a certain boundary, he may lay it down in accordance with scientific rules, without its being correct. He merely acts on the information he can get.

His Excellency the PRESIDENT—Is it intended by this Bill that if *A* and *B* go to law about their private boundaries, and the Government have nothing to do with it, that Colonel Laughton's survey shall be considered in a court of law to be *primâ facie* evidence?

The Honourable Mr. GIBBS—Certainly not.

His Excellency the PRESIDENT—Then unless the Government is concerned in a case, this Bill has nothing to do with it?

The Honourable Mr. GIBBS—No, certainly not,—neither Colonel Laughton's survey nor any other.

His Excellency the PRESIDENT—The Honourable the Advocate-General's objection applied to cases between private individuals, and if the Bill has no concern with such cases, the Honourable the Advocate General's objection does not apply.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—It ought to be more clearly defined.

The Honourable the ADVOCATE GENERAL—I only wish that the Act may be carefully guarded from going any further.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—I quite agree with the Honourable the Advocate-General. I think we ought to be careful.

The Honourable Mr. GIBBS—I think it is clear that the Bill makes Colonel Laughton's survey *primâ facie* evidence only in cases between Government and the public. As regards the Government boundaries he had correct information. It was not likely that Colonel Laughton could lay down the correct boundaries in the case alluded to by the Honourable the Advocate General, because when the parties came into court neither of them knew what their own boundaries were.

The Honourable the ADVOCATE GENERAL—It was only after very careful inquiry that the correct particulars were ascertained from the deeds and other documents. Colonel Laughton saw nothing except the boundary walls.

The Honourable Mr. RAVENSCROFT—The existing divisions in the shape of walls, &c., are all the survey undertakes to show with regard to the property of private individuals.

His Excellency the PRESIDENT—There is another section which goes very far, indeed, to give this survey value as regards private individuals, viz., Section 20, which compels every owner of land to maintain the Government boundary marks.

The Honourable Mr. GIBBS—That is only for the purpose of protecting the survey.

The Honourable the ADVOCATE GENERAL—Those are merely boundary marks set down by the officers who conducted the survey or afterwards by the Collector.

His Excellency the PRESIDENT—Then I conclude the Council are in favour of the Bill being read a second time, and that we may proceed to consider it in detail.

Bill read a second time and considered in detail.

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

The Honourable Mr. GIBBS inquired whether in the General Clauses Act there was a definite statement of what constitutes the City of Bombay.

The Honourable the ADVOCATE GENERAL—That is defined by the Bombay General Clauses Act as all places for the time being within the limits of the ordinary jurisdiction of the High Court of Bombay. The Honourable the Advocate-General further proceeded to call attention to the words "owner or occupant" which appeared in the Bill. He said—The Law Society suggest that these words should be defined, and I think the suggestion is important. The word "owner" would, better than the word "occupant," describe the party with whom it is the intention of the Act to deal. I apprehend that technically speaking there are no "occupants" of land in the island of Bombay.

The Honourable Mr. RAVENSCROFT—The conclusion at which the Select Committee arrived was that the terms "owner" and "occupant" were synonymous; and I was of the same opinion.

The Honourable RAO SAHEB—I think there is one section of the Revenue Survey Act which puts the two words in the Mofussil almost on the same footing. It was that which I had chiefly in view when I spoke of it in the Select Committee.

The Honourable Mr. GIBBS—Would the Collector, Mr. Arbuthnot, be able to tell us? Would the Collector have anything to do with an occupant who might not be owner?

The Honourable Mr. RAVENSCROFT—Does the honourable member mean the occupier?

The Honourable RAO SAHEB—We understood on the Select Committee that the occupier and the occupant were quite different.

The Honourable Mr. GIBBS—I do not know what the word "occupant" is intended to mean; whether it means the occupier.

The Honourable Major-General KENNEDY—I asked the question, and I was told it meant the owner.

The Honourable Mr. GIBBS—Then if "the rose by any other name would smell as sweet," I should much prefer to have the word "owner" used all through.

The Honourable Mr. GIBBS called attention to the explanations of the following words in Clause 3 of Section 3 of the Bill:—"Any iron or other mark set up by the officers who conducted the Bombay City Survey, and any new mark that may be hereafter set up by the Collector." The honourable gentleman asked if that included walls.

The Honourable the ADVOCATE GENERAL—A man has a right to pull down his own wall, but if a wall is set up by the Survey Officers, I suppose it must be maintained.

His Excellency the PRESIDENT—Suppose a wall already exists, and he puts his mark upon it.

The Honourable RAO SAHEB—He must set up the boundary himself.

Referring to Section 6—appointments of the Collector's assistants and establishment—the Honourable Mr. Gibbs asked if it was not necessary to say in addition to the words "as the Governor in Council may from time to time sanction," "under the general control of the Governor General in Council." The question of revenue was an imperial and not a provincial one, and they could not appoint assistants in that department without the consent of the Governor General of India.

His Excellency the PRESIDENT—We have nothing stated here about pay.

The Honourable Mr. GIBBS—I don't see how we are to have assistants to the Collector without paying them, at least not until the millenium comes. It would save any trouble afterwards, and no harm can be done by putting the words in.

The Honourable Mr. Gibbs' suggestion was adopted, and after the words "Governor in Council" in the fifth line of the section, the words "under the general control of the Governor General in India in Council" were inserted.

Also, at the suggestion of the Honourable the Advocate General, words "by him, or otherwise," in the seventh line of the section were omitted, and the words "in such manner" substituted.

In Section 7, the words "on this behalf" were expunged, as being unnecessary.

Section 8 of the Bill as amended by the Select Committee was as follows:—

Land revenue to be fixed and levied by the Collector.

"The Collector shall have authority, subject to the orders of Government, to fix the assessment for land revenue at his discretion on all lands not wholly exempt from land revenue, or in regard to which there is no limitation of the right of Government to assess, and the amount due according to such assessment shall be levied by the Collector on all such lands.

Proviso.

"Provided that in the case of lands partially exempt from land revenue, or the liability of which to payment of land revenue is subject to special conditions or restrictions, respect shall be had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting, according to the nature of the said rights; but payment for any period of years continuously hitherto of an unvarying amount of land revenue shall not of itself be held to constitute a title to exemption from liability to a higher assessment, except in any case in which Government may have at any time expressly admitted a right of exemption on such ground."

The Honourable Mr. ROGERS said this section had created the utmost consternation among land-owners, who regarded it as unfortunate that it should ever have been contemplated at all.

The Honourable Mr. RAVENSCROFT—It has been done in the same manner for one hundred years.

The Honourable the ADVOCATE GENERAL—We cannot alter the pension tax: and that has been fixed for centuries. The alarm may probably arise from the words "at his discretion" which are certainly very alarming words, and which go very far beyond the Regulation, which provides that the land revenue of the Presidency of Bombay should be assessed according to the principles laid down in Regulation XVII. of 1827. There, the Collector had principles laid down to guide him, and now some fifty years later it is proposed that his discretion should be substituted. There seems to be good ground for alarm. After a lapse of a great many years, the Collector's discretion should not be allowed to override rights which parties may have acquired by the continuous payment of a fixed rate of tax. We take away that, and we say that the payment for a number of years shall not of itself constitute a title to exemption, and that certainly is going against the practice of the Courts.

The Honourable Mr. GIBBS—Why cannot we leave out the words "at his discretion."

The Honourable the ADVOCATE GENERAL—I should like to see those words left out.

The Honourable Mr. ROGERS—Does not a payment for a certain number of years constitute an exemption?

The Honourable the ADVOCATE GENERAL—Under the Limitation Act, the long term of 60 years is stated as the period within which a suit in the name of the Secretary of State may be brought.

The Honourable Mr. GIBBS—Then why not leave out the words "at his discretion"?

The Honourable Mr. ROGERS—That would not do away with the objection, which is to the latter part of the clause.

The Honourable Mr. GIBBS—If we leave out those words, it is subject to the direction of Government.

The Honourable Mr. ROGERS—That would not reply to the objection at all.

The Honourable Mr. GIBBS—The discretion of Government is supposed to be a wiser discretion than the Collector's.

His Excellency the PRESIDENT—As the section stands, it is subject to Government.

The Honourable Mr. GIBBS—Exactly, but the wording creates a misapprehension. It is of no earthly use. The Collector must act in the first instance according to his discretion.

His Excellency the PRESIDENT—I understand that the honourable member wishes to give the Collector the power of fixing the rate of payment under the law.

The Honourable the ADVOCATE GENERAL—Exactly.

His Excellency the PRESIDENT—Would it not do to place it in the hands of the Collector, "subject to the law in force for the time being," to fix the rates. You want to say that the Collector is to be the man to do this, but you want him to do it according to law If you do this you place it in his hands subject to legal restrictions.

The Honourable Mr. GIBBS—Well, the legal restrictions are the orders of Government.

The Honourable the ADVOCATE GENERAL—That would compel anybody who felt aggrieved by the Collector's assessment to go into court and ask the Judge to determine whether the Collector's decision was according to the law for the time being.

The Honourable Mr. GIBBS—What is the law at the time being? I do not like that expression.

His Excellency the PRESIDENT—In the fifth section we empower the Collector to "discharge the duties imposed and conferred on him by this Act, or by any other law for the time being in force."

The Honourable the ADVOCATE GENERAL—I believe the tenures under which people hold land from the Government of Bombay are various.

The Honourable Mr. RAVENSCROFT—Yes, they are; and a great portion of the land is leased on renewable leases. But in a great many cases the tenants say they do not hold any leases at all.

The Honourable the ADVOCATE GENERAL—That has arisen from past Collectors of Bombay not having kept their records properly. Many records have been lost, or stolen, or otherwise disposed of.

The Honourable Mr. GIBBS said the section was really the old clause from the old Act.

The Honourable the ADVOCATE GENERAL—No, there is something more in the old Act. There we have given specific rules for the Collector's guidance.

The Honourable Mr. RAVENSCROFT—In point of fact the question of raising the assessment in Bombay is a very small one, because the land revenue of Bombay scarcely amounts to a lac of rupees, and an increase could scarcely produce more than Rs. 5,000. Almost all the land in Bombay is now taxed very fairly indeed, and it would be extremely injudicious to attempt to increase the general revenue by increasing the land-tax.

The Honourable the ADVOCATE GENERAL—The only increase possible in the land revenue of Bombay is as the leases expire.

His Excellency the PRESIDENT—Would not the whole thing become very simple if we were to put the case in this way: "It shall be the duty of the Collector, subject to the orders of Government, to fix and to levy the land revenue." We must define what the duties of the Collector are.

The section was then altered to read as follows:—

"It shall be the duty of the Collector, subject to the orders of Government, to fix and to levy the assessment of land revenue, when there is no right on the part of the superior holder in limitation of the right of Government to assess, the assessment shall be fixed at the discretion of the Collector subject to the control of Government. When there is a right on the part of the superior holder in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved, the assessment shall not exceed such specific limit."

His Excellency the PRESIDENT—Now we come to the question about the "occupant."

The Honourable the ADVOCATE GENERAL—I suggest that the word "occupant" be left out, and the word "owner" allowed to remain alone.

The Honourable RAO SAHEB—In the case of lease-hold property under Government the lease-holder will not be the owner; he will only be the occupant.

The Honourable Mr. GIBBS—The Honourable Mr. Ravenscroft has told us that the greater portion of the land in the Island of Bombay is held on lease from the Government; and those who hold it will not be the owners. There must be a definition of the word "occupant."

The Honourable RAO SAHEB—The definition of the word "occupant" in the Mofussil is that it means the person named in the Government papers as responsible for payment of land revenue.

The Honourable the ADVOCATE GENERAL—We cannot rely on the records of the Collector in Bombay, for in many cases wrong names are entered, and in others there is no record at all. The Collector's man goes to collect the money from any one who will give it to him, and is perfectly satisfied if he can get the money.

The Honourable Mr. GIBBS—I remember trying a case on the Original Side of the High Court which induced me to write to Government to say the books ought to be better preserved. We found in searching for the occupants of some land which was in dispute, that many names had been entered that had no connection at all with the matter; and nobody knew how they got in. Suppose we use the word "tenant"; say "owner or tenant."

His Excellency the PRESIDENT—That would not do.

The Honourable Mr. GIBBS—Why not?

His Excellency the PRESIDENT—We would not settle the assessment with an annual tenant.

The Honourable Mr. GIBBS—But we would on a man who held a 100 years' lease.

The Honourable RAO SAHEB—We must have the word "occupant."

The Honourable Mr. GIBBS—Well, if we have the word "occupant", we must put in an interpretation clause to say what "occupant" means.

His Excellency the PRESIDENT—That had better be postponed.

The Honourable the ADVOCATE GENERAL called attention to a phrase in Section 9, which proposed to provide that in the absence of the owner or occupant of a piece of land, the settlement of assessment might be made with "such person as the Collector may deem fit to recognise as the owner or occupant for the purposes of this section, and any assessment so fixed shall be binding upon the rightful owner or occupant of the land." The Advocate General suggested that it would be better to substitute for "such person as the Collector may deem fit to recognise as the owner or occupant for the purposes of this section," the words "the person actually in possession of the land." The Collector, he said, might deem fit to recognize some one not connected with the land.

The Honourable Mr. RAVENSCROFT—The honourable member will see that the 10th section points to that.

The Honourable the Advocate General's proposition was adopted; and at the suggestion of His Excellency the President the following clause was added to the section—"Any payment made by the person in possession in accordance with the provision of this Act shall be deemed to have been made on behalf of the owner or occupant."

The last four and a half lines of Section 10 beginning from the word "and" were struck out, leaving the section standing as follows:—

"10. The owner or occupant of land shall be liable in person and property for the land revenue due upon the holding."

In Section 12, in the ninth line and after the words "paying revenue," were inserted the words "or in their absence persons in possession."

In Section 13, in the fifth line, and after the words "or occupant," the words "or person in possession, as the case may be," were inserted.

Section 19 was amended, at the suggestion of the Honourable the Advocate General, by omitting the words in the seventh and eighth and ninth lines, to the effect that the records of the Bombay City Survey should be "recognised and acted upon for all the purposes of this Act," and by the substitution of the words "taken as *primâ facie* evidence for all proceedings under, and for all the purposes of, this Act." Also by the omission, in the latter portion of the section, of the words "if he deem fit," as applied to the Collector's power to cause alterations or corrections to be made in the demarcation of lands, or of any entry in the records. As amended, the section will read as follows:—

"19. The survey made under theauthority of Government during the years 1865 to 1872 shall be called 'The Bombay City Survey'; and the demarcation of lands then made, and all the records of the said survey, shall be taken as *primâ facie* evidence for all proceedings under, and for all the purposes of, this Act, provided that the Collector may, on the application of the parties interested in such lands, and shall in pursuance of a decree or order of a competent court, cause any alteration or correction to be made of any such demarcation of lands, or of any entry in any such record."

In Section 22, in the seventh line, and after the word "occupant," was inserted "or in his absence the person in possession"; and in the twelfth line also, after the word "occupant," was inserted the phrase "or person in possession."

Also in Section 23, after the word "occupant," the same phrase, "or person in possession" was inserted.

Section 25 was amended by the omission of the whole of the latter portion of the section from the words "when such lands or foreshore" downwards.

In Section 26, in the twelfth line, the words "if he deem fit" were omitted, and the words "with the previous sanction of Government" substituted; and for the words "double the value of the land" in the seventeenth line, the words "a sum not exceeding five times the value of the land" were substituted. Again in the eighteenth line, the words "an assessment not exceeding five times the ordinary annual land revenue" were substituted for "double the ordinary annual land revenue."

Section 27 was amended by the omission of the last three words of the eighth, the whole of the ninth and tenth and the first two words of the eleventh lines; and also by the omission of the last three words of the thirteenth, the whole of the fourteenth and fifteenth, the first six words of the sixteenth, the four last words of the seventeenth, and the whole of the eighteenth lines.

Section 28 was amended by the omission of the words "it shall be lawful for" in the fourth and fifth lines, and the alteration of the sentence so as to render the Collector's action in regard to dealing with encroachments subject to the sanction of Government. The word "double" in the nine line was altered to "a sum not exceeding double," and the same word in the ten line was altered to "an assessment not exceeding double."

The section as amended reads as follows:—

"28. In the case of any encroachment made within 20 years before the passing of this Act, the Collector may, with the sanction of Government, charge the person who made such encroachment, or who is in occupation of the land so encroached upon, a sum not exceeding double the value of the said land, and fix an assessment not exceeding double the ordinary annual land revenue thereon, and recover arrears of land revenue at the same rate from the date when the encroachment was made."

Section 29 was amended in the latter portion so as to read from the middle of the tenth line "and the value and land revenue payable in respect of the same shall be calculated according to the market value of similar land in the neighbourhood, and land revenue chargeable in respect of the excess shall be calculated at the same rate at which the rest of the holding has been assessed. In case there has been no such holding, the assessment shall be made at such rate as the Collector with the sanction of Government may fix.

His Excellency the President then adjourned the Council.

By order of His Excellency the Governor in Council,

W. LEE WARNER,
Acting Under Secretary to Government.

Bombay Castle, 4th January 1876.

The following Extract from the Proceedings of the Governor of Bombay, in the Legislative Department, is published for general information :—

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

The Council met at Bombay on Wednesday, the 5th January 1876, at noon.

PRESENT.

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE GENERAL.

The Honourable MAJOR-GENERAL M. K. KENNEDY.

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

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALLY ROGAY.

The Honourable KHAN BAHADUR PADAMJI PESTONJI.

The Honourable RAO BAHADUR BECHERDASS AMBAIDASS, C.S.I.

The Bombay Land Revenue Bill considered in detail.

The Council proceeded with the consideration of Bill No. 2 of 1875,—a Bill to amend the law relating to the Land Revenue Administration of the City of Bombay as amended by the Select Committee.

Referring to Section 30 of the Bill, the Honourable the ADVOCATE GENERAL said—The Law Society objects to this clause, and I think very properly. The objection is to the word "possession" as applied to the transfer of houses or land or other immoveable property. I apprehend that the intention of the Bill is to provide for notice being given to the Collector, not when the "possession" of a house or piece of land is transferred, but when the property itself is transferred. It could never have been intended that the Collector should be informed whenever an under tenant was placed in possession of property leased from Government; and indeed in cases of small holdings, where the tenants are changed from month to month or even several times in a month, it would be utterly impossible that notice of each change could be given. There is also another point in the section to which I wish to invite the attention of the Council. The section applies now to all houses, lands, &c., in the Island of Bombay, and the old regulation applied only to houses or lands which were "subject to the payment of a quit or ground rent to Government." I do not know whether it is the intention of the Council to make the Collector a sort of registering officer of all property in Bombay, in addition to the registration provided for by the Registration Act; but there are reasons why it might be desirable that such a registration should be established. Whether that was contemplated or not I do not know. If it was not, it will be necessary to introduce some words into the section, after the words "immoveable property," in the third line, to show that it is only intended that the Collector should have notice only of the mutation of possession of such property only as is subject to the payment of a quit or ground rent to Government.

The Honourable Mr. RAVENSCROFT—It is for the convenience of the public that there should be a register of titles.

The Honourable the ADVOCATE GENERAL—No doubt it might be very convenient.

The Honourable Mr. RAVENSCROFT—And that does exist now. Whenever a transfer of property is made it is entered in the books.

The Honourable the ADVOCATE GENERAL—Yes, when land subject to payment of revenue to Government is transferred; but I do not think there is any law to that effect regarding other property.

The Honourable Mr. GIBBS—The custom is I believe to give the Collector notice. Whether it is the law or not, I do not know.

The Honourable Mr. RAVENSCROFT—No doubt it is a very great benefit to the public that there should be a register of titles and of transfers; so that when any dispute arose, reference could be made to the Collector's numbers.

The Honourable the ADVOCATE GENERAL—No doubt the Collector's numbers are one of the most important means by which landed property is identified in Bombay.

The Honourable Mr. GIBBS—What are the Law Society afraid of?

The Honourable the ADVOCATE GENERAL—They are not afraid of any thing. They are rather in favour of it, and wish the Council to go further and say that all such transfers shall be evidenced by writing.

The Honourable RAO SAHEB—Oh, no, I don't think that could be done.

The Honourable the ADVOCATE GENERAL—There should be no verbal transfers of landed property under the Contract Act.

The Honourable RAO SAHEB—The common practice at Hill Stations, is to sell property verbally, and a *Razinama* and a *Kabulayat* are all that is necessary for transferring the property in the Collector's books.

The Honourable Mr. GIBBS—Supposing I say to you "I will sell you my house," and you say "I will buy it for Rs. 5,000," and you give me a cheque, and I say "Take my house," and the purchase and transfer is complete. How is that compatible with registering.

The Honourable the ADVOCATE GENERAL—The Contract Act, by providing that contracts need not be in writing, gives an opening for defeating the Registry Act.

The Honourable RAO SAHEB—Well, it is the law of the land; and I don't think any evil has arisen from it. This Council is not called upon now to make new regulations with respect to contracts for sale.

The Honourable the ADVOCATE GENERAL—I very much doubt whether this Council could take that upon them. They ought to leave the general law alone.

The Honourable Mr. GIBBS—Would the honourable member leave the section out, then? I think it is a useful one.

The Honourable the ADVOCATE GENERAL—So do I, and I think it would be desirable to extend this compulsory system of registration of land which pays quit or ground rent to Government, to all lands in Bombay, and to make the Collector's Register supplementary to that in the Registration Office.

The Honourable RAO SAHEB—I have heard, and I have reason to believe, that very many transfers take a very long time in being registered in the Collector's office, some times weeks, if not months; and there ought to be a maximum time fixed, if it can possibly be done.

The Honourable Mr. GIBBS—But supposing the thing to be this,—I sell a house No. 151 in the Collector's books, and you are the purchaser; we both give notice to the Collector that I have sold and you have bought the house numbered 151 in his books; and what does he want more than to enter the name of the purchaser opposite the number, and do the whole thing in half an hour?

The Honourable Mr. ROGERS—After he receives the notice, he sends to survey the land.

The Honourable Mr. GIBBS—What does he want to do that for? All he has to do is to enter the sale in his book. It is not desirable that the Collector should be Judge of a small court of titles.

The Honourable the ADVOCATE GENERAL—All that the Collector has to do I apprehend is to see that no Government rights are trenched upon in the transaction. Otherwise, the party might turn round, when any encroachment might be subsequently discovered, and say—"Well you can't complain, because you had notice given of the transfer at the time."

His Excellency the PRESIDENT—What is the use of these transfers being recorded in the Collector's office, if he puts down everything that is told him, and makes no inquiry as to the truth of the statements.

The Honourable Mr. RAVENSCROFT—The fact is the owners themselves are anxious that their names should be entered, because they think then by some means or other their title is recognised.

The Honourable the ADVOCATE GENERAL—It is really a financial question. I do not know what the expense would be.

His Excellency the PRESIDENT—Is there any fee payable now on the registration before the Collector.

The Honourable RAO SAHEB—I believe there is a small fee.

The Honourable Mr. RAVENSCROFT—Yes, there is a small nominal fee.

His Excellency the PRESIDENT—I suggest that we should introduce the words "subject to the payment of land revenue to Government."

Accordingly, for the words "possession of" in the first line of the section, were substituted the words "title to," and after the words "immoveable property" in the third line were inserted the words "subject to the payment of land revenue to Government."

The second clause of the section was amended by the insertion of the word "in" after "person" in the 19th line, and of the words "the title to any property" after "name" in the same line; by the omission of the words "as the owner or occupant of any property" in the 21st and 22nd lines, and of the words "possession of" in the 23rd line; by the substitution of the word "title" for "property" in the 23rd line, and by the substitution of the words "from such" for the words "of the said owner's or occupant's" in the 26th and 27th lines.

The Honourable the ADVOCATE GENERAL asked if it was worth while continuing the beating of *bataki*.

The Honourable RAO SAHEB—It is well known; and in many parts of the island, such as Mahim, it will be of great use.

Section 31 was amended, on the motion of the Honourable the Advocate General, by the omission of the word "original" in the 8th line, and by the insertion of the words "of transfer, if any," after "instrument" in the 9th line.

Alluding to Section 32, the Honourable RAO SAHEB said—I think the question of the amount of the fine was to a certain extent left open. I would suggest that Rs. 100 should be the maximum for all cases, but that in certain minor cases a smaller sum should be fixed, and should not be exceeded by the Collector.

The Honourable the ADVOCATE GENERAL—The Collector will not be likely to fine a very small landholder in a large penalty. In the section as it stands, the Collector may fine a man 2 annas, or 4 annas, which might in some cases be a sufficient remedy.

The Honourable Mr. GIBBS—We may suppose the Collector will have some discretion. The only thing is, would a Rs. 100 fine be too much in even the most serious cases.

The Honourable Mr. RAVENSCROFT—I should think that would be sufficient punishment in any case.

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK moved that for the words "not exceeding 100 Rs." in line 7, the following words be substituted:—"not exceeding

Rs. 10 in case of holdings paying less than one rupee as Land Revenue, and in no other case exceeding Rs. 100."

The Council divided:—

Ayes.	*Noes.*
The Honourable J. Gibbs.	The Honourable A. Rogers.
The Honourable the Advocate General.	The Honourable Major General M. K. Kennedy.
The Honourable Rao Saheb Vishvanath Narayan Mandlik.	The Honourable E. W. Ravenscroft.
The Honourable Nacoda Mahomed Ali Rogay.	
The Honourable Khan Bahadur Padamji Pestonji.	
The Honourable Rao Bahadur Becherdass Ambaidass.	

—*Carried.*

His Excellency the President said he trusted that Section 33, with reference to the Collector having power to call upon a land-owner to show cause for neglect to give notice, might be omitted.

The Honourable Rao Saheb—I think it might be left out with great advantage.

The section was accordingly struck out.

Referring to Section 34, His Excellency the President observed—I wish the buyer to be liable as well as the seller. As this section stands, will it not take the liability off the person to whom the land has been transferred?

The Honourable Rao Saheb—I thin kso; we should make the seller liable, and, failing him, the purchaser.

Accordingly the following phrase was added to the section:—"But nothing contained in this section shall be held to diminish the liability of the land, house, or other immoveable property to attachment or sale under the provisions of Section 13 of this Act."

The section was also amended by the substitution of the words "title to" for "possession of" in the first and second lines; by the insertion of the words "paying land revenue to Government" after the word "property" in the third line; and by the substitution of the word "transfer" for the words "change of names" in the 11th and 12th lines.

Section 35 was amended by the substitution of the words "title to" for the words "possession of" in the 5th line; by the insertion of the words "subject to payment of land revenue to Government," after the word "property" in the 6th line; and by the substitution of the word "title" for "property" in the 17th line.

Section 36 was amended by the substitution of the word "title" for "name" in the second line; and by the substitution of the words "transfer is made or registered" for the words "name is so registered or transferred" in the two last lines.

The Honourable the Advocate General—The Law Society object to Section 37 as I stated previously. The law of India, or at all events the law of England, says that you cannot compel persons to produce their title deeds, and it is also laid down that they cannot be compelled to disclose the particulars of their titles, and that I presume is the object of the phrase "such information as may be in their possession." I think it would be very undesirable indeed that a Collector should have any such power. It would create a great deal of annoyance and confusion, and I do not see what good could be derived from it. I think it should be omitted.

Considerable discussion followed on this section up to the adjournment at 2 o'clock. On the Council re-assembling, His Excellency the President said—We have had an opportunity of conferring together on the subject of this section (37) and I think we may safely consent to its being struck out.

The section was accordingly omitted.

The Honourable the Advocate General suggested that with reference to the word "occupant," the best way would be to define the person to whom Government would look finally for the payment of land revenue as the "superior holder," and then in the interpre-

tation clause they could define the words "superior holder" to signify the person having the highest title under Government to the land in respect of which land revenue was payable.

Accordingly, the word "occupant" was changed to "superior holder," and an interpretation clause to that effect inserted.

Bill ordered to be printed as amended and brought up at some future day for further consideration.

It was resolved that the Bill should be printed as amenedd, and brought up at some future day again for further consideration in detail if further amendment is necessary. Then it can be put down for the third reading.

Mr. Rogers moves the Second Reading of Bill No. 5 of 1875 (The Mámlatdárs' Courts Bill).

The Honourable MR. ROGERS moved the second reading of Bill No. 5 of 1875 (a Bill to consolidate and amend the Law relating to the powers and procedure of Mámlatdárs' Courts). He said—The Report of the Select Committee which has just been read to the Council sets forth all the amendments. The chief alterations are in Sections 4 and 11. The alterations in Section 4 consist of illustrations to show what kind of cases Mámlatdárs are bound to take up. It has been found by experience that they often do not understand what constituted possession and what do not constitute possession; and in order to make the matter clear to them these illustrations have been inserted. It will be seen that they consist of cases which are likely to occur in every range of the Mámlatdárs' practice. Having read the illustrations, the Honourable Mr. Rogers continued—The only other point that I have to allude to is as regards the provision that we have made that the Mámlatdárs shall be obliged to satisfy themselves in cases of summonses being issued that the summonses reach the defendants in the cases. The Council are aware that the proceedings under this Act are necessarily summary, and in the opinion of the Select Committee it was very desirable to guard against the possibility of any inequitable decision being come to in consequence of summonses not being properly served. Other alterations of less importance have been made, and the Council will consider them when the Bill is under consideraiton in detail.

The Honourable MR. GIBBS—The only points which are likely to give rise to any differences of opinion, I suppose, are first the question as to how the Mámlatdár's decision is to be carried out; whether by the village authorities or not; and secondly, the motion of which the learned Advocate General has given notice, respecting the Mámlatdárs not being allowed to award costs, which was one of the principal reasons why this Bill was brought before the Council.

The Honourable the ADVOCATE GENERAL—I have always understood that the object of giving this jurisdiction was to provide a cheap and speedy remedy in cases of disputes and disturbances such as the Mámlatdárs are here empowered to deal with; and it appears to me very likely that by giving him power to award costs we would almost indefinitely increase the expense of such proceedings,—an expense which I think it is desirable to guard against. It does not appear to me that any objection to the absence of power to give costs has been taken by the suitors. The number of cases tried in these courts in 1873-74 was 485, and in 1874-75, 691; and that I think shows very clearly that the absence of power to give costs has not prevented persons from availing themselves of this summary process. If parties desire costs they have the choice of the civil courts, where they can get precisely the same relief that the Mámlatdárs' courts afford them, and an award of costs. This Act has been in operation since 1864, and, so far as I can form an opinion, it appears to me that the actual working of the Act shows that the absence of power to give costs has been rather an advantage. I have no very particular information myself on the subject, except what I derive from the statistics of the working of the Act which are before the Council. I certainly should desire as much as possible to keep these courts as cheap and to make their procedure as speedy as it has hitherto been; and when the section referring to the costs comes to be considered, I shall take the opinion of the Council upon the matter, for the reasons I have stated.

The Honourable RAO SAHEB—The only point I wish to refer to is that of the execution of the Mámlatdárs' decrees, and the question that was considered by the Select Committee whether special officers should be appointed for that purpose, or whether their execution should be entrusted to the village authorities. With reference to the statistics quoted by the learned Advocate General, the only point that occurs to me is to show how misleading they can be, for though the number of the decrees may have gone on increasing, their effect has not been proportionate. At present there is no machinery for enforcing them.

The Honourable the ADVOCATE GENERAL—Then are they so many pieces of waste-paper ?

The Honourable RAO SAHEB—It is a fact that at present a man frequently gets a Mámlatdár's order, and there is no execution. With regard to the question of costs, I must say I think if the Mámlatdárs' Courts are to be retained, they ought to have power to award costs. As to placing the execution of the decrees in the hands of the village officers, I think they have quite plenty of work to do already. The Civil Court decrees are executed by a separate establishment; and I see no reason why the Mámlatdár's decrees should not be executed in precisely the same manner. I think this Council ought to use the very best safe-guards against these decrees being misused, and the only way to provide against that is to entrust their execution to a separate establishment, which ought to be paid for by those who make use of it. I shall support any scale of fees which it may be thought necessary to sanction for this purpose, and I should strongly urge it for the consideration of the Council if possible to avoid entrusting the work to the village authorities.

Bill read a second time and considered in detail.

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

The Honourable the ADVOCATE GENERAL said he did not quite understand what the fourth illustration to Section 4 meant; and after some conversation it was decided that the words "a *pat* or *kans* or similar" should be inserted before the word "artificial" in order to explain the words "artificial water-course."

The Honourable MR. GIBBS proposed to add a note at the end of the illustrations as follows: "The above illustrations are not exhaustive, but simply show some of the more common cases coming under this Act"; but the proposition was negatived.

The first portion of the second clause of the 11th section was transposed in order to render its meaning more clear; and for the words "plaint is filed," in the last line, were substituted the words "notice is issued."

When considering Section 13, the Honourable the ADVOCATE GENERAL said—This is the first Section under which the question of the awarding of costs arises; and I should like to take the opinion of the Council as to whether it is advisable to give the Mámlatdárs that power or not.

The Honourable MR. GIBBS—I do not think the giving the Mámlatdár the power of awarding costs would necessarily increase the expenses of the court, and as to many of the men who appear in these cases one, two, or three rupees is of serious importance, perhaps as much as three or four hundred rupees would be to a gentleman in Bombay, the power should be given.

The Honourable RAO SAHEB—If this section is left out, it would be very hard on a defendant, in a case where a plaintiff called him away from his employment, and then failed to attend the court himself, that he should not have his costs.

The Honourable the ADVOCATE GENERAL—Well, I do not care to divide the Council about it, if the Council is of opinion that the Mámlatdárs should have the power to award costs. I do not press my amendment, but I think the result will probably be very much to enhance the cost of these courts.

The Honourable MR. GIBBS—Speed is the thing that is wanted in these cases.

The section was accordingly allowed to stand.

Alluding to Section 14 the Honourable Mr. ROGERS said that he thought the Mámlatdárs ought to have power to adjourn cases when it was necessary, to call other witnesses.

The Honourable MR. GIBBS—That would give the Mámlatdárs an excuse for adjournment, which they should not have.

The Honourable the ADVOCATE GENERAL objected to the last clause of the 15th section, which proposed to provide—"In either case, the Mámlatdárs shall direct by whom the costs of the suit, including the costs of execution, are to be paid." He asked why should the Mámlatdárs be allowed discretion in such a manner. In England, in the new Judicature Act the Judges had decided that costs should be awarded to the successful party to a suit. Certainly, in India the Judges still had the discretion; and he thought it was a very unsatisfactory state of things.

The Honourable Mr. ROGERS said there might be cases where the Mámlatdár should exercise a discretion.

The Honourable Mr. RAVENSCROFT—If the Mámlatdár has power to decide cases, perhaps he should have power to decide to whom the costs should be paid.

It was decided that the words—"Mámlatdár shall direct by whom" should be omitted, and that for the words "are to be paid," the words "shall follow the decree" should be substituted.

When Section 18 was read the Honourable RAO SAHEB reiterated his objections to the village officers being entrusted with the carrying out of the Mámlatdár's decrees.

The Honourable the ADVOCATE-GENERAL—I do not see why if the village organization is good for one thing, it should not be good for another.

The Honourable Mr. ROGERS—They would only have to see that the decrees were carried out.

The Honourable Mr. GIBBS—I would say let the Mámlatdár's bailiff go to the Patel of the village and say—"I have come to execute this decree." Then let the Patel, when the decree has been enforced, sign the declaration on the back, in token that it has been properly done. The decrees should be conveyed safely and speedily to the village authorities and not entrusted to the post.

The Honourable the ADVOCATE-GENERAL—Why is a bailiff wanted at all? Why should not the plaintiff, if he obtains a decree, take it himself to the Patel of the village?

The Council then adjourned to Thursday, the 7th January 1876.

By order of His Excellency the Governor in Council,

W. LEE WARNER,

Acting Under Secretary to Government.

Bombay Castle, 5th January 1876.

The following Extract from the Proceedings of the Governor of Bombay, in the Legislative Department, is published for general information :—

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

The Council met at Bombay on Friday, the 7th January 1876, at noon.

PRESENT.

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *Presiding.*
The Honourable A. ROGERS.
The Honourable J. GIBBS.
The Honourable the ADVOCATE GENERAL.
The Honourable MAJOR-GENERAL M. K. KENNEDY.
The Honourable E. W. RAVENSCROFT, C.S.I.
The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK.
The Honourable NACODA MAHOMED ALI ROGAY.
The Honourable KHAN BAHADUR PADAMJI PESTONJI.
The Honourable RAO BAHADUR BECHERDASS AMBAIDASS, C.S.I.

The Mámlatdárs' Courts Bill (No. 5 of 1875) considered in detail.

The Council proceeded with the consideration in detail of Bill No. 5 of 1875, "a Bill to consolidate and amend the laws relating to the powers and procedure of Mámlatdárs' Courts."

With reference to Section 17 the Honourable MR. GIBBS said :—The Patel must be a party to the execution, because supposing he has nothing to do with it, and a special bailiff goes down, and goes to *A* and says : "Here is an order of the Mámlatdár that you are not to interfere with certain lands belonging to *B*," *A* puts the order in his pocket and goes away, and as the Patel does not know anything about it, there is no one to see that it is carried out. If the Patel has not anything to do with it, the result will be that the order will become comparatively useless. The injunction or order should be taken to the Patel by a special person appointed for that purpose, and the Patel should accompany him to see the order carried out.

His Excellency the PRESIDENT :—Why should not the Mámlatdár's order be given to the successful party in the suit, leaving him to take it to the Patel?

The Honourable MR. GIBBS :—There are objections to that course. If the Patel is personally interested in the matter, he will not feel himself bound to do it, and then you have no independent party to show the Patel has been told about it.

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK :—I made some remarks at starting on this subject, and I think if we are going to improve the Mámlatdárs' Courts, we ought particularly to consider what the effect of the decrees will be. I think there are several very serious objections to their being entrusted to the village officers, who might be parties to a suit. Neither should the decrees be left to the parties themselves independently, though there are many considerations why the patels might be made to act as a check on the special bailiffs. That the decrees should not be entrusted altogether to the parties themselves seems to me a matter of great importance. With regard to the village officers, first of all they would not be specially paid agents, and they are already a hard-worked and underpaid class, as has been clearly acknowledged by Government. Again, they might be dealing largely with land, &c., in their villages, and might have to act as bailiffs in cases in which they were themselves concerned. The duties they have to perform are laid down very definitely in Regulation 16 of 1827, Sections 21 and 22. Nearly everything in the whole village economy has to be done by the Patel, from keeping the land registers down to showing numerous civilities to travellers. Now, I submit it is of the last importance that an overworked and underpaid officer like that, and also one who may be the owner of land himself and may be a party to the decree he has to execute, should have nothing to do with the execution of decrees. There would be little or no check on him : but in the

case of a bailiff coming from the Mámlatdárs' Courts, the Patel will act as a check upon him, as he does on the bailiffs of the civil courts. In all decrees as to land at present, the Patels are required to attend all sales, so that they may act as a check, and that is a proper office for them to serve. I don't see, if parties wish to get their decrees executed, why they should not be made to pay to keep one or more bailiffs to each court for that purpose. If the number of suits increases, as we see it has been doing, it is of the last importance that this should be carried out at once, because as the business increases the number of bailiffs may be increased, but the number of Patels cannot be increased. I therefore submit it for the consideration of the Council that the Mámlatdárs should have power to have their decrees executed in such manner as they may deem fit. I think that will meet the matter.

The Honourable Mr. Gibbs:—What I proposed the other day was this,—that there should be bailiffs attached to these courts, as to the ordinary Civil Courts, and paid for by the parties, who should take the Mámlatdár's order to the village, and if it is an injunction shall serve it on the defendant in the presence of the Patel, who shall sign the endorsement on the back to show that it has been done. That is the sole execution that can be effected. I object, as I said from the first, to have the paper sent to the Patel by the village post. With regard to placing a man in possession, the bailiff should himself send for the parties and say:—"I put you in possession,—the Patel is a witness, and you are to remain in it, and you (the other party) are not to interfere." What we have to consider is how is the order of the Mámlatdár to be carried out. It seems to me that the proper way to do it is to send a bailiff down to the place to execute it in the presence of the Patel.

The Honourable Mr. Ravenscroft:—I quite concur in what the Honourable Mr. Gibbs has said. It seems to me the only practicable way.

The Honourable Mr. Rogers:—I think the honourable member has some mistaken notion of what would have to be done. He talks of the Patels being so hard-worked that it would not be advisable to entrust them with this duty. I think the work of the Patels in this matter would be a mere nothing. As for their being interested parties, I think those remarks apply only to parts of the country. There are other portions of the country where they are stipendiaries, and could be trusted with the decrees just as well as outsiders altogether. The extra work would, I think, be a mere trifle. In the case of an injunction, the Patel would have merely to serve the Mámlatdár's order on the party against whom it was issued, and then, being on the spot, the village officers would be able easily to see that the order was carried out, which a bailiff who simply came and went away again would not have the opportunity of doing.

The Honourable Mr. Ravenscroft:—All that the village officers would have to do in the other case would be to see that the bailiff executed the order. That is what the Honourable Mr. Gibbs proposed, and I think that is the simplest way of meeting the matter.

The Honourable Mr. Rogers observed that he had been reported in a newspaper to have stated on the occasion of the former discussion that as the Mámlatdárs' had separate establishments for the purpose, it would be inadvisable for the village officers to have this work to do. What he said was, that if the village officers had not to do this work the Mámlatdárs would require such separate establishments.

The Honourable the Advocate General:—I do not see how the work of the Patel is decreased by what is proposed, because he has to attend with the bailiff. It would not take less time to walk with the bailiff than to walk by himself, I suppose.

The Honourable Mr. Gibbs moved that the first portion of the Section should be altered so as to read as follows:—

"If the Mámlatdár's decision be for awarding possession or restoring a use, he shall issue an order to give effect thereto, which shall be executed in the manner hereinafter provided.

"If it be for granting an injunction, he shall cause the same to be prepared in the form of Schedule C., and shall deliver or tender the same then and there to the defendant, if he be present; and if he be not present, it shall be served upon him in the manner hereinafter provided.

"The order of the Mámlatdár in the above cases shall be committed to a bailiff, who shall execute or serve it in the presence of one of the village officers, who shall sign the return made to the Mámlatdár by the person in charge of the order."

The Honourable MAJOR-GENERAL KENNEDY :—That is only serving the decree upon the man.

The Honourable MR. GIBBS :—That is all that can be done in any case. The bailiff says : " I put you in possession of that field, and the Patel is a witness that it is done."

The Honourable MAJOR-GENERAL KENNEDY :—And if the defendant refuses to obey the order ?

The Honourable MR. GIBBS :—The plaintiff goes to the magistrate, then, under the Penal Code.

The Honourable the ADVOCATE GENERAL :—I do not see why, if you have an organisation that you are ready to trust with matters of revenue, &c., you should not trust the same organisation to carry out these decrees.

The Honourable MR. RAVENSCROFT :—The Mámlatdár only appoints a special peon to execute the decree.

The Honourable the ADVOCATE GENERAL :—Then what is the use of saying all this about a special bailiff ? It seems to me that if you have a proper village organisation you should make it responsible to carry out the Mámlatdár's orders, and if the Patel does not obey the orders, of course the Collector can deal with him as a person guilty of misconduct in the execution of his duty. I think it is of very great importance to maintain the principle of the responsibility of the village officers for the proper execution of these decrees. I do not see otherwise how any benefit is to be obtained by persons who resort to the Mámlatdárs' Courts.

The Honourable MR. RAVENSCROFT :—That is what it is proposed to do.

The Honourable the ADVOCATE GENERAL :—That is what the Honourable Rao Saheb objects to. He says they are overworked, and it appears to me that they would have just the same amount of work under the arrangement proposed by the Honourable Mr. Gibbs as under the original Sections. All this proposed machinery goes to what I think is a great objection in this Act, viz., the increase of expenses.

The Honourable MR. GIBBS: —When the Mámlatdár lives in the village there need be no difficulty, but when he is 50 miles away, I want to have some person who is called a bailiff appointed to take the order to the village and to see it executed.

The Honourable the ADVOCATE GENERAL :—But why should not the party himself take it ?

The Honourable MR. GIBBS :—In that case, it would only end in a row, and he would get his head broken if the other man was stronger than he.

His Excellency the President—The party would not take it to the other man, but to the Patel.

The Honourable MR. GIBBS :—Then there is a row afterwards, and perhaps the Patel is mixed up in the matter. If he does not want to execute the order, he will not do it, and when the plaintiff says he gave the order to him, he will say—" No, I know nothing about it." If an independent bailiff is appointed to take the order to the Patel, the difficulty would be obviated.

The Honourable the ADVOCATE GENERAL :—But supposing one of the parties bribes the independent sepoy ?

The Honourable MR. GIBBS :—The sepoy must return to the Mámlatdár a certificate from the Patel that he has executed the order. That seems to me to be the simplest way of settling the matter.

The Honourable MAJOR-GENERAL KENNEDY :—Would special bailiffs be appointed ?

The Honourable MR. GIBBS :—There are peons attached to the courts, and should the work increase they could appoint extra peons as bailiffs.

The Honourable the ADVOCATE GENERAL :—I do not think the employment of peons is advisable if it can be avoided.

The Honourable MR. GIBBS :—It appears to me that the Honourable the Advocate General wishes to make the Mámlatdár's orders of as little use as possible.

The Honourable the ADVOCATE GENERAL :—No : I want them executed with as little expense as possible.

The Honourable MR. GIBBS :—But according to the old adage, one may skin a flint for sixpence and spoil a shilling knife in doing it. Perhaps a better plan, though, would be to cut out the bailiff and say—" If the Mámlatdár's decision be to award possession or to restore a use, he shall issue an order to give effect thereto ; and if for granting an injunction, he shall make it out in the form of Schedule C. and give it to the party, if he be present ; and if he be not present, it shall be served upon him. The order of the Mámlatdár in the above cases shall be executed in the presence of the village officers, &c., leaving it to the Mámlatdár to decide how he shall send it to the village officer. That will give all that is wanted, viz., that orders of this kind should be executed in the presence of the village officers.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:—I agree to that amendment.

His Excellency the PRESIDENT :—I thought if we were to make sure of getting the order into the hands of the Patel it would be all right. The village officer will have just as much trouble in this way.

The Honourable MR. GIBBS :—No : he will only have to ascertain that the thing has been done, and then sign the return.

The Honourable MR. ROGERS :—I think the Section should remain as it stands. I think it is very advisable that it should be done in the presence of the village officers.

The Honourable the ADVOCATE GENERAL :—There is nothing in the Section as it stands to prevent the Mámlatdár sending his order to the village officer by a bailiff. It is open to him to send it in that way, if he chooses.

The Honourable MR. GIBBS :—The Honourable Mr. Rogers, who has charge of the Bill, wishes it left as it is. Then I will move that it be amended as I proposed,

The Council divided :—

Ayes—4.	*Noes*—5.
The Honourable J. GIBBS.	The Honourable A. ROGERS.
The Honourable E. W. RAVENSCROFT.	The Honourable the ADVOCATE GENERAL.
The Honourable RAO SAHEB VISHVANANTH NARAYAN MANDLIK.	The Honourable MAJOR-GENERAL M. K. KENNEDY.
	The Honourable KHAN BAHADUR PADAMJI PESTONJI.
	The Honourable RAO BAHADUR BECHERDASS AMBAIDASS.

The amendment was accordingly lost.

With reference to the 3rd clause of Section 17, the Honourable MR. GIBBS observed there was a blank left as to the number of days, and His Excellency the PRESIDENT said the word " if " at the commencement of the clause ought to be changed to " when."

The word " when " having been substituted, the Honourable MR. ROGERS said he thought five days would be sufficient notice.

The Honourable the ADVOCATE GENERAL asked why the costs of such a suit should be made recoverable as a revenue demand.

The Honourable MR. RAVENSCROFT :—I do not see why it should be recovered as a revenue demand.

His Excellency the PRESIDENT :—Why should we add anything about recovery ?

The Honourable the ADVOCATE GENERAL :—Why should it not be recovered as ordinary costs ?

The Honourable MR. GIBBS :—The Mámlatdár is not supposed to have any machinery for recovering costs except as a revenue demand. If this clause were not in, the winner would have to go to a civil court to recover costs. The Mámlatdár has no other means of getting them than as a revenue demand.

The Honourable the ADVOCATE GENERAL :—There is no particular difference between the mode of recovering a revenue demand and that of recovering costs in a civil court.

The Honourable Mr. Gibbs :—It simplifies matters, because the Mámlatdár better understands recovering as a revenue demand.

The Honourable Mr. Ravenscroft :—I object to the Mámlatdár having power to levy costs as a revenue demand. It is simply a matter of costs against one private individual on behalf of another private individual, and how could it be recovered as on behalf of Government ?

It was decided that the clause should be amended so as to read as follows :—" When the Mámlatdár awards costs, such costs together with the costs of execution shall be recovered from the party in person, and, in the event of non-payment, by the attachment and sale of his property."

In the 18th Section, after the word " possession," in the 6th line, the words " or use " were inserted, and for the words " ejected in execution of," in the 7th line, the words " ousted by " were substituted. In the same line after the word " decree " the words " or order " were inserted.

The Honourable Mr. Rogers observed that if the Mámlatdárs were allowed to award costs, surely the third clause of the 18th Section should be omitted.

After some discussion the clause was struck out.

With reference to Section 21, the Honourable Rao Saheb Vishvanath Narayan Mandlik proposed that the words " of the inquiry " in the 13th line should be omitted, and the words " of the Mámlatdár's decision" substituted.

The Honourable the Advocate General :—Suppose the Mámlatdár wants to screen a man, and he does not decide to give the permission before the month is over ; what about that ?

The Honourable Rao Saheb Vishvanath Narayan Mandlik proposed that the words " or of some other Revenue officer to whom such Mámlatdár is ordinarily subordinate " should be omitted ;—the amendment was agreed to.

His Excellency the President :—Suppose after the Mámlatdár's decision a man was tried for telling a falsehood, and when he got into another court proved it all to be true. That is quite possible.

The Honourable Rao Saheb Vishvanath Narayan Mandlik :—I have known that occur in a case tried on the merits. I would suggest that instead of giving the month's time we say " at the time of the Mámlatdár's decision."

His Excellency the President :—Why should not the decision be stopped if the case is going to a civil court ? Why should a man be tried for perjury if he is taking the proper steps to go before a civil court to have the thing tested ?

The Honourable the Advocate General :—I do not see why we should not leave this out altogether, and let a man go to the magistrate if he wants to prosecute another for perjury under the Penal Code.

The Honourable Mr. Gibbs :—There can only be a prosecution for perjury on the order of the court in which the case is tried. The only effect of this 21st Section is that we limit the time during which such order can be given, so as to prevent an opportunity for undue influence.

His Excellency the President :—But what is the use of the 20th Section if a man can be tried for perjury without it ? If provision is made already, why put this in ?

The Honourable Mr. Gibbs :—We here limit the time. Under the general law, as it stands, a man may apply for an order, I believe, within a year afterwards,—in fact it is practically unlimited.

The Honourable the Advocate General :—Why not leave out these Sections, and do not suggest prosecutions for perjury under this Act at all.

The Honourable Mr. Gibbs :—The Penal Code is perfectly well known.

The Honourable the Advocate General :—Then let them take advantage of it, if they are so disposed.

The Honourable Mr. Gibbs :—If the Council likes, it may be left out ; and then we must leave out everything from the end of the 19th Section.

The Honourable Mr. Rogers :—I must dissent from that.

The Honourable Mr. Gibbs :—I thought the Honourable Mr. Rogers said he agreed to the proposal. These Sections are all in the old law which we are amending. If we omit them we should be relieving the perjurer from the more gentle clutches of this Act and put him under the Penal Code; we should put him quietly out of the frying-pan into the fire. By leaving out this clause, we do not prevent an application for prosecution for perjury; we only enlarge the time indefinitely.

The Honourable the Advocate General—I do not see why perjury before a Mámlatdár should be considered a worse or less offence than perjury before a civil court; or why such a perjurer should not be left to be dealt with in the same manner as other perjurers.

The Honourable Mr. Gibbs :—These Sections are the present law of the country, under the Mámlatdárs' Act, 5 of 1864; therefore we only re-enact them. Under the circumstances perhaps we had better leave them as they are, with the exception of the alterations in Section 21.

Section 21 was then amended by the excision of the words "or of some other Revenue officer to whom such Mámlatdár is ordinarily subordinate," in the 9th, 10th, and 11th lines; by the substitution of the word "only" for "not" at the beginning of the 12th line; and by the substitution of the words "at the time of the Mámlatdár's decision" for the whole of the latter portion of the Section after the words "be given" in the same line.

Section 22 was also amended by the omission of the words "is of opinion that there is sufficient ground for investigating" in the 1st, 2nd, 3rd, and 4th lines; and the substitution of the words "has given its sanction to the institution of any"; by the omission of the words "after making such preliminary inquiries as may be necessary" in the 6th, 7th, and 8th lines; and by the insertion of the words "or of the division of the district," after "district," in the 9th line.

Section 23 was amended by the insertion of the word "so" after "determining" in the 2nd line; by the insertion of "or the magistrate of the division of the district" after "magistrate" in the 10th line; and by the substitution of the word "said" for "district" in the 12th line.

The Schedules and the preamble were approved.

The Honourable Mr. Gibbs—I presume His Excellency will resume the consideration of this Bill in detail at some future period.

Bill as amended to be printed and considered in detail at the third reading.

His Excellency the President :—Yes, the Bill as now amended will be printed, and can be further considered in detail if necessary before the third reading.

Mr. Rogers moves the second reading of Bill No. 7 of 1875.

The Council next proceeded to the second reading of Bill No. 7 of 1875,—a Bill to amend (Bombay) Act 8 of 1867.

The Honourable Mr. Rogers, in moving the second reading of the Bill, said:—I said the few words that I had to say on the subject on the occasion of the first reading the other day; and I think no further remarks are necessary. The Council are perfectly aware of the purport of the Bill.

Bill read a second time and considered in detail.

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

The Honourable Mr. Gibbs—The only difference is that this Bill allows a magistrate to suspend a man during inquiry as to an alleged wrong-doing, and as a punishment it limits the suspension entirely for misconduct, and leaves him for any criminal offence to be tried by the laws of his country.

The only amendment made in the Bill was the introduction of the word "such" after "any" in the 12th line of the 3rd section.

Bill read a third time and passed.

As no amendment of any important nature had been made therein the Bill was read a third time and passed.

His Excellency the President then adjourned the Council.

By order of His Excellency the Governor in Council,

W. LEE-WARNER,

Acting Under-Secretary to Government.

Bombay Castle, 7th January 1876.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRES-