

PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS,

1874.

VOLUME XIII.

Published by the Authority of His Excellency the Governor.

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# I N D E X

TO THE

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

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Volume XIII.

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

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

The Council met at Bombay on Wednesday, the 25th March 1874, at noon.

**P R E S E N T .**

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

His Excellency the Honourable SIR AUGUSTUS ALMERIC SPENCER, K.C.B.

The Honourable H P St G TUCKER

The Honourable A. ROGERS.

The Honourable MUNGULDASS NUTHOOBHOY, C S I.

The Honourable COLONEL M. K. KENNEDY

The Honourable SIR JAMSETJEE JEJEEBHOY, Bart., C S I.

The Honourable NARAYAN VASUDEVJEE.

The Honourable J. K. BYTHELL

The Honourable F. S. CHAPMAN

The Honourable F S CHAPMAN took the usual  
 Affirmation of office, &c. taken by Mr. Chapman.      affirmation of office and declaration of allegiance to Her Majesty

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

1. Letter from the Secretary to the Government of India, returning, with the assent of His Excellency the Governor General signified thereon, the authentic copy of the "Bill to amend Bombay Act No. II of 1864, providing for the Periodical Survey of Steam Vessels, and to provide for the Examination of Engineers of Steam Vessels."
2. Report of the Select Committee on the Jails Bill.
3. Letters from the Inspector General of Prisons, Senior Assistant Judge, Sholapur, and Registrar of Her Majesty's High Court of Judicature, regarding the Jails Bill



The Honourable Mr. ROGERS, in moving the first reading of the Bill No. 1 of 1874 (the Tramways Bill), said:—Sir,—I beg to move the first reading of Bill No. 1 of 1874, to authorize the making of Street Tramways in Bombay. It will be seen by the appendix to the Bill that articles of agreement were made last year between Messrs Stearns and Kittiedge and the Municipal Commissioner of Bombay to enable that firm to construct tramways in the city of Bombay. That agreement was subsequently confirmed by Government, and the purport of this Bill is to enable the promoters of the tramway to carry out its objects. Tramways have now been laid down in most of the principal cities in the world, and it has always been found necessary to provide special rules for their construction and management. The Bill before us is similar to the legislation agreed upon regarding tramways in Calcutta and elsewhere, and of course its objects are to secure the convenience of the community. The only point I may remark upon is, that although the Municipal Commissioner has power, with the sanction of the Corporation, to permit the construction of tramways, he will not have power, without special enactment, to hand over certain portions of the public roads and streets for the special use of tramways. It is obvious that if an Act of this kind were not passed, it would be possible for the owners of private carriages to drive on the rails, in front of a tramway car, so as to impede it deliberately. It is partly to protect the Tramway Company from being interfered with in this way that this Bill is introduced, and partly to make people liable to certain penalties in case of non-payment of their fares. With these remarks, I beg to move that this Bill be read a first time

The Honourable Mr. CHAPMAN—Sir,—One would suppose from the preamble of this Bill that this Tramway Company were about to confer a great benefit upon the community generally. But I believe I speak the sentiments of a large portion of the public who use our roads, when I say that the tramways are an intolerable nuisance at present, and really I cannot see how they can be otherwise so long as the rails are laid down upon the present system. I believe that it will be necessary to provide in some way for the paving of the parts of the road adjoining the rails, for so long as the rails are laid in macadamised roads the metalling will be giving way, leaving the rails bare. I think also that in this Bill we shall have to consider how people may be compensated speedily for the injuries which their persons or their property may receive from these tramways. I cannot say what the ordinary remedy at law for this is, but it seems to me that it is extremely desirable to provide in this Bill that a person whose horse or carriage has been damaged by the rails should have some speedy means provided him of obtaining redress. I think it right to remark that the popular feeling about the tramway system is that it is a great nuisance, and therefore in any Bill upon the subject we ought to endeavour to reduce the evil to a minimum

The Honourable Colonel KENNEDY—I quite agree with the remarks of the Honourable Mr Chapman. The tramways are a considerable nuisance and a great impediment to the ordinary traffic of the city. It is perhaps too late now to take these objections, because the tramways are laid upon most of our principal streets; but I agree that it is now our duty to reduce the evil to a minimum, as the Honourable Mr. Chapman has just

Mr Rogers moves the first reading of the Tramways Bill

Mr Chapman states the popular objections to tramways in Bombay, and considers that the Bill should provide for direct redress being obtainable from the Tramway Company for injuries caused through them to person or property

Colonel Kennedy agrees with Mr Chapman.

said. When the carriages run upon these rails there will, I believe, in consequence of the vibration, be a dislodgment of the adjoining metal, and thus there will be a continual impediment to ordinary carriage traffic. Looking at the narrowness and extreme tortuousness of most of the roads in Bombay, the rails cannot be avoided, and I think that whoever may attempt to cross them when the cars have run upon them for some time will feel a considerable jar upon his wheels. It seems to me that the people who will chiefly be benefitted by these tramways are the coach-builders.

The Honourable Mr. MUNKELDASS also concurred with the Honourable Mr. Chapman. In Abdool Rahmon Street the carriage way was so narrow that private carriages would be compelled to go upon the tramways, and yet the honourable mover had stated that one of the objects of the Bill was to prevent private carriages from going on the rails.

His Excellency the PRESIDENT—There are provisions for taking away the rails in a street if they should prove inconvenient. Certainly, the unfortunate tramway presents itself in its most unfavourable state when it is under construction, and I believe that this is the principal reason for its being so unpopular. It may improve in popularity when it is complete and in working order.

The Honourable Colonel KENNEDY—Completed portions of the tramway that have not been used by cars already offer obstacles to carriage traffic. What will the tramway be when it has borne traffic for some time?

The Honourable Mr. TUCKER—The present discussion is hardly in order, because the Executive Government, so far as they are concerned, are committed to the principle of the Bill; and, unless it be intended to throw it out altogether, this is not the time for the consideration of details. I agree with His Excellency that it is rather unfortunate that the consideration of this measure has been postponed to the present time, when the public are experiencing a great amount of inconvenience from the construction of the tramways. I trust, however, that what has been said in this room will show the proprietors the necessity of exercising strict supervision over their contractors, so that the ordinary carriage traffic may not be obstructed or disturbed by the laying down of their lines. If so many streets had not been broken up at one time, and the work had been completed in short sections, I do not think that the unpopularity of the experiment would have been so great as it appears to be at present. However, I do not consider that the project ought to be condemned, because inconvenience and obstruction have been caused when the lines were under construction. Government sanctioned the agreement with the Tramway Company, under the hope and in the expectation that the new system would improve the means of locomotion in this city and be advantageous to the poorer classes; and I still hope that, notwithstanding the temporary inconvenience which is being experienced, this hope and expectation will be realised. During my recent visit to England I noticed a tramway of this description which runs through Camden Town, and there seemed to be no difficulty whatever in respect to the passage of ordinary carriages, while the cars seemed to be exceedingly popular with the people inhabiting that suburb of the metropolis. I believe that although the Bombay tramway may not find much favour among that class of persons who are able to afford carriages, yet it will confer great benefits upon the poorer

Mr. Tucker thinks tramways in Bombay will improve when they are being worked. He notices in the Bill certain provisions not in accordance with terms of Municipal Act.

classes of the community. I notice in the Bill before us certain provisions which are not in complete accordance with the Bombay Municipal Act. It was my object in that enactment to prevent any new streets being opened except with the sanction of the Municipal Commissioner, the Corporation, and the Government. When the agreement with the promoters of the Tramway Company was entered into I was too ill to attend to business, or I should have pointed out that the proposed contract was not in accord with the Act. Government has now, it seems to me, virtually abdicated its power to interfere in this matter, and left the authority to determine what streets shall be opened in the hands of the Municipal Commissioner only, and that agreement we must now carry out. I was of opinion that no new street should be opened without the concurrence of the Corporation, the Municipal Commissioner, and the Government; but this joint authority will, now that this agreement has been entered into, be concentrated in the Commissioner. I call attention to this matter to show that the serious responsibility is now about to be vested in the Municipal Commissioner, and I trust that this officer will take care that no streets are opened up in a manner which will be injurious to the public. To him the community will look, if the extension of tramways is carried out in a manner that will be detrimental to the public interests.

The Honourable Colonel KENNEDY—I see that the tramways are now being extended up to Byculla

The Honourable Mr ROGERS—Although tramways have been criticised severely by several honourable members, I understand that it is not the intention of any of them to oppose my motion for the first reading of the Bill. I think, however, that in the course of these criticisms some strong expressions were used which were scarcely justifiable. The Honourable Mr. Chapman said that no benefit would accrue from the system, and that it is an unmitigated nuisance. Now, seeing that the system has not had a trial in Bombay yet, I do not think the Honourable Mr. Chapman should have said what he did. Tramways have been tried and have answered in other parts of the world, and there is no apparent reason why they should not succeed in this city. The Honourable Mr. Tucker has mentioned that he saw tramways flourishing in London.

The Honourable Mr TUCKER—The tramway I referred to was not in a crowded part of London, and the streets in which it was laid were much broader than the majority of the streets in Bombay.

The Honourable Mr. ROGERS—There are many streets in Bombay which are as broad as Camden Town, and I hope that when the system is set agoing here it will not be found “to be an intolerable nuisance” to the public, but, on the contrary, a great benefit. Some observations were made with regard to the probability of the road metalling being shaken up and carriages being damaged while crossing the rails; but these are merely matters of detail, which may surely be left to the care of the Municipal Commissioner. Moreover, as the Honourable Mr. Tucker has just pointed out, an agreement has been entered into by Government which it must carry out now, so that we are committed to the principle of the measure,

The motion that this Bill be now read a first time was put to the Council by His Excellency the President and carried.

The Bill read a first time.

The Honourable Mr. ROGERS did not think it necessary to refer the Bill to a Select Committee, as the Committee of the whole Council would be sufficient.

His Excellency the PRESIDENT—Considering the opposition which has been shown to the Bill, I think it would be advisable to have its provisions thoroughly sifted in Select Committee. I always expected that this Bill would be referred to a Select Committee, because I believe it possible that such a Committee might see its way to giving the public more protection, as has been suggested, than the Bill at present provides.

The Honourable Messrs. TUCKER and Colonel KENNEDY concurred with His Excellency the President.

It was then agreed to refer the Bill to a Select Committee composed of the Honourable the Advocate-General, the Honourable Colonel Kennedy, the Honourable Sir Jamsetjee Jejeebhoy, the Honourable Mr. Chapman, and the mover, with instructions to present their report on or before the 31st instant

The Honourable Mr. ROGERS then moved the second reading of the Jails Bill (No. 11 of 1873) He said :—As I entered into the details of this Bill when I moved the first reading of it at Poona, it will not be necessary for me to go thoroughly into the subject again. I shall simply, therefore, make a few observations upon the changes which the Select Committee have made

in the reading of the Bill, and refer briefly to a few suggestions made by Judges of the High Court. These remarks can be more fully entered into when the Bill is being considered in detail. Sir Michael Westropp says :—“I think it should be distinctly stated whether or not the House of Correction in the Island of Bombay is to be subject to the provisions of this Bill. That establishment is the subject of a special enactment (R. O. R. III. of 1827) and of the Acts XVIII. of 1862, V. of 1865, and XIII of 1856, Section 49.” It appears that the provisions of Act VIII. of 1856, on which this Bill is founded, would be applicable in all its details to the House of Correction, and it has therefore been found advisable to insert words in the present Bill excluding the House of Correction from its operations. The Select Committee have also taken care to exempt all civil jails in Bombay from the provisions of this Act, in order that the powers and responsibilities of the Sheriff of Bombay in regard to civil matters should not be interfered with. Section 19 has given rise to a good deal of discussion. I think I mentioned, when introducing this Bill, that there had been a deal of difficulty experienced in the cases of prisoners sentenced to rigorous imprisonment for short terms. By the existing law they had to be sent either to a criminal jail or a subordinate jail, whichever happened to be nearest, and it was found unpracticable in the subordinate jails to provide hard labour for prisoners. In the present Bill we have endeavoured to meet this objection in two ways—first, by shortening the time for which prisoners must be sent to subordinate jails, and, second, by giving the Executive Government the power to decide in certain cases that subordinate jails shall be considered capable of being pronounced fit to hold prisoners sentenced to hard labour for periods up to three months. An objection has been raised by the Honourable Mr. Justice Pinhey, in his remarks upon this Bill as to the responsibility which would devolve upon the class of officers who are now generally appointed Superintendents of Jails He objects to Civil Surgeons being placed in charge of jails as Superin-

tendents, because their duties as private practitioners often prevent them from paying the requisite attention to the prisoners and the regular jail management. Whether Civil Surgeons should be appointed as Superintendents of Jails is, however, a mere matter of finance. In several instances lately we have endeavoured to appoint independent Superintendents, and so far as the means of Government will permit the same plan will be carried out regarding other jails. If in going through the details of the Bill any honourable member can point out any way by which we can provide for the superintendence of Jails being more thoroughly carried out by the Jailor than by the Superintendent, I shall have no objections to the suggestions being embodied in this Bill. As to the power of Superintendents to punish prisoners, the Inspector General of Prisons says that in some cases he considers punishments, especially flogging, are exercised rather indiscriminately, and we have therefore provided for rules being framed to regulate the matter. There is one other point which appears to have been overlooked by the Select Committee, and which Mr. Justice West has called attention to. I refer to the discipline of prisoners when employed in out-door work. Regarding this matter, the Honourable the Advocate-General has favoured me with two draft sections, which I shall propose when we go into Committee. I think these sections will meet the emergencies contemplated by Mr. Justice West.

The Honourable MR CHAPMAN—Before the vote is put to the Council I would like to ask the Honourable Mr. Rogers whether he has paid any attention to Act XXVI. of 1870 of the Government of India—an Act which regulates the jails throughout the greater part of India? It is in many respects a superior measure to this one.

The Honourable MR ROGERS—I beg to explain that the present Bill is not a new Bill. With few exceptions it is merely an amendment of the law that has been in force in Bombay since 1856, and which has been found to act fairly.

The Honourable MR CHAPMAN—Looking at this Bill, as it now stands, there are some very important matters in it, to which I take objection. Here there is no distinction made between different grades of Superintendents, so that apparently a third class Superintendent would possess quite as large powers as those invested in the Superintendent of a Jail like Yerroda. This third class Superintendent may carry out all the powers invested in Superintendents by Section 32 (the penal clause) of this Bill, so that we may have cases of men getting perhaps Rs 40 or Rs. 50 a month flogging prisoners. Again, no distinction is made here between tried and untried convicts flogged by a petty official like the ordinary third class Superintendent. The Act of the Government of India to which I have referred might with advantage be copied to a great extent.

The Honourable MR TUCKER—Sir,—I was not present in the Council when the introduction of this Bill was decided upon, and I have hitherto taken no part in any of the deliberations to which it has given rise. I have no objection whatever to the principle of the measure, and fully recognize the necessity for the consolidation of the laws which now regulate the prisons, civil and criminal, of this Presidency, and for the repeal of enactments which are unsuited to the conditions and exigencies of the present time. The last Act for the administration of the Mofussil Jails was most imperfect, and it will be impossible to carry out an improved sys-

Mr Chapman thinks the Bill ought to have been more assimilated to Act XXVI of 1870 of the Government of India.

Mr Tucker thinks the Shrievalty of Bombay should be abolished by the Bill. He moves that the Bill be referred back to Select Committee.

tem of prison management and discipline without amending it. I therefore cordially acquiesce in the steps which have been taken, but I am of opinion that further consideration is necessary before we can adopt the measure in its present shape. I regret very much that advantage has not been taken of the present occasion to get rid of the ancient office of Sheriff, which is a relic of that old unreasonable usage of appointing a man on liberal remuneration to a sinecure office, and then allowing the real duties to be performed by an underpaid deputy. At the commencement of the present century sinecure offices were common in England, but I am happy to state that they are gradually disappearing, and it is now high time that in India this remnant of the lax and imperfect notions which prevailed at one time of official obligations and the just apportionment of responsibility should also pass away. Since I have been a member of the Government of Bombay, I have more than once urged that this office on its present footing should be abolished, and a permanent Sheriff appointed who would discharge personally the duties which attach to the office and receive an adequate salary. By such an arrangement the public revenues would gain, and that portion of the community who come in contact with the Sheriff and his officers would be greatly benefitted and many abuses put an end to. My efforts have been hitherto unsuccessful, and I have always been met by two objections—1, that the proposed change would deprive the Government of the means of rewarding a deserving public servant or independent citizen, who had rendered good service to the Government or the public, and to this extent would diminish the power of the head of the Government; 2, that it would remove the personal responsibility of the Sheriff in the case of the escape of a civil debtor, and so be injurious to successful litigants. To the first class of objectors, I would say that I doubt if this little piece of patronage increases the prestige of the Governor or of the Government. It was said by a well-known English Premier, with reference to the selection of Bishops, that the exercise of each separate act of patronage made him one lukewarm friend and ninety-nine malignant enemies; and though the candidates for the Bombay office are much fewer in number than the aspirants for a mitre in England, I am inclined to think the disposal of the Shrievalty in most cases produces an effect somewhat similar. I am of opinion that neither the head of the Government nor the collective Government gain by the possession of this piece of patronage. With respect to the second objection, the pecuniary liability of the Sheriff in case of escapes is more nominal than real. In England, where the office of Sheriff is assigned to rich men, this responsibility has some significance. But in India, considering the means of the class of persons from whom Sheriffs are generally chosen, it would be neither just nor practicable to enforce strictly the liability of Sheriffs, and, if tried, this supposed security for judgment creditors will be found entirely worthless. I should like, therefore, to see this anomaly got rid of, and the maintenance of the existing usage of the city of Bombay put an end to. It will probably not be long before a change will be made in the law regarding imprisonment for debt, and this mode of enforcing satisfaction of a decree will be abolished, and resort to imprisonment only had to punish the fraudulent and reckless contractor of debt. If this be the tendency of affairs, little risk will be increased by the substitution of the general responsibility of Government for the personal liability of the Sheriff. It is desirable also to revive the old practice of making the Session Judges visitors of each District Jail located at the stations where the Session Judges hold their Courts. When the Session Judges were relieved from the charge of the executive management of prisons, their inquisitorial functions were transferred to the District and other Magistrates; and, practically speaking, it has been to the Hoozoor Deputy Magistrates that these periodical visitations

have generally fallen. The position and influence of these officers have not usually been found sufficient to secure an effective inspection, and it is desirable to reinstate the Session Judges in the office of visitors. Each Session Judge should visit the jail at his head-quarter station at least once in each month, and, during intermediate times, he should be able to delegate to his assistant the duty of visiting. It might be as well also to introduce a system of Jail delivery by providing that, at each Criminal Sessions, the Superintendent or Jailor of a District or Central Jail shall furnish the Session Judge with a list showing the number of prisoners in confinement, otherwise than by judicial sentence for a longer period than one month. The Session Judge would examine this list, and bring to the notice of the High Court or of Government any case in which a person appears to have been unnecessarily detained in custody. A check of this kind is necessary to prevent the irregular and unnecessary detention of persons in custody, and this safeguard is requisite to prevent persons in confinement being overlooked. Instances of such detention have occurred, as I am aware, though not very recently, and it is very desirable that the recurrence of such mistakes should be rendered impossible. A provision of this nature would properly belong to a Code of Criminal Procedure, but it will not be inappropriate in a Bill for the regulation of prisons. It will be expedient also to provide for the payment by Government of the subsistence of persons, other than debtors, who may be directed by competent authority to be detained in a civil jail. The honourable mover of this Bill has admitted its incompleteness, and the Honourable Mr. Chapman has pointed out that the Bill has been drafted without reference to Act 26 of 1870 on a similar subject passed by the Government of India. For the consideration of the points I have indicated, I would propose as an amendment that the Bill be referred back to the Select Committee with a direction to report before the 1st July next. This will enable the Committee to consider the suggestions which have now been thrown out, as well as the recommendations of the Judges of the High Court, more especially those of Mr. Justice West; and will also give time for the Inspector General of Prisons, Dr. Cruickshank, who is now on his way from England, where he has been studying the improvements made in the construction and management of prisons, to give his opinion on the details of the Bill. There is nothing to be gained by hurrying this measure through the Council, and by the further examination I have suggested the measure will be ultimately made more perfect and more useful. I would conclude by observing that no real reform can be effected in Prison management without the appointment to the larger Jails of properly paid Superintendents who can reside either within the precincts of the Prison or in close proximity thereto and devote their whole time to their duties, and without the provision of salaries for Jailors, Accountants, and Warders, which will induce a really respectable class of men to serve in these positions. We have made a few slight improvements in this respect of late years, but much remains to be done, and, with the limited resources of a Provincial Government, I fear that it will take much time to do all that is necessary in the matter of improvement of establishments. Under good management our Jails should be much more productive than they are now, and this way a large portion of the cost of improved establishments may be ultimately met.

The Honourable Mr. ROGERS—With regard to the Honourable Mr. Tucker's proposal, I can only say that the present Select Committee have gone over the Bill very carefully with the Honourable the Advocate-General, by whom every point of law was considered. The sections drafted by the Honourable Mr. Scoble are founded on the very matters referred to by the Honourable Mr. Tucker in the course of his observations.

His Excellency the PRESIDENT—Looking to the remarks which have fallen from the Honourable Mr. Chapman and the Honourable Mr. Tucker, I certainly would be inclined to recommend the Honourable Mr. Rogers to accept the proposal that the Bill should be referred back to the Select Committee.

The Bill is referred back to a Select Committee.

The Honourable Mr. TUCKER's motion was then carried, the Honourable Mr. Rogers only dissenting

The Honourable Mr. TUCKER moved that the Honourable Messrs Chapman and Bythell be added to the Select Committee

The motion was agreed to.

His Excellency the President then adjourned the Council to 8th proximo

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

J NUGENT,

Acting Under Secretary to Government.

*Bombay, 25th March 1874*



*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 8th April 1874, at noon.

*P R E S E N T .*

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

The Honourable A. ROGERS.

The Honourable the ADVOCATE GENERAL.

The Honourable MUNGULDASS NUTHOOBHOY, C.S.I.

The Honourable Colonel M. K. KENNEDY.

The Honourable NARAYAN VASUDEVJEE.

The Honourable J. K. BYTHELL.

The Honourable F. S. CHAPMAN.

The Report of the Select Committee on the Tramways Bill presented to the Council.

The report of the Select Committee on the Tramways Bill (No. 1 of 1874) was presented to the Council.

The Honourable Mr ROGERS then moved the Second Reading of Bill No. 1 of 1874 (a Bill to authorise the making of Street Tramways in Bombay). In moving the Second Reading he observed as follows—*I do not require to trouble the Council with many remarks upon the Bill nor upon the amendments made upon it in Select Committee. All I need say is, that with a few exceptions the alterations made in Select Committee were made with a view to bring the Bill more into conformity with the English Act. The Bill as it stood was drawn up by an eminent solicitor in Calcutta on the model of the English and other Tramway Acts, and we felt in Select Committee that we could do very little more than make those alterations we have made, because the grantees had entered into an agreement with the Corporation, with the sanction of Government, and no alterations could be made which would tend to nullify the stipulations in that agreement.*

Bill read a second time and considered in detail

The motion was carried, and the Council proceeded with the consideration of the Bill in detail.

On the suggestion of the Honourable the Advocate-General it was resolved to substitute "road" for "street" throughout the Bill.

In line 22 of Section II "road" was substituted for "street"

With reference to the second paragraph of Section III., the Honourable Mr. ROGERS said that an alteration was made upon the wording of it by the Select Committee, in order to prevent the Tramway Company from obstructing the laying down of sidings from the Cotton Green to the Apollo Bay Reclamation, but he thought that the words adopted went rather beyond that intention. He wished the section to be amended in order to make the intention of the Council clearer.

After some conversation, the words "without the express permission of Government" in lines 24 and 25 were omitted, and the following words inserted after "Reclamation" in line 23—"so as to obstruct the said railway or any such siding."

The Tramways not to obstruct railways or railway sidings.

The Honourable Mr. ROGERS—I move that in the last paragraph but one of Section III. for the words “a single track” should be substituted :—“a single or double track as may be approved of by the Municipal Commissioner for the said city and sanctioned by Government” As I have already explained to the Select Committee, if the old words are retained, and it be found expedient hereafter to lay down a double track, it will be necessary to introduce a new Bill for the purpose, which would be extremely undesirable.

His Excellency the PRESIDENT—I have no objection to the alteration. Going outwards from the Pydhonee well towards Abdool Rahmon’s stables the road is narrow, and although it subsequently widens, yet in the narrow part it would be very inconvenient to have a double track.

The Honourable Colonel KENNEDY concurred with His Excellency. So convinced was he, after what had been said about the great inconvenience which the tramways were causing in Bombay, that Government will not hastily sanction the laying down of additional tracks, that he had no opposition to offer to the Honourable Mr. Rogers’ amendment

The Honourable Mr. ROGERS mentioned that one end of the street was 33½ feet wide and the other 51 feet, and allowing 14 feet for the space that would be occupied by a double track in the narrow portion, there would still be 9 feet clear on each side of the outer rails at the narrow end

The amendment was agreed to.

The Honourable Mr. ROGERS had given notice of motion that in the last paragraph of the same section the words “and sanctioned by Government” should be omitted; but, on further consideration, he had resolved to withdraw the amendment.

His Excellency the PRESIDENT mentioned that the grantees had agreed to the retention of these words in the Bill.

The Honourable the ADVOCATE-GENERAL expressed his opinion that it was very desirable that in such a case the sanction of Government should be necessary.

The Honourable Mr. CHAPMAN said that he had given notice of a series of amendments, to the effect that an officer specially appointed by Government to superintend the working of this Act should do certain things instead of the Municipal Commissioner, but it had been brought to his notice—and he would say there was a good deal of force in the plea—that it might be very hard upon the Tramway Company to have their work under the supervision of two masters, and as he believed on further consideration, that the Municipal Commissioner would see that the Tramway Company carry out their contract properly, he did not wish to pursue his amendments.

The Honourable Colonel KENNEDY—I shall be very glad if the Municipal Commissioner will take great care in seeing that as little inconvenience as possible is caused to the public by these tramways. I feel bound, however, to say, that I do not think he has kept that principle well in view up to the present time. At the end of last month the Kalbadavee road and the road near the Pydhonee well were absolutely dangerous to traffic, and I think if proper pressure had been put upon the grantees by the municipal authorities, some better arrangements might have been made for the public convenience. Rails and sleepers were left lying about, piles of stones were scattered in the way of traffic, and at night the broken-up parts of the road were insufficiently lighted. Judging from the experiences of the past,

Mr Chapman withdraws his amendments of which he had given notice

I think we are all justified in hoping that the Municipal Commissioner will, as the Honourable Mr. Chapman has remarked, look sharper after the Tramway Company in future.

The section was passed.

Referring to Section VI., the Honourable Mr. ROGERS moved that carriages should, as it stood in the Bill at first, be allowed to extend fourteen inches beyond the wheels. The carriages had been already submitted to the inspection of the Municipal Commissioner, and it was considered that the public safety would be better secured if the width of the step were allowed to be 14 instead of eleven inches, because in this way passengers would have a better footing. The difference of six inches that would be required for each car would not materially affect the traffic of a road. He proposed that in line 11 "fourteen" be substituted for "eleven."

Footways on the tramway carriages to be fourteen inches broad

The alteration was approved of, and the section agreed to.

Adverting to Section IX. the Honourable the Advocate-General remarked:—I hope we shall never have steam-power introduced upon the tramways, and yet this section apparently permits the Municipal Commissioner to allow the cars to be pulled by other than animal power. To guard against that contingency I think the sanction of Government should be necessary before steam-power is introduced, and I shall move an amendment to that effect. Possibly some good-natured Commissioner might be inclined to allow steam traction engines to be used upon the tramways.

The Advocate-General objects to the possibility of a Municipal Commissioner sanctioning the use of steam power on the tramways, and moves an amendment.

The Honourable Mr. NARAYAN—I would rather have the words "unless with the consent of the said Municipal Commissioner" struck out.

His Excellency the PRESIDENT—That cannot be done, because these words are used in the contract.

The Honourable the ADVOCATE-GENERAL moved that after "Commissioner," in line 5, "and the sanction of Government" should be inserted.

The Honourable Colonel KENNEDY—I certainly support that amendment.

The Honourable Mr. ROGERS—I beg to move that the section remain as it is. By the agreement which has been entered into, the general control of the tramways will be in the hands of the Municipal Commissioner. My honourable and learned friend the Advocate-General has referred to what a good-natured Municipal Commissioner might do, but I should like to see any Municipal Commissioner, however good-natured, who would have the hardihood to allow the tramways to be worked by steam. He is appointed by Government, but he is responsible for the public safety upon the roads, and, under the Municipal Act, he is liable to be removed from his appointment if he does not do his duty. He is under the control of the Town Council and the Corporation—not perhaps with reference to this particular point, but at all events he is under their general control—and I do not see the slightest necessity for Government interfering in the matter. I think the Municipal Commissioner may be perfectly trusted to do what is proper, and, if this motion is carried, we unnecessarily take away from his powers, and shall be flying in the face of the principle upon which we passed the Municipal Act a short time ago. We then allowed the representative principle to be introduced with the idea that the people would be able to take care of

Mr Rogers opposes the amendment.

themselves ; and, as the Municipal Commissioner is to act for the Corporation, we shall simply be hampering him if we agree to these words being inserted.

The Honourable Mr. NARAYAN pointed out to the Honourable Mr Rogers that by the Municipal Act Government had already power to interfere with the roads. By adopting the Honourable the Advocate-General's motion, the citizens would have an additional safeguard in the matter under discussion.

The Honourable Mr. ROGERS—It is a question whether Government having already sanctioned an agreement, the terms of the contract can be in any way departed from in this Bill.

The Honourable Mr. NARAYAN observed that Government never contemplated that these cars would be worked by steam-engines in Bombay.

The Honourable Mr. ROGERS—Of course not; it is an impossibility.

His Excellency the PRESIDENT—I do not think it would be an impossibility. A Municipal Commissioner might allow steam to be introduced upon the tramways under the impression that it would be very harmless. In Bombay we often see steam-rollers on the roads, and, taking that as a precedent, a Municipal Commissioner might sanction the introduction of steam-power upon the Bombay tramways.

The Honourable Colonel KENNEDY—I do not see why, if such a very vital change is contemplated as traction by steam, Government should not be called in to exercise some sort of influence in the matter. We have already laid down the principle that in certain other less important matters the consent of the Government is necessary.

The Honourable the ADVOCATE-GENERAL—The sanction of Government is necessary for new roads, and I do not see why it should not be also necessary for new motive power. The Honourable Mr. Rogers has answered himself in his own remarks. He contends that the Municipal Commissioner would be unworthy of his office if he allowed steam to be used upon the tramways, but yet that he ought to have that power! I think it necessary that we should have some safeguard in this matter. Many of us know that we seldom go along the Queen's Road without seeing some horse startled by a passing train, even though the train is separated from the road by a fence. How much more dangerous will it be to have steam on the open thoroughfares without any fence to protect frightened horses from rushing among the cars!

The Honourable Mr. BYTHELL—I do not think that such a large power as this should be left to the decision of one man. I also think that the Corporation ought to have the decision of the matter, but as the majority of the Council seem to be in favour of the consent of Government being made requisite, I do not wish to press my views. I would, however, remark that the Corporation are either useless or they are quite competent to manage the traffic of their own roads without Government being called upon to interfere. If they are competent, Government's consent need not be asked; if they are not, then it would be as well to hand over the entire care of the roads to Government.

The Honourable the ADVOCATE-GENERAL—The Municipality have already divested themselves of any power in this matter by handing their interests over to the care of the Municipal Commissioner, and by coming to the present agreement with the grantees. But I think we will be able to get out of any difficulty by adopting the words I have suggested.

The Advocate-General's amendment agreed to

The Honourable the Advocate-General's motion was carried.

The Honourable Mr. ROGERS moved that at the end of the second paragraph of Section X. the following words should be inserted :—

Seven days' notice from the  
Tramways Company to the Corporation  
in cases of emergency.

“except in cases of emergency arising from defects in any of the rails or other work and then so soon as is possible after the beginning of the work or the necessity for the same shall have arisen.” This, he said, would be only reasonable, because as the section stood it would sometimes be practically impossible for the Tramway Company to give the requisite seven days' notice.

The amendment was agreed to.

The Honourable Mr. ROGERS proposed that the third clause should be struck out, as the grantees were already bound by contract to pay Rs. 3,000 a mile per annum for the roads used by the tramways. This was agreed to.

The Honourable Mr. ROGERS, for the same reason as the one given regarding his amendment on the third paragraph of the preceding section, moved the omission of the third paragraph of Section XI.

The motion was carried.

The Honourable Mr. ROGERS moved the omission from line five of Section XII of the words “with such materials, and,” as he was afraid that if they were allowed to stand part of the Bill the Municipal Commissioner if he were unreasonable might insist upon the grantees repairing roads in the most extravagant manner.

The Honourable the ADVOCATE-GENERAL had no objection to the alteration, as he did not believe it would make the slightest difference regarding the power of the Municipal Commissioner, who might order repairs to be made “in such a manner” as he chose, and thus he would have the power to give directions as to materials.

The Honourable Colonel KENNEDY was glad to notice that after all the Honourable Mr. Rogers thought that in certain cases it was necessary to keep the Municipal Commissioner in order.

The amendment was agreed to.

In line 18 of Section XII. the word “roads” was substituted for “streets.”

Referring to Section XIII., the Honourable Mr. CHAPMAN repeated his hope that the Municipal Commissioner of Bombay would never conduct his duties in such a way as to lay himself open to the suspicion of desiring to make things easy for the Tramway Company. However enterprising and high principled the present grantees might be known to be, there was no assurance that their successors would be the same, and therefore the Municipal Commissioner had a responsibility attaching to him of a serious nature, to see that whoever possessed the tramways should be compelled to do their duty by the city.

The Honourable Colonel KENNEDY expressed similar views.

In lines 23 and 26 of Section XIV. “road” and “roads” were substituted for “street” and “streets” respectively.

In line 9 of Section XV also “roads” was substituted for “streets.”

Adverting to Section XV., the Honourable Mr. ROGERS said that there was a want of reciprocity in the section which told very much against the Tramway Company.

The Honourable the ADVOCATE-GENERAL agreed with the Honourable Mr. Rogers, and said that as the Municipality had power to call upon the Tramway Company to give

notice of their intention to interfere with the roads used by their tramways, it was only fair that the Municipality and the Gas Company should be compelled to give the Tramway Company notice before they proceeded to disturb the roads and the tramways upon them. He suggested that the words of the English Act should be inserted in Section XV.

The following words were then added to the section —

1. Provided always that they shall cause as little detriment or inconvenience to the grantees as circumstances admit :

2. Before they commence any work whereby the traffic on the tramway will be interrupted they shall (except in cases of urgency in which cases no notice shall be necessary) give to the grantees notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work.

3 They shall not be liable to pay to the grantees any compensation for injury done to the tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid.

In line 1 of Section XVII the word "Marathi" was inserted after "English," and in line 3 "fares" was substituted for "tolls."

In lines 1 and 8 of Section XVIII. the word "fares" was substituted for "tolls."

The Honourable the ADVOCATE-GENERAL proposed that in lines 10 and 11 of Section XIX. "or damages, or destroys any property of the grantees" should be omitted, because this was already met by "mischief" under the Indian Penal Code.

The alteration was agreed to.

The Honourable the ADVOCATE-GENERAL moved the omission of the third paragraph of Section XX. and in the fourth paragraph the words "or to endanger the lives of persons therein or thereon." The Indian Penal Code already embraced the offences referred to in the words proposed to be omitted.

These alterations were agreed to

In line 14 of Section XXIV the words "or passengers" were struck out on the suggestion of the Honourable Mr. Rogers, because it was not intended that the Municipal Commissioner should interfere with the timing of passenger carriages

In line 1 of Section XXVI. the word "fares" was substituted for "tolls," and in line 8 "fare" for "toll."

In line 14 of the Preamble "had" was inserted between "agreement" and "on".

On the suggestion of the Honourable the ADVOCATE-GENERAL, the words "and to regulate the working of" were inserted after the word "making," in the title of the Bill in order to make the objects and scope of the Bill more clear.

After the Bill was considered in detail the standing orders were suspended and the Bill was read a third time and passed.

His Excellency the President then adjourned the Council.

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

J NUGENT,

Acting Under Secretary to Government.

Bombay, 8th April 1874.

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

The Council met at Poona on Monday, the 24th August, at noon

**PRESENT**

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

HIS Excellency the Honourable SIR AUGUSTUS ALMERIC SPENCER, K C.B.

The Honourable A. ROGERS.

The Honourable J. GIBBS

The Honourable the ADVOCATE GENERAL.

The Honourable COLONEL M. K. KENNEDY.

The Honourable J. K. BYTHELL

The Honourable COLONEL W. C. ANDERSON

The Honourable F. S. CHAPMAN

The Honourable RAO SAHEB VISHVANA'TH NA'RA'YAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY

The Honourable KHAN BAHADOOR PADAWJI PESTONJI

Affirmation of office, &c., taken by Additional Members of Council      The following gentlemen took the usual affirmation of office and declaration of allegiance to Her Majesty.—

The Honourable Colonel M. K. Kennedy, R E, the Honourable J. K. Bythell, the Honourable Colonel W. C. Anderson, the Honourable Rao Saheb Vishvanath Narayan Mandlik, the Honourable Nacoda Mahomed Ali Rogay, and the Honourable Khan Bahadour Pudumjee Pestonjee.

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

Transfer from the Revenue Department (No 6468 dated 27th November 1873) of papers connected with the Hereditary Offices Bill.

Petition from the Satara Sarvajaniĳ Sabha, regarding the Hereditary Offices Bill.

Petition from the Wuttundars of the Kaladgi District, dated 3rd April 1874—praying that either the Hereditary Offices' Bill be withdrawn or certain necessary amendments be made therein.

Letter from the Secretary to the Government of India, returning, with the assent of His Excellency the Governor General signified thereon, the authentic copy of "The Boiler Inspection Bill."

Letter from the Secretary to the Government of India, returning, with the assent of His Excellency the Governor General signified thereon, the authentic copy of "The Bombay District Municipal Bill."

Letter from the Secretary to the Government of India, returning, with the assent of His Excellency the Governor General signified thereon, the authentic copy of "The Bombay Salt Bill."

Letter from the Secretary to the Government of India, returning, with the assent of His Excellency the Governor General signified thereon, the authentic copy of "The Bombay Tramways Bill"

Letter from the Secretary to the Government of India, stating that His Excellency the Viceroy and Governor General regrets that he feels it his duty to withhold his assent from the "Bill for the regulation of Burial-grounds and Burning-grounds and places for the exposure of the Dead," and, in accordance with the requirements of Section 40 of the Indian Councils Act, signifies the reasons which have led His Excellency to withhold his assent.

Before resuming the consideration of the Hereditary Offices Bill, His Excellency the PRESIDENT observed as follows:—We now proceed to the first order of the day, namely, the resumption of the consideration in detail of Bill No. 12 of 1873—a "Bill to amend the law relating to Hereditary Offices." I may briefly state, for the information of the new members of Council, that this Bill underwent a most prolonged examination in the course of last year by the Council both here and at Bombay, and it was agreed that in the form in which it ultimately left the Council on the last occasion, it should be circulated as extensively as possible throughout the country with the view of eliciting opinions and advice upon the various important points involved in it. The opinions received have now been printed. The last step taken on the part of the Government was the circulation of various amendments, which, after a careful examination of the suggestions and remarks made by various gentlemen, the Executive Government think it their duty to submit for the consideration of the Council, and adoption if possible. We shall consider the objections set up in the various petitions as we proceed with the consideration of the Bill. I may, however, mention that the Ahmedabad petitioners seem to object to the whole Bill. They request that the Bill be not allowed to pass into law, and that it be rejected or postponed until its contents are made known and understood by the rural population whom its provisions will affect. I do not think the Government could have taken more trouble than they have taken to disseminate the proposals of this Bill over the country, and to endeavour to make the rural population comprehend how it will affect them in their social rights.

The Honourable Mr. GIBBS concurred with His Excellency the President, and considered that if the Bill were postponed until the desire of the Ahmedabad petitioners were accomplished, it might wait until the "Greek Kalends" or any similar period.

In reply to the Honourable Khan Bahadoor, His Excellency the PRESIDENT said that the last translation of the Bill was circulated six months ago. His own opinion was that, in consequence of the different customs prevalent throughout the Presidency, it would be impossible to make the rural population understand it thoroughly. Already every pains had been taken to remove provisions which might press heavily upon the native population.

The Hereditary Offices Bill re-considered

The Council then resumed consideration of the Bill (No 12 of 1873).



The Honourable Mr ROGERS proposed that the following words be added to Section 1, Clause 2, after the word "otherwise" — "So far as its provisions shall not conflict with the terms on which any such alienated village may have been secured to the holder thereof." Originally the section simply declared that the Bill was to extend to the Regulation Districts and to all villages therein, whether alienated or otherwise, but as a great many objections were raised by the different local officers to the effect that the tenure on which alienated villages were held might be interfered with, the above amendment had been prepared. By adopting it, alienated lands allotted for service in a village would in no way be interfered with. He also proposed to add the following paragraph to the first section — "Nothing in this Act shall affect the powers of Government to deal with any wuttun or parts of wuttuns, or with the profits thereof respectively under Act No. XI. of 1852 or Bombay Acts Nos. II. and VII. of 1863, or any other law at present in force with respect thereto." The reason for proposing this amendment was that in the Acts quoted certain powers were retained by Government, and these acts were not meant to be interfered with by the present enactment.

The amendments were agreed to.

Referring to Section IV, His Excellency the PRESIDENT said the Ahmedabad petitioners objected to the illustration given in the section as very objectionable. He therefore proposed that it should be struck out.

The amendment was agreed to.

The Honourable Mr. ROGERS then moved that the following words be added after the word "office" in line 8— "It (*i.e.* the definition of 'hereditary office') includes a right to levy customary fees or perquisites in money or in kind at fixed times or otherwise. It includes cash payments in addition to the original wuttun property made voluntarily by Government and subject periodically to modification of withdrawal." In different parts of the country it was the custom to levy fees and perquisites for service in various ways, sometimes in money and sometimes in kind. Therefore, in order to provide for that custom, the first part of the proposed amendment was necessary. The second part of the amendment related to cash emoluments allowed by Government for the remuneration of patells and other officers in villages where the value of the original wuttun could not be regarded as a sufficient remuneration for the proper performance of their duties. He begged also to propose that the words "if any" be inserted between the words "property" and "and" in line 22, that the following words be inserted after the word "wuttun" in line 26—"It (*i.e.* the definition of wuttundar) includes a person holding wuttun property acquired by him before the introduction of the British Government into the locality of the wuttun, or legally acquired subsequent to such introduction, and a person holding such property from him by inheritance", also that the following words be inserted after the word "wuttun" in line 28—"subject to the conditions hereinafter specified", that the words from "provided" to "person" in lines 28 to 37 be omitted, that the words "'or ghur' means" in line 38 be omitted, and the word "includes" be inserted in their stead; that the word "an" be substituted for the word "the" at the end of line 39, that the words in the Proviso at lines 40 to 42 be omitted and the following substituted.—"Provided that no sub-division shall be recognized except as hereinafter provided in Section XXIII.", that the words "means the eldest existing representative of

The definition of wuttun to include the right to levy customary fees or perquisites.

a family," in lines 43 and 44, be omitted, and the words " includes the chief representative of each branch of a family" be inserted in their stead; and that the following words be added at the end of the section:—" 'Guardian' includes a relation or other person to whom the care, nurture, or custody of any child falls by natural right or recognized usage, or who has accepted or assumed directly the care, nurture, or custody of any child "

The right of free adoption not to be interfered with, though all adoptions must be reported to Government

In the course of the inquiries made in regard to the Bill, many objections had been made in different parts of the country with regard to the alleged intention of Government to interfere with adoptions, and accordingly it was decided to do away with any necessity of obtaining the sanction of Government in cases where an adoption has already taken place. By the amendments which I have just read the Council will see that the future regarding adoptions is also provided for. As to the word "ghur" it is omitted, because, though it is used in the Deccan, it is not known in Guzerat or in the Southern Mahratta Country. As to the amendment regarding the word "and," I may explain that there are many wuttuns in which the wuttundars are not descended from one original wuttundar. In the Deccan there are tucksheems of wuttuns in which the holders originally sprang from different families altogether. As the section stood originally it only related to one branch of wuttundars in a wuttun, but by the amendment it would apply to the various branches. As to the remaining amendments, the section as it stood originally laid it down that no sub-division recognized within the last thirty years should be taken into account. That

Sub-divisions of wuttuns made within the last thirty years may be recognized.

was objected to in a great many quarters, and after due consideration the Executive Government thought the objections were reasonable, and therefore, as would be seen when Section 23 was reached, considerable alterations had been made in favour of the sub-divisions which are already permitted under the rules of the Bombay Government. As to the definition of "guardian," it had been taken from the Bombay Municipal Act.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—I would suggest that this section, or at all events that part of it which relates to representative wuttundars, may be kept over for future consideration until the Council decides upon rotation, and as to whether lists are to be permanently fixed for all shareholders, or whether, where there are several sharers in a wuttun, only one of them is to be elected according to the principle laid down in Act XI of 1843. I may say that I am glad the Executive Government have decided to abandon the section interfering with the right of adoption, which was never intended by the Hindoo Law to be vested in Government. Government will receive the approbation of the whole country upon this point.

His Excellency the PRESIDENT observed that all that wuttundars had to do now was to report adoptions.

The Honourable RAO SAHEB—That is quite right. Reporting adoptions is an old institution of the country, because it was a rule that they should always be reported to the Rajah or head of the village.

The Council agreed to postpone consideration of the paragraph defining "representative wuttundar." The remaining amendments proposed by the Honourable Mr. Rogers were agreed to.

The Honourable Mr. ROGERS moved that the words "or interest" be inserted between the words "thereof" and "to" in line 6 of Section V.

The Honourable Khan Bahadoor PADAMJI PESTONJI asked whether Collectors are to be the persons who are to decide whether the person proposing to purchase a share in a wuttun is a wuttundar.

HIS EXCELLENCY the PRESIDENT replied in the affirmative.

The amendment was agreed to.

The Honourable Mr. ROGERS moved that the following section be added after Section V. —

*“ Clause I.—*In any case in which it shall appear to the Collector that the institution of legal proceedings is requisite or desirable with respect to any wuttun or the estate, property, funds or affairs thereof, the Collector shall certify such case in writing under his hand to the Revenue Commissioner together with such statements and particulars as in his opinion may be requisite or proper for the explanation of such case; and thereupon the said Revenue Commissioner, if upon consideration of the circumstances he thinks fit, shall authorize the Collector to institute and prosecute, in the name of the Collector, such legal proceedings as may be requisite or proper for the protection of the wuttun, its estates, property, funds, or affairs, by suit or petition in the District Court. The cost of such proceedings, unless recovered from the opposite party, shall be paid out of the funds of the wuttun.

*“ Clause II —*The Collector may, if he thinks fit, proceed as provided in Sections VIII., IX., X., or XI. of this Act in lieu of instituting or prosecuting legal proceedings under this section.”

The honourable member explained that the object of this section was to provide for cases in which there might be any particular complication in consequence of the alienation of the wuttun or any part of it before the coming into force of the Bill under consideration. There might occur cases in which wuttundars combined to defeat the objects of Government, and to these this section would apply.

HIS EXCELLENCY the PRESIDENT approved of the section and remarked that Government had a distinct interest in keeping every wuttun in an efficient state.

The Honourable Rao Saheb VISHVANATH NARAYAN thought there was a consensus of opinion that some means should be devised to regulate the sale of Wuttuns. Regulation XVI laid it down that no wuttun should be sold or alienated in any way, and if a branch of the wuttundars died out their interest in the wuttun reverted to the other branches. His own opinion was that each wuttundar should have control only over his own life-interest in the wuttun, and that not even with the sanction of Government should any sale or alienation of a wuttun be permitted.

The Honourable Colonel ANDERSON—There could be no reasonable objection to consolidating a wuttun by permitting a bankrupt shareholder to sell his interest in the wuttun to another shareholder in the same wuttun.

The Honourable the ADVOCATE GENERAL—I suppose the intention of Government is to prevent hereditary shareholders and their portions of wuttuns from getting hopelessly into the hands of Marwarees or sowcars.

The Honourable Mr. ROGERS concurred.

The new section was adopted.

The Honourable Mr. ROGERS then moved that the following sections be substituted for Sections VII., VIII., IX., and X.—“ Whenever any wuttun or part or profits thereof, whether assigned as remuneration of an officiator or not, has before the date of this Act coming into force passed by decree of any Court into the ownership or beneficial possession of any person other than the officiator for the time being, or has before such date passed otherwise than by decree of any Court into the ownership or beneficial possession of a wuttundar other than such officiator, or when any wuttun, or part or profits thereof, not being assigned as remuneration of an officiator, has, after the date of this Act coming into force, passed, by decree of any Court or otherwise into the ownership or beneficial possession of a wuttundar other than such officiator; such wuttun or part or profits thereof shall be liable to contribution for the remuneration of such officiator in like manner and to the like extent as if no such decree had been passed or no such transaction had taken place.”

*Clause I.*—“ Whenever any wuttun, or part or profits thereof, whether assigned as remuneration of an officiator or not, has, before the date of this Act coming into force, passed otherwise than by decree of any Court, and without the consent of the Collector and transfer of ownership in the Revenue records, into the ownership or beneficial possession of any person not a wuttundar of the same wuttun, the Collector may, after recording his reasons in writing, declare such alienation to be null and void, and order that such wuttun, or part or profits thereof, shall from the date of such order belong to the wuttundar previously entitled thereto and may recover and pay to such wuttundar any profits thereof accordingly.”

*Clause II.*—“ If such part of a wuttun be land, it shall be lawful for the Collector, instead of transferring the possession of the land, to demand and recover the full rent ordinarily paid by tenants of land of similar description in the same locality, and the amount so recovered shall be considered as the profits ”

“ When it shall appear to the Collector that by decree of any Court any wuttun, or any part or profits thereof, recorded as such in the Revenue records or registered under this Act, and assigned as remuneration of an officiator, has, after the date of this Act coming into force, passed without the sanction of Government into the ownership or beneficial possession of any person other than the officiator for the time being; or that any such wuttun, or part or profits thereof, not so assigned has so passed into the ownership or beneficial possession of any person not a wuttundar of the same wuttun, the Court shall, on receipt of a certificate under the hand and seal of the Collector that such alienation has been decreed, remove any attachment or other process placed on the said wuttun, or part or profits thereof, and set aside any sale or order of sale or transfer thereof.”

“ When any alienation of the nature described in Section X. of this Act shall have taken place otherwise than by decree of any Court, the Collector shall, after recording his reasons in writing, declare such alienation to be null and void and shall either summarily

resume possession of such property, or assess it at the rate prescribed in Section IX, Clause 2 of this Act, as he may think fit, and it shall thenceforward revert to the wuttun."

The Honourable Mr. GIBBS remarked that by these sections it was apparently intended to legalise a certain amount of illegality which Courts had committed, because the former law distinctly was that no wuttun should be alienable.

His Excellency the PRESIDENT—These sections were framed after the Executive Government had a long discussion with the Collectors assembled at Poona, and I am certain that these gentlemen made a complete distinction between alienations made before the law came into operation and alienations afterwards. Now, however, this distinction seems to have been lost sight of, and alienations made after this Act is passed are to be put upon the same favourable footing as alienations made twenty or thirty years ago.

The Honourable Mr. ROGERS—The reason is "that we are making provision for wuttuns which do not pass out of the hands of members of the same family of wuttundars, and drawing a clear distinction between such cases and others in which the emoluments would pass into the hands of strangers.

The amendment was agreed to.

The Honourable Mr. GIBBS thought that some provision must be made to provide for the transfer of the possession of land. It might be declared that in this case the Collector's order should be equivalent to the decree of a Court.

The Honourable the ADVOCATE General suggested that the following section be added

A Collector's order to be equivalent to the decree of a court. as the last of the sections which had just been agreed to on the motion of the Honourable Mr Rogers —

Clause 3 —"Any order of a Collector made under this section, or Sections 9 and 11 of this Act, shall have the force of and may be executed in the same manner as a decree of a civil court."

The amendment was agreed to.

His Excellency the PRESIDENT said that Section XII. was characterised by the Ahmedabad petitioners as a most objectionable and injurious one. Hereditary officers, they contended, could not be treated as if they were merely stipendiary. If the section were agreed to, it would, in the opinion of the petitioners, extinguish many hereditary officers. Wuttun offices were held from time immemorial, and the holders had their rights and position formed by the usages of the country as well as by enactments. Under the British Government they had received no privileges as wuttundars which they did not possess before, and there was no law to authorise the adoption of a measure which might have the effect of extinguishing wuttuns. In the opinion of the petitioners the British Government, if they desired village services to be efficiently performed, should increase the emoluments of wuttundars instead of depriving them of their hereditary offices. If Government could not do this, then they ought to leave the wuttundars alone. These were the main contentions of the petitioners.

The Honourable Mr. ROGERS—I have already explained several times the chief object for which this section was drafted. An order was issued some time ago to provide for cases in which the wuttun lands of different villages were mixed together in consequence of the

Certain petitioners object to the right of Government to amalgamate wuttuns and thus possibly deprive wuttundars of their right to serve in consequence of their wuttun being absorbed in another wuttun.

villages themselves being amalgamated. Although the wuttuns were combined, the rights of those holding the different wuttuns were preserved by giving them rights in the new village in proportion to those they enjoyed before the combination of the wuttun properties.

The Honourable Mr. GIBBS remarked that in joining certain villages and wuttuns a great administrative improvement would be secured. If by amalgamating certain villages a suitable remuneration for an efficient officiator could be secured, he thought it would be right to make that amalgamation.

The Honourable Rao Saheb VISHVANATH NARAYAN—The honourable gentleman forgets that amalgamation of wuttuns will be depriving certain families of their rights as wuttundars

The Honourable Mr. GIBBS—All the families concerned in the wuttuns will have their chance of service by rotation

Consideration of the section postponed. The Honourable RAO SAHEB submitted that the consideration of the section ought to be postponed.

This was agreed to.

The Honourable Mr. ROGERS moved the following amendments in Section XIII In lines 3 and 8 of Clause 1 of Section XIII, for the word "holders" read "holder,"; for line 5 in the same clause, for the words "them and their heirs in perpetuity" read "him and his heirs and successors in perpetuity.", in line 7 after the word "conditions," the following words be inserted—"whether consistent with the provisions of this Act or not"; in Clause 3 of Section XIII. the words "or holders" and "or their" be omitted.

HIS EXCELLENCY THE PRESIDENT mentioned that the Ahmedabad petitioners objected to this section, because they held it would be unfair to allow settlements between a Collector and a wuttundar with respect to commutation of service to be made on any account what ever

The Honourable Mr GIBBS—Ten out of the twelve collectorates of the Presidency have already been settled as regards District service wuttuns and the same work in the other two collectorates is very nearly finished This section is merely to confirm what has already been done, and to enable other wuttundars to part company with Government if they desire it

The amendments were agreed to.

The Honourable Mr. ROGERS proposed that the following section be added after Section XIII —

"Nothing in this Act shall be held to affect any rights of individuals or village communities to exact such service as may be customary from village servants whose wuttuns were originally granted or are now held for the performance of such service, but who have been relieved by Government of liability to perform such service to the State"

The honourable member explained that many of the hereditary village officers perform a dual kind of service—partly to the State and partly to the village community For instance, the barber is supposed to shave the people, and also, on occasions when a robbery has taken place and the footsteps of the robbers have to be tracked, to be present on the occasion with

\* Villagers may exact their customary rights as to service from wuttundars

a torch to lead the way if that is necessary. The carpenter is supposed to mend the carts of the villagers besides doing certain Government work. In such cases Government will relieve the wuttundars from service, but they are not in any way exempted from their liability to serve the village community.

The amendment was agreed to.

The Honourable Mr. ROGERS moved that in lines 1 and 2 of Section XIV., for the words "a wuttun property or part thereof," read "all or any of the property of a wuttun", that the word "determine" be substituted for the word "assess" in line 9 of Section XIV, and the words "in assessing such payments no larger amount shall be paid than" in lines 11 and 12 of the same section be omitted and the words "no larger demand shall be made than one equivalent to the amount that" inserted in their stead.

The Honourable RAO SAHEB mentioned that the Poona Survajanik Subha complained that this section would interfere with the rights of Jaghirdars, Inamdars, and Mewasi Chiefs.

The Honourable Mr. CHAPMAN considered that the objections made by the Poona Subha were already met by the amendment which had been made on Section I.

The amendments were agreed to.

The Honourable Mr. ROGERS moved that the word "village" be inserted between the words "a" and "wuttun" in line 2 of Section XV. He said that in the course of previous discussions on this section an objection was raised that it gave power to Panchayets to settle what villages were to pay to the belotadars, but did not give power to the Panchayet to settle what the belotadars were to do in exchange for that payment; but by alterations now made that matter was provided for

His Excellency the PRESIDENT—The Ahmedabad petitioners object to the Collector interfering in this matter at all

The Honourable Mr. ROGERS—There are peculiar cases in the Deccan which render it necessary that something of this kind should be done. Mhars, for instance, are very strongly suspected of poisoning cattle in a great many parts of the country; and the best way we considered to settle the disputes which led to such crimes being committed was to order a Panchayet to assemble and decide among the disputants.

The Honourable Rao Sahib VISHVANATH NARAYAN mentioned that the Poona Subha considered that this section, if it contemplated the regulation of the payment to be made for services done by village officers, would be unnecessary interference with the old arrangements between landlords and servants, and probably inflict hardships upon the ryots.

The Honourable Mr. CHAPMAN—This is really one of the most important sections in the Bill, as the whole system of village administration may be said to depend upon it. Some means must be adopted whereby the payment of village officers will be secured. Mhars, village watchmen, &c, are essential to the comfort and well-being of villages, and unless they get their proper remuneration it would be quite hopeless to expect proper services from them. All we say in this section is that the rights of these people will be maintained. We want a prompt remedy by which the half-naked Mhars and others ~~may~~ get their rights, and do in return the services which their wuttun has for

generations past entailed upon them. Looking at the system of police administration in this country we could not get on without Mhars, whose obligations are of such a minute character that it would be impossible to expect a Collector to say what they are, although they are perfectly well-known to the country side, and the reason why we wish the Panchayet to be established is that they may arrange these matters.

The Honourable the ADVOCATE GENERAL—The only difficulty I see about this section is that it contains nothing about how the decisions of Panchayets are to be enforced. Supposing a Panchayet passes a decision, and the wuttundar refuses to accept it, what is to be done?

The Honourable Mr CHAPMAN—For such cases there is full power in the Bill to confiscate a wuttun. Moreover, the Panchayet may withhold remuneration in certain cases. For instance, if much grain were stolen frequently, and the thief could not be found out, the Panchayet might refuse to pay the Mhar on the ground that he was not performing the duties attached to his wuttun.

The Honourable RAO SAHEB—Certain duties and responsibilities devolve upon the Mhars, and surely something must be exacted from them as well as from the people who must pay them.

The Honourable Mr. CHAPMAN—We must leave the section indefinite to a certain extent. We cannot go into minute particulars about what the Collector must make the Mhars do.

The Honourable Mr. ROGERS—From some of the observations made, it seems to be expected that if this section is passed the Collector will immediately proceed to inquire closely into the performance of the duties of all wuttuns. If this is the case, perhaps something might be introduced in the Bill to suit the views of those honourable members who entertain such fears and to prevent such unnecessary interference.

The Honourable Mr CHAPMAN—It is the desire of Government that Collectors should not interfere too closely with existing village arrangements. I believe that Government will take care to inform Civils Officers of this particular desire.

The Honourable Mr GIBBS remarked that the general instructions of Government to its servants on this point would be on the principle *quieta non moveri*.

After some further discussion the amendment was agreed to.

In line 6, between the words "Collector" and "to," "on the application of any person interested" was inserted.

The Honourable Mr ROGERS moved that the word "determine" be substituted for the word "assess" in line 9 of Section XVI.

The amendment was agreed to.

The Honourable Mr ROGERS moved that in line 7 of Section XVII for the word "of" read "duly authorized by"

The amendment was agreed to.

The Honourable Mr. ROGERS moved that the following words be inserted after the word "Government" in line 15 of Section XIX.—"or when the right of any particular



family to hold a wuttun does not exist or is not established” Also that the illustration to Section XIX. in lines 20 to 27 be omitted.

The amendments were agreed to.

The Honourable Mr. ROGERS moved that the following words be added after the word “value” in line 17 of Section XX.—“Such increase or diminution being made rateably among the holders in proportion to the profit derived by such holders respectively from the wuttun.”

The amendment was agreed to.

Consideration of Section XXI. was postponed

In line 2 of Section XXII. the words “as hereinafter provided the custom of the watan as to service and” were inserted after the words “determine,” and the words “as hereinafter provided” in line 7 omitted.

The Honourable RAO SAHEB, before stating his views upon the definition of rotation wuttundar, called attention to Section XXIII, in which it was stated that in determining what heads of families shall be recognised as representative wuttundars, and what is the custom of the wuttun as to service, the Collector must be guided by the practice observed during a period of not less than thirty years before the date of this Act coming into force

The Honourable Mr CHAPMAN—Before the honourable member proceeds further

Mr Chapman contends that holders of fractions of a wuttun ought not to be registered for certain practical reasons.

I would draw his attention to the amendment on Section 23 of which notice has been given. Instead of the Collector being bound to examine the custom for only thirty years preceding the introduction of this Act, it is proposed that he shall take into consideration the practice observed “from the earliest period for which there are records or other evidence available, provided that he shall not be bound to recognise appointments or sub-divisions which have been made subsequently to the introduction of Act XI. of 1843, and which he considers to be contrary to the custom of the wuttun.” As the framer of that amendment, I may perhaps be permitted to make a few remarks in explanation of it, and for the purpose of facilitating discussion on the subject. I agree with the Honourable Rao Sahab in looking upon this as one of the most important sections in the Bill. I also think it is no exaggeration to say, that had registers been prepared in the first instance we would have none of the difficulties which we have now to deal with. In fact it is the absence of proper registers which has created these difficulties, inasmuch as the whole question of service by rotation hinges upon proper registers. Any one who has studied the history of this matter will have found the greatest difference of opinion respecting the question of service by rotation. As regards koolkurnies there is no doubt that rotation has existed from of old, but as regards patels there is a wide difference of opinion entertained by Revenue Officers as to whether it is not an innovation Mr. Vibart, the late Revenue Commissioner, when drafting Act XI of 1843, distinctly provided for frequent rotation; on the other hand, Mr. J Nugent Rose, who was, perhaps, the highest authority on Mahratta customs, was decidedly of a contrary opinion in respect to patels. I have discussed these different opinions very frequently with native gentlemen, and when I mentioned Mr. Rose’s name they have said “Oh, it was all very well for Mr. Rose to entertain that opinion, but we are given to understand that Mr Rose was himself a wuttundar in Scotland; and, of course, he upheld

the 'Wateel or primogeniture' theory." My own impression, looking to the past history of the matter, is that it was very much a case of the strongest and most influential man getting the post of officiator. When Act XI. of 1843 was enacted rotation was recognized, but unfortunately no provision for preserving proper registers of shareholders was made. The result has been deplorable. The omission has given rise to a most corrupt scramble amongst all parties to obtain office. There was no authoritative list from which the nominating officer could make his selection. The consequence was that intrigue, bribery, and corruption were rife amongst all the offices, from the Mamlutdar's up to the Revenue Commissioner's. I believe I am correct in saying that the great object of the Bill now before us is to amend and simplify the manner in which these appointments are made. With a view to checking these evils, Government, as far back as 1866, issued executive orders for the preparation of registers and regarding the manner in which appointments were to be made. We have now to consider, first, how far the registers already prepared in conformity with the orders issued by Government in 1866 are to be upheld, and in the next place how far it is advisable in making new registers where no registers at all have been prepared, to interfere with past practices. This is a most difficult matter to deal with, and the amendment now on the paper is, I think, as satisfactory a way of meeting it as can be devised. I will first deal with the case of registers that have been prepared subsequent to 1866, and in doing so must draw attention to the amendment to Section 63. Honourable members, after looking at that clause, will see that we have done all in our power to prevent unnecessary interference with registers already prepared by responsible officers after the parties have had an opportunity of appearing before them and advancing their claims. I do hope that the officers to whom the working of this Act will be entrusted will be very chary in interfering with the past, and restrain that craving after uniformity, which is to my mind the most unpleasant and I believe unpopular feature, in our administration. Knowing as I do how keenly these rights are contested, I think it is better that some differences of system should remain than that old squabes once set at rest should be revived. I will now turn to the second part—namely, the preparation of new registers where none now exist. We find that there has been the greatest diversity in the way in which the orders of 1866 have been attended to in different collectorates. In some collectorates—notably Poona, Nasik and Dharwar—the orders issued by Government in 1866 have been most carefully attended to. In other collectorates, especially Khandesh and throughout Guzerat, I believe little attention has been paid to the orders, and no new registers have been prepared. The officers in these collectorates will therefore have to deal with this matter *de novo*, and I repeat the hope that they will endeavour to interfere as little as possible with the customs of wuttuns. The words of the amendment are wide and elastic. I trust that the effect of it will be that only the names of men who by intrigue and improper means have found their way into existing registers will be eliminated, that this power of elimination will be carefully and guardedly exercised, and that the names of all who by custom and usage are entitled to the privilege will be retained. I believe that the local Government will enjoin the greatest possible care on the part of officers. I have now, I hope, sufficiently explained the object of these registers. I can assure the Council that these amendments have been discussed in the most unreserved and careful manner by every officer whose opinion is of the slightest weight, and we have come to the conclusion that the present is an equitable and practical way of dealing with a most difficult and embarrassing subject.

The Honourable Rao Saheb VISHVANATH NARAYAN—I have listened carefully to the remarks of the Honourable Mr Chapman, but still I think

Rao Saheb Vishvanath Narayan contends that all wuttundars having equal rights, therefore fractional wuttundars ought to be represented in the service of a wuttun

that we ought to postpone the consideration of this section until we agree whether the representative wuttundar who is to officiate must really be the head of a family of wuttundars. Under the present systems of Mahomedan and Hindoo law, all members of families of wuttundars have equal rights, and Act XI of 1843, if it did no other service, laid it down that if all members of families of wuttundars could not act as wuttundars at one and the same time, they at all events had the right of voting who among them should perform the duties of the wuttun. Here such option is not left—a man must be the head of the family of wuttundars or he cannot officiate. It is true that it is stated in Section XXIII that the Collector in determining “what heads of families shall be recognised as representative wuttundars” must look to the “custom of the wuttun as to service and take into consideration the practice heretofore observed” during a certain period. But I do not think these words are wide enough to allow of the elective principle being carried out whenever the members of a particular family of wuttundars or groups of families in a particular wuttun have hitherto enjoyed the right of electing representatives. If it is declared distinctly that they shall still be allowed to exercise this privilege under these sections, I will have no objection to them, but I would respectfully put it to the Honourable Mr Chapman that the rights of minor wuttundars should not be entirely extinguished. Formerly the ablest wuttundar in families of wuttundars could have his abilities recognised and be elected as their representative; but now it is proposed, though making a scheme simple no doubt, to deprive the villages or the State of being served by the best man available.

The Honourable Mr. CHAPMAN—To do what the Honourable Rao Saheb contends for we must first, as it were, have an electoral college. We must have a full register of voters. But if we agree to such a system we leave the door open, as formerly, to every sort of intrigue and difficulty. We now wish once for all to have a trustworthy register of qualified wuttundars prepared and if it is said that there must be an elective franchise amongst all sorts of wuttundars, whether principal or minor, I submit that we shall never be able to get rid of interminable confusion. If the name of every wuttundar is registered indiscriminately, whether he is a representative man or not, it stands to reason that we cannot escape from having as unsatisfactory a condition of matters in the future as we have had in the past.

The Honourable RAO SAHEB—Will the junior members of families be allowed to get their names on the register at all?

The Honourable Mr. CHAPMAN—No. Supposing a Hindoo died, leaving four sons we would only recognise and register the eldest. This we take to be the simplest mode of dealing with our present difficulties. If the Honourable Rao Saheb or any other gentleman can suggest a more practical way of improving the administration of villages, the Executive Government will, I am sure, be happy to adopt it.

The Honourable RAO SAHEB—Can we not leave respectable wuttundars themselves to elect an officiator? The question is, who is to get his name on the register? I want to secure for the subordinate wuttundars some share in the election of the representative wuttundar, whoever he may be.

His Excellency the PRESIDENT—Instead of the Collector saying, “ I take this man to be the representative wuttundar,” the Honourable Member wishes families to have the power of saying, “ So-and-so is the man we want ?”

The Honourable RAO SAHEB concurred.

The Honourable Mr. CHAPMAN—I quite admit that the Rao Saheb's theory is excellent, but there are so many practical difficulties that it could not be carried out.

The Honourable the ADVOCATE GENERAL—If the ancient custom of the wuttun has been that all the families in the wuttun shall elect their own representative, I presume the Collector will adhere to that custom. In fact, where there is no electoral college one will not be created, but where there is one, it will be recognised.

The Honourable Mr. ROGERS—It is not meant to recognise that custom at all.

The Honourable RAO SAHEB—Under Act XI of 1843 the Collector could only elect a representative in those cases where, the wuttundars having the right to elect a representative, they could not agree to be unanimous. There is a great deal to be said against the system of unanimity, and I believe if we could get a system of majorities it would do very well.

The Honourable Mr. CHAPMAN—We must endeavour to narrow the number of electoral wuttundars by this Bill, and if we do not start with a more simple style of register than we have had hitherto we shall have a repetition of all the old evils.

The Honourable Mr. GIBBS—Suppose a wuttun in which there are two shares worth 4 annas each, and another worth 8 annas which is sub-divided among 50 people, surely it would be absurd to register the names of those 50 sharers in the 8 annas share of the wuttun.

The Honourable RAO SAHEB—I would give a vote to every anna share in a wuttun.

The Honourable Mr. CHAPMAN—That would be impracticable, and we would simply be re-opening the old fields of khutput and bribery. It would surely be safer to accept the broad principle upon which we proceed, that no arrangements entered into subsequent to the passing of Act XI of 1843 are to be recognised. That will enable us to get rid of a great many of the objectionable sub-divisions which have sprung up of late years.

The Honourable the ADVOCATE-GENERAL suggested that the words “ head of a family ” should be omitted from Section IV. and XXIII so as to show that the officiating wuttundar need not necessarily be the head of a family.

After some discussion the Honourable RAO SAHEB expressed his concurrence with the Honourable the Advocate-General's proposition.

Section IV was then reverted to, and in the definition of “ representative wuttundar ” the words “ head of a family ” were struck out.

Referring back to Section XXII the Honourable the ADVOCATE-GENERAL asked whether if infinitesimal taksheens existed before 1843, it was intended to interfere with them.

\* The Honourable Mr. CHAPMAN replied in the negative.

The Honourable Mr. ROGERS moved that the words “ take into consideration ” in line 7 of Section XXIII be omitted and the words “ inquire into ” inserted in their stead ; and that the remainder of the section after the word “ observed ” in line 8 be omitted and the

following words substituted.—“ From the earliest period for which there are records or other evidence available, provided that he shall not be bound to recognise appointments or subdivisions which have been made subsequently to the introduction of Act XI of 1843 and which he considers to be contrary to the custom of the wuttun.”

The amendments were agreed to

The Honourable Mr ROGERS moved that the illustration (from lines 10 to 23) in Section XXIV be omitted.

The amendment was agreed to.

The Honourable Mr ROGERS moved that the illustrations to Section XXVI. from lines 14 to 13 be omitted, that the following words be added at the end of Section XXVI — “ Except that in cases where such several families are not descended from a common ancestor the Collector shall register as representative wuttundars the heads of such families and establish the practice of service in successive periods ”

The amendments were agreed to

In lines 6 and 7 “ for thirty years or more ” was struck out and “ at the date of the introduction of Act No XI of 1843 ” substituted.

The Honourable Mr. ROGERS moved that the following section be added after Section XXVI —“ When the custom of service in successive periods has been introduced in consequence of the reduction in the number of shawers or the amalgamation of wuttuns by Government, the head of each family that formerly officiated shall be separately entered as a representative wuttundar ”

The amendment was agreed to

The whole section was then passed as amended

The Honourable Mr ROGERS moved that the following sections be added after Section XXVIII —

“ In any case in which before the coming of this Act into force any registered wuttundar shall have adopted an heir, notice of the same shall, within twelve months from the coming into force of this Act, be given by or on behalf of such adopted heir to the Collector, who shall register the name of such heir accordingly. But if such adoption shall subsequently be set aside by decree of a competent Court, the Collector shall remove such name from the register ”

“ In any case in which after the coming of this Act into force any registered wuttundar shall adopt an heir, report of such adoption shall within three months be made to the Collector by such wuttundar, or by such adopted heir or by the guardian of the latter, and the Collector shall register the name of such heir accordingly. But if such adoption shall subsequently be set aside by decree of a competent Court, the Collector shall remove such name from the register. In any case in which report of such adoption shall not be made as herein directed, the Collector shall not recognize the same without the production of a certificate of heirship granted by a competent Court ”

The new sections were agreed to

In line 4 of Section XXIX “ and ” was substituted for “ or ” The illustration was omitted

In line 1 of Section XXX. the words "head of a family or" were inserted after the word "any" and in the same section the word "his" was substituted for "the" in line 4, and the words "of the minor" in lines 4 and 5 struck out.

The Honourable Mr ROGERS moved that for the words "for not less than ten years" in line 12 of Section XXXI the following words should be substituted — "the period for a patel shall not be less than ten years and for a koolkunee not less than five years"

The Honourable KHAN BAHADOUR PADAMJI PESTONJI was of opinion that patels and koolkunnies should be elected for the same period, five years. If it would injure the public service to remove a patel at the end of five years he might be re-elected for another term.

The Honourable Mr ROGERS' amendments were agreed to, and the Honourable Khan Bahadour did not press his expression of opinion.

The Honourable Mr ROGERS moved that the words "subject to the provisions of Part VIII of this Act" be inserted after the words "his heir shall" in line 5 of Section XXXII.

This was agreed to.

After some discussion Section XXXIII was altered to read as follows — "Every representative wuttundar whose duty it is to officiate shall, if a fit and proper person, perform the duties of the hereditary office himself or being so required by the Collector, unless permitted by the Collector to appoint a deputy."

The Honourable Mr ROGERS moved that the following words be added to Section XXXIV — "or may direct service in successive periods by representative wuttundars who have hitherto served or are serving, contemporaneously."

The amendment was agreed to.

In lines 3 and 4 of Section XXXVI the words "wuttundar entitled to serve" were deleted and the words "representative wuttundar whose duty it is to officiate" substituted. In line 7 "after due inquiry" was inserted after "believe."

The section was then agreed to.

In lines 1 to 5 of Section XXXVII the words "representative wuttundar becoming unfit persons not to officiate physically or mentally incompetent" were deleted, and these words substituted — "wuttundar whose duty it is to officiate being or becoming unfit by reason of other employment or calling or physical or mental incompetence." In lines 9 and 10 "becoming physically or mentally incompetent" was deleted and "so becoming unfit" substituted.

The section as amended was agreed to.

The Honourable Mr ROGERS moved that the following section be added after Section XXXVII —

"Whenever a representative wuttundar whose duty it is to officiate ceases to be disqualified under the provisions of Sections XLIII and XLIV of this Act he shall become entitled, if otherwise fit, to serve in person, or to appoint a deputy in supersession of any deputy appointed by the Collector."

The section was agreed to.

After the word "wuttundar" in the first line of Section XXXIX. the words "whose duty it is" were substituted for "entitled", and in line 4 "if otherwise fit" was inserted between "himself" and "perform". The section as amended was agreed to.

The words "or the guardian of a representative wuttundar" were inserted before "she" in line 5 of Section XLII. The section as amended was agreed to.

In line 4 of Section XLII "and during any vacancy" was inserted after "deputy"; in line 5, "temporarily" was inserted between "shall" and "be" in line 6, "substitute whether a wuttundar or not" was substituted for "deputy", and line 7 was struck out.

In line 3 of Section XLIV "not exceeding" was substituted for "of", the words "provided also that the appointment of a deputy on behalf of a minor shall terminate with the minority" in lines 11 to 13 were omitted, and the following words added to the section—"and any appointment of a deputy on behalf of a representative wuttundar under the age of eighteen years shall terminate on the attainment by such representative wuttundar of that age."

In line 3 of Section XLV "an officiator" was substituted for "a wuttundar officiating".

In line 4 of Section XLVI "or families" was deleted, in line 6 "head of the family" was substituted for "heads of the families", in line 8 "a" was inserted before "representative"; in line 9 "wuttundars" was made "wuttundar", and the remainder of the section was struck out.

The Council then adjourned.

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

**JOHN NUGENT,**

**Acting Under Secretary to Government.**

*Poona, 24th August 1874.*

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 Poona on Tuesday, the 25th August, 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 COLONEL M. K. KENNEDY

The Honourable J. K. BYTHELL.

The Honourable COLONEL W. C. ANDERSON.

The Honourable F. S. CHAPMAN.

The Honourable RAO SAHIB VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable KHAN BAHADUR PADAMJI PESTONJI.

The Council resumed consideration of the Consideration of the Wuttundars Bill resumed. Hereditary Offices Bill (No. 12 of 1873)

The words "not exceeding five rupees" were struck out of lines 8 and 9, in Section XLVII., and "when" was inserted after "except" in line 13.

The Honourable Mr. ROGERS explained that this section was introduced mainly with the idea of giving Collectors power over wuttundars who neglected their work, or refused to live in their village, for, of course, it was impossible for patels or koolkurnies to do their work properly unless they lived in their villages.

Section XLVIII. was altered to read as follows:—"It shall be lawful for the Collector, with the previous sanction of Government, in case of fraud, the wilful framing of incorrect records, habitual neglect of duty, or other grave misconduct on the part of an officiator to remove him from office and appoint a deputy, who shall be selected from the wuttundars, unless Government shall otherwise direct"

Section L. originally stood as follows:—"When any representative wuttundar or any deputy appointed by him as such is convicted by any Criminal Court, or by the Collector under the provisions of this part, of any offence in the discharge of his official duties, it shall be lawful for Government to direct the forfeiture of the whole or part of the wuttun and profits.

"*Explanation.*—Where the deputy is appointed by the Collector, the forfeiture shall not take place."



The Honourable Mr. ROGERS moved that the words "or by the Collector under the provisions of this part" and the explanation be omitted.

The Honourable RAO SAHEB Vishvanath Narayan Mandlik objected to any wuttundar losing more than his own life-interest for any fault he might commit.

Should an officiating wuttundar's grave offence be the means of confiscating the whole wuttun? The Honourable RAO SAHEB contends that an offending wuttundar should be able to imperil only his own share in the wuttun

His Excellency the PRESIDENT—This same question came before us on a previous occasion, when the native Members of Council agreed to allow the section to go out to the country as it now stands, on the understanding that the question should be left open for future discussion.

The Honourable RAO SAHEB—Then I will propose an amendment to the effect that if there is an offending wuttundar, that wuttundar shall not jeopardise the property of his fellow wuttundars

The Honourable MR GIBBS—I understand that this section is simply a repetition for the old law

The Honourable RAO SAHEB—We have made many changes on the old law, and changes, I trust, for the better; and in the present case, especially when we have taken all power out of the hands of the minor wuttundars, I think we might endeavour to improve this section. Under the old law, it was only conviction by a Court of Session that was penal, and then it was left to the Government to decide whether the whole wuttun or any part of it should be confiscated; but now, we say, "any Criminal Court," so that a confiscation of a wuttun might depend even upon the decision of a Mamlutdar's Court.

The Honourable Mr. CHAPMAN—Trial only by Court of Session was simply an arbitrary distinction, as, whatever a man's offence, he was bound to be tried somewhere.

The Honourable RAO SAHEB—It was a thing scarcely ever heard of, the confiscation of wuttuns under Native Governments

The Honourable Mr. CHAPMAN—I never heard of wuttuns being interfered with under the British Government; still, as a matter of common law, I should be sorry to see the present check removed.

The Honourable RAO SAHEB—Since we are endeavouring to improve the status of wuttundars, since we have practically deprived the minor brotherhood of wuttundars from having any share in the concerns of the wuttun, and since we have made fixity of tenure a leading principle of the Bill, I do not see why Government should seek to incur the odium of retaining this objectionable power in the statute-book, especially when it is never likely to be put in force.

The Honourable Mr. CHAPMAN—For political offences it might be necessary to exercise this power occasionally.

The Honourable RAO SAHEB—Then say that if there is an offence committed against the State a wuttun may be forfeited. I do respectfully, but strongly, urge upon the Council the propriety of returning to the words which the late Honourable Mr. NARAYAN succeeded in introducing into this section at the previous discussions on the second reading

The Honourable Mr. ROGERS—If the whole of the patels combined together to defraud Government, would that not be a sufficient reason for confiscating a wuttun?

The Honourable RAO SAHEB—Where a representative wuttundar becomes officiator, I submit it will be practically impossible for the other wuttundars to have any interest in the wuttun.

The Honourable MR. CHAPMAN—Take those offences that are unfortunately common in the Ghaut districts at present. There you have bands of plunderers, and if a whole wuttun were to give these men food and shelter, surely confiscation of the wuttun could alone be an adequate punishment.

The Honourable RAO SAHEB—There would probably be other means of reaching the offending wuttundars.

The Honourable Colonel ANDERSON—But this would certainly be the sharpest way.

HIS EXCELLENCY the PRESIDENT—It seems to me it is doubtful, if an officiator is guilty of misconduct, whether Government can deprive not only him of his income, but also a number of other persons of their incomes.

The Honourable Colonel KENNEDY—It would be hard upon the other wuttundars, I dare say, but the question is whether Government should not have the right of resuming what it granted for certain purposes which have not been properly fulfilled.

Should Government not have the right of resuming that which it granted for certain purposes that have not been properly carried out?

The Honourable RAO SAHEB—This officiator cannot personally assign anything more than a life interest, and why in this particular matter of wuttuns should he be the means of destroying the life interest of others?

The Honourable Mr. CHAPMAN—There can be no organised or systematic treason carried out without some of the wuttundars knowing about it. Moreover, the offence of wuttundars may consist, not in actually combining against Government, but in passively acquiescing by not giving information about what is going on.

The Honourable RAO SAHEB—Practically the management of wuttuns will be in the hands of Government. I may say that I have observed the village system for thirty-five years, and I think the Council is now about to enforce a very great hardship.

The Honourable Colonel ANDERSON—We are simply introducing a rule which ought to have been a rule before, and saying that inferior members of a wuttundar family shall be debarred from interfering with matters which formerly they would not have been allowed to interfere with.

The Honourable Mr. CHAPMAN—Would it satisfy the honourable member if we were to retain conviction by Sessions Court?

The Honourable RAO SAHEB—I do not object so much to the kind of Court as I do to sacrificing the life-interest of several people for the fault of only one man.

The Honourable Mr. GIBBS—Since the law of 1843 was passed, there have been only two cases of confiscation of wuttuns, and one of the cases, which occurred at Nasik, was, I believe, quasi-political.

The Honourable Mr. ROGERS—We have given the heads of families the right to sign documents, &c., and therefore the officiator may have an efficient supervision kept over his conduct by his bhaebunds.

The Honourable RAO SAHEB—That may be in Guzerat, but not in any other part of the country with which I am acquainted. Some people may sign village papers, but

here are wuttundars who could have no interest in living in the village, or in looking closely after what the officiator was doing.

The Honourable Colonel ANDERSON—Surely, if some of these wuttundars receive emoluments from a wuttun, there must be some responsibility attaching to them in the administration of the wuttun.

The Honourable RAO SAHEB—We have already deprived the minor wuttundars of all responsibility, and if we have done that, I do not think you ought to forfeit more than the offender's life-interest.

The Honourable Mr. BYTHELL suggested that for a serious offence the life-interest of all the sharers in the wuttun at the time should be forfeited, but that the rights of heirs should not be interfered with.

The Honourable Mr. GIBBS—If this were a new proposal I would oppose it, but as it is considered necessary by the Revenue authorities I am prepared to vote for the retention of the present law.

The Honourable Mr. BYTHELL—I think the Honourable Mr. Gibbs is mistaken in thinking that all the Revenue officers agree with this section. I see that several of these gentlemen express the opinion that it is unnecessarily harsh.

The Honourable Mr. GIBBS explained that he only alluded to the Revenue officers who attended the conference held in Poona. Some of the most able members of the Revenue Department attended this conference, and they were all in favour of the power of confiscating a wuttun remaining in the hands of Government.

The Honourable Mr. BYTHELL—That may be, but there are some very strong opinions expressed in writing against that power.

The Honourable Mr. ROGERS—Before this question comes to a vote I beg to remind honourable members that Government can have no possible inducement to resume wuttuns in this particular way. Services must be performed, and if a wuttun ever were confiscated, the duties would simply be transferred to some other person, and the emoluments would be appropriated for his remuneration and not escheat to the State.

The Honourable KHAN BARADOOR—Government might join certain villages together, and in that case it would be a gainer, while certain persons who used to perform services would undoubtedly be losers.

The Honourable RAO SAHEB—Before the sense of the Council is taken upon this important amendment, I wish to repeat a remark or two. If the Council is now simply confirming the old law, all I can say is that it has already changed that law in many respects, and for the better I hope. It has been acknowledged that the old law has been almost useless except in one case; the other may be left out of consideration as it was quasi-political. We have now introduced an entirely different system under which theoretically there may be joint responsibility in the wuttuns, but practically there cannot be, as nobody but the officiator will have anything to do with village management. That being the case, I think it is hard that the whole family of shareholders should suffer for the fault of one man, unless their participation be clearly proved.

The Honourable NACODA MAHOMED ALI ROGAY concurred with the opinions expressed by the Honourable Rao Saheb, and remarked that if the amendment were not agreed

to, the Council would simply be adopting the policy prevalent under the Peishwa's or Gaekwaree rule.

The Honourable Rao Sahib proposes that an offending wuttundar shall imperil only his own life-interest

The Honourable RAO SAHIB formally moved—That in line 9 of Section L after “of” the following words be inserted—“the life-interest of the officiator in,” and that the following be omitted—“the whole or part of.”

The Council divided —

<p style="text-align: center;"><i>Ayes</i>—4.</p> <p>The Honourable J. K. BYTHELL.</p> <p style="padding-left: 2em;">” RAO SAHIB V. N. MANDLIK.</p> <p style="padding-left: 2em;">” NACODA MAHOMED ALI ROGAY.</p> <p style="padding-left: 2em;">” KHAN BAHADOOR PADAMJI PESTONJI.</p>	<p style="text-align: center;"><i>Noes</i>—6.</p> <p>The Honourable A. ROGERS.</p> <p style="padding-left: 2em;">” J. GIBBS.</p> <p style="padding-left: 2em;">” the ADVOCATE GENERAL.</p> <p style="padding-left: 2em;">” COLONEL M. K. KENNEDY.</p> <p style="padding-left: 2em;">” COLONEL W. C. ANDERSON.</p> <p style="padding-left: 2em;">” F. S. CHAPMAN.</p>
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The amendment was therefore lost.

The Council then adopted several minor alterations in order to make the Section conform more to the old law, so that ultimately the section stood thus :—“When any representative Wuttundar, or any deputy appointed by him as such, is convicted by any Court of Session of any offence in the discharge of his official duties, it shall be lawful for Government to direct the forfeiture of the whole or part of the wuttun and profits”

The Honourable Mr ROGERS moved that after “wuttun” in line 11 of Section LI. the following words be inserted—“of the representative Wuttundar entitled to officiate”; and that in line 13 of the same section for “be a representative Wuttundar or Deputy” read “be such representative Wuttundar or a Deputy appointed by him.”

The amendments were agreed to.

The Honourable Mr. ROGERS moved that the sentence from “the Collector,” &c, in line 27 of Section LIV. be converted into a new clause (d); that in line 28 the words “and enforce” be inserted between the words “for” and “the”; and that after the word “representatives” in line 31 the following words be added —“And in cases where the crime of cattle poisoning is prevalent shall, with the sanction of Government, have power to attach, during the pleasure of Government, the wuttuns of the persons whom he may have reason to believe to have been guilty of, or to have connived at the commission of, the crime.”

The amendment was agreed to.

In line 6 of Section LVII. “the names of the occupants” was inserted after “lands”, and in line 17 “not” was altered to “otherwise.”

The Honourable Mr ROGERS moved that the words following the word “made” in Section LVIII. be omitted, and the following words substituted —“in accordance with the provisions of this Act in the particulars above specified.”

The amendment was agreed to.

The Honourable Mr. ROGERS moved that in line 11 of Section LIX for “hereditary offices” read “wuttundars”; that in line 3 of Section LX. for “hereditary officer” read “wuttundar;” and that the following words be added as clause 2 to Section LXII :—

" *Clause 2* —Every person who shall have been summoned to give evidence, or to produce any document in his possession, by the Collector or other officer conducting an investigation under this Act, shall be legally bound to attend or to produce such document."

The amendments were agreed to.

In line 6 of Section LXIII. "remuneration" was substituted for "emolument", and in line 11 "successive" was deleted; and the Honourable Mr ROGERS moved that the following clause be added to the section :—

" *Clause 2*.—Unless the Governor in Council shall otherwise direct, decisions passed subsequently to the year 1866, after an investigation recorded in writing and after a proper opportunity had been afforded for the hearing of claims and the production of evidence and which are recorded, with the reasons therefor, in the handwriting of a Collector or his assistant or deputy, shall be accepted in so far as they may not be inconsistent with the provisions of this Act, in lieu of fresh investigation and decision under this Act for the purpose of framing the register required in Part XI. thereof. If any details necessary for the said register have not been recorded in any decision of the nature described above, but are ortho-coming from the evidence taken in connection with such decision, they may be supplied from such evidence in lieu of fresh investigation for the completion of the register. Such details as may not be forthcoming shall be obtained by such further investigation as the Collector may deem necessary."

The amendment was agreed to.

After a brief conversation relating to Section LXVI, the words "nor in any case not expressly provided in this Act, no appeal shall lie" were struck out.

In line 15 "ninety" was substituted for "sixty" in Section LXVII.

The Honourable Mr ROGERS moved that the following section be added after Section LXXV. :—

"The Governor in Council may from time to time confer on any officer specially selected for the purpose all or any of the powers and duties which under this Act are required to be performed by a Revenue Commissioner or a Collector, and may authorise the delegation to any mamlutdar or mahalkaree of the power to fine hereditary village officers in sums not exceeding two rupees."

The new section was agreed to.

The needful alteration in the numbering of sections and clauses in consequence of the introduction of new sections and clauses was made throughout the Bill, so that the last section (*i e.* LXXXVI.) stood Section LXXXV., and the Council then agreed to the Schedule and Title of the Bill.

The Council proceeded with the next order of the day—the second reading of Bill No. XI. of 1873: a "Bill for the Regulation of Jails in the City and Presidency of Bombay and the enforcement of discipline therein."

The Honourable Mr. ROGERS, in moving the second reading of the Jails Bill, said :—

Sir,—I beg to move the second reading of the Regulation of Jails Bill. The Council will recollect that the Bill was brought forward in November last, when it was considered by the Council that we had not taken sufficiently into consideration the laws passed on the subject by the Government of India. The Bill was therefore referred back to the Select

Mr Rogers moves the second reading of the Jails Bill.

Committee whose report is now before the Council. It may be said generally that we have preserved the original scheme of the Bill as drafted, but at the same time have taken advantage of many of the provisions of Act XXVI of 1870 of the Government of India. The Select Committee considered that punishments were apt to be inflicted by Superintendents of Jails in rather a harsh manner, and therefore they have provided for more frequent and regular examinations of Jails by visitors, and also laid down that in any case where a Superintendent has inflicted corporal punishment he shall be bound to record his reasons, so that the visitors and Government may be able to keep a check upon his proceedings.

Bill read a second time and considered in detail. The motion was agreed to, and the Council proceeded to consider the Bill in detail.

In line 3 of Section II. the words "the person or persons" were altered to "any person."

Adverting to Section III. the Honourable the ADVOCATE-GENERAL said:—"In order to make it perfectly clear that the Bombay House of Correction will be brought under this Act, I propose that in line 8 the words "including the House of Correction" shall be inserted after "Bombay."

The amendment was agreed to.

In line 6 of Section XI. "in writing" was inserted after "issue".

Lines 9, 10, and 11 of Section XIII. were altered to read as follows.—"of the District, or, on the recommendation of the Medical Officer, by the permission of the Nazir in charge of the Jail".

The Honourable the ADVOCATE-GENERAL here remarked that if this Act were to be properly carried out, Government must take care to separate the Civil and Criminal Jails all over the country.

In line 21 of Section XIV the word "necessary" was struck out, and "order by the Judge or Assistant Judge under the provisions of Section XI. of this Act" substituted. In line 26 "in writing" was inserted after "demand".

In line 9 of Section XV the words "the prisoner so dying" were altered to "such prisoner"; and, on the suggestion of the Honourable Khan Bahadur, "relatives or" was inserted before "friends" in line 12, and in line 14 "burned, or otherwise disposed of" was inserted after "buried", and "or burnt" was struck out.

In line 7 of Section XVI the word "or" after the word "burial" was struck out and the words "or disposal" added after the word "cremation," and in line 8 "or burnt" was struck out, and the following words substituted "burned or otherwise disposed of"—

The following words were added to the end of Section XIX—"and at such other places as the Governor in Council may from time to time direct".

In line 11 of Section XXV the words "ordinary custody in the" were inserted before "Jail".

Referring to Section XXVI, His Excellency the PRESIDENT remarked that perhaps it would be well to define the size of fetters that ought to be used, as he had never seen such heavy ones anywhere as those which were used in this country.

The Honourable Mr GIBBS remarked that this was a matter of detail which it would be difficult to settle in the Bill.

His Excellency the PRESIDENT.—As it is stated in the Bill that "fetters are not to be part of punishment", the greatest caution will have to be exercised in permitting Jailors to place fetters upon people.

In line 27 of Section XXVIII the words "without delay" were inserted after "Government".

In line 9 of Section XXXIII. the words "or solitary" were inserted after "separate."

In line 5 of Section XXXVII. the words "give to any prisoner or" were inserted before "introduce", and in line 10, the words "or introduced into" were inserted before "such."

In line 6 of Section XLI. the words "or other suitable clothing" were inserted before "and"; and in lines 11 and 12 "cause the prisoner to be discharged" was substituted for "discharge the prisoner"

In line 7 of Section XLVII. the words "penal servitude or transportation, or," were inserted after "imprisonment".

In line 18 of Section XLVIII "Medical Officer" was substituted for "Surgeon"; in line 19 "such" was inserted before "prisoner"; in line 20 "so dying" was struck out, in line 23 "relatives or" was inserted after "or"; in line 24 "or" was struck out; and in line 25 "or otherwise disposed of" was inserted after "burnt".

His Excellency the PRESIDENT then adjourned the Council.

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

JOHN NUGENT,

Acting Under Secretary to Government.

Poona, 25th August 1874.

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

The Council met at Poona on Friday, the 9th October 1874, at noon.

*PRESENT.*

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

HIS EXCELLENCY the Honourable SIR CHARLES STAVELEY, K.C.B

The Honourable A. ROGERS.

The Honourable J. GIBBS

The Honourable COLONEL M. K. KENNEDY.

The Honourable COLONEL W. C. ANDERSON.

The Honourable F. S. CHAPMAN.

The Honourable RAO SAHIB VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable KHAN BAHADOOR PADAMJI PESTONJI.

The Honourable Mr. ROGERS moved that the consideration of the Jails Bill be

Mr. Rogers moves that the Jails Bill be reconsidered

The Bill reconsidered

resumed. He said that the Bill had already been considered in detail, and the only amendment which had been received regarding it was the following from the Honourable the Advocate-General, who considered that it would make the Bill apply clearly to Non-regulation as well as Regulation districts :—

“ In the event of the provisions of this Act being extended or applied to any place beyond the districts subject to the operation of the General Regulations and Acts affecting the Bombay Presidency, the weekly and periodical visitation as hereinbefore directed of any District Jail established in the said place, shall be conducted by such officers as the Government may from time to time appoint, and the visitors so appointed shall have the same powers and duties as are conferred on ex-officio visitors by the preceding section.”

The above new section was added to the Bill and the Bill was then read a third time and passed.

The Honourable Mr. ROGERS moved the first reading of Bill No. 2 of 1874 (a Bill to amend Bombay Act No. I of 1865). He said that the state-

Mr Rogers moves the first reading of Bill No 2 of 1874

ment of objects and reasons showed clearly the object of Government in introducing this Bill. The High Court of Bombay had declared that because the date up to which occupancies may be relinquished is laid down in Act I of 1865 as the 31st March, the survey settlements cannot legally be introduced to have effect from the following revenue year subsequently to that date. It has been found on previous occasions, when survey settlements were about to be introduced, that there are so many details to be gone into by the officers that it is almost impossible to get everything ready by the 31st March. Therefore, it was now proposed that the date should be postponed to the time which is generally regarded as the commencement of the cultivating year—that is, the 5th of June. In many districts in the Presidency it would be simply impossible to go into the fields and prepare the field registers which are necessary before a settlement can be introduced. Sub-divisions frequently occur in fields,



and their measurement which must be duly recorded, in order that every individual may have his rights, requires considerable time. By putting the time back cultivators will not be inconvenienced, and the Bill contains ample provisions to obviate any hardships to which cultivators could possibly be exposed by the alteration of date.

The Honourable RAO SAHIB VISHVANATH NARAYAN MANDLIK—There is nothing in the Bill regarding the difficulty said to have been raised by the High Court. The only case I know of touching this point is that of Govind Venayek *vs* the Collector of Ratnagiri in which the enhanced assessment was levied at once, and hence arose the difficulty in that case. The Council now propose under this Bill not to levy the enhanced assessments at once, and if this practice is laid down by an administrative order I think all difficulty vanishes. But if we are to have a new Bill I think that this one is incomplete, and if the Council is dealing with the matter at all, I think that all other orders and notices affecting the agriculturists ought to be dealt with at the same time.

The Honourable MR. ROGERS—We are proposing to introduce, in a short time, a new Revenue Code in which all these matters will be dealt with.

The Honourable RAO SAHIB—As we are going to have a Revenue Code, and it may take some time to have that Code thoroughly discussed in this Council, would it not be better to define now the subject of notice between landlord and tenant? The fact of six months' notice being required is causing great hardship. In some parts of the country it causes the tenant practically to lose the twelve months of the year.

The Honourable Colonel ANDERSON—The Honourable Rao Sahib is now speaking on a very different subject. The object of this Bill in the first instance has been explained by the Honourable Mr Rogers. In some parts of the country the Revenue Survey officials could prepare the necessary field registers showing the names of occupants of land before March, but in the Concan and the Ghaut districts, where holdings are very small, and disputes about boundaries are numerous, the thorough examination of the properties becomes a troublesome operation, and one requiring a great deal of time. I believe that the same difficulty exists in Guzerat. I think this Bill will benefit the landholders, for it is much better for them to have this examination done thoroughly and completely at once than having it done hurriedly in such a manner as to cause a great deal of trouble afterwards. Clause 3 of the Bill before us really contains a considerable concession to occupants of lands who under certain circumstances may get their assessment for the first year fixed at the old rates. The old rates thus last for thirty-one years, whereas the new ones will not extend over a longer period than twenty-nine years, and this is surely a matter of considerable advantage for the landholders.

HIS EXCELLENCY THE PRESIDENT—Supposing the new settlement is introduced on the 25th August, then according to this Bill a man does not become liable for the increased rate till the first of August following. But when must he give notice that he is going to give up the land?

The Honourable Colonel ANDERSON—If a settlement was introduced on the 25th August 1874 the new rates of assessment would take no effect in the year then current; and in the ensuing year 1875-76 the new rates would not be levied on any occupant who resigned his land before the 31st March 1876 according to the third clause of Section 2 of this Bill.

HIS EXCELLENCY THE PRESIDENT remarked that under these circumstances it appeared to him that plenty of time would be allowed to the landholders.

The Honourable Mr. GIBBS—I remember when the case alluded to by the Honourable Rao Sahib came before the High Court, it was pointed out that it would be very hard if a man were obliged to give in his resignation of his land on the 31st March, because it might be that he knew of the revised assessments only a day or two before.

The Honourable Rao SAHIB—The case supposed by His Excellency is quite distinct. Before the 31st March a man would have eight months' notice during which he might resign. The fact is the High Court has raised no such difficulty as this Bill seems to suppose. In the case before the High Court, the settlement was introduced in April at once, and the defendant could not therefore resign in the preceding month of March. We are now giving three months to the Revenue Survey and twelve months to the ryots, so that the law will practically be neutralised.

The Bill read a first time

His Excellency the President put the motion, that this Bill be read a first time.

The motion was agreed to, and the Bill was ordered to be translated before the Second Reading

The Honourable Mr. ROGERS—SIR,—I propose that Council revert into general committee in order to resume consideration of the Bill to amend the law relating to hereditary offices. A great many verbal amendments will be submitted for the consideration of the Council, and as none of them, with one exception, affect the principle of the Bill, I dare say the Council will have no difficulty in agreeing to them. The alterations that may be considered to affect the principle will occur on Sections 78 and 79, which we propose to omit altogether. These sections refer to the jurisdiction of Civil Courts with regard to matters dealt with under this Bill. There is at present under the consideration of the Executive Government a Code in which that subject will be provided for, and it is therefore unnecessary to include it in the Bill now before us.

The consideration of the Hereditary Offices Bill resumed

The Council agreed to resume consideration of the Bill.

The Honourable Mr. ROGERS then proposed the following amendments, which were agreed to .—

In Section IV., line 11, before "at" insert "whether."

In line 29, before "constitute" insert "together."

In line 40, omit the word "hereafter", and after the word "specified" insert the words "in Sections 33 to 35 of this Act."

In line 50, for the words "the provisions" substitute "Section 25."

In lines 52 and 53, for the words "includes a deputy appointed under this Act" substitute the words "means the person actually performing the duties of an hereditary office for the time being, whether he be a representative Watandar or a deputy or a substitute appointed under any of the provisions of this Act."

In line 54, for the word "includes" substitute "means," and in line 59 after the word "child" add "or in case of dispute the holder of a certificate of guardianship from a competent court."

In Section VI., Clause 1, line 18, for "be" substitute "appear."

In line 21, for the words "the District Court" substitute the words "any Civil Court having jurisdiction in the matter."

In Clause 2, line 27, omit "or" and after "11" add "or 13."

In Section VII., line 1, after "as signed" insert "under Section 23 of this Act."

In Section VIII., lines 1 and 2, and in Section VIII., line 22, and in Section IX., Clause 1, lines 2 and 16, and in Section X., lines 4, 15, and 23 for the words "part or" substitute "any part thereof, or any of the."

In lines 5 and 11, and in Section IX., Clause 1, line 5, and in Section X., lines 9 and 15, after the word "has" add "or have."

In line 8, lines 12 and 13, and line 19, and in Section IX., Clause 1, line 8, and in Section X., lines 2 and 3, and in Section XI., lines 5 and 6, for the words "decree of any Court" substitute "virtue of, or in execution of a decree or order of any British Court."

In line 23, after "hable" insert "under the orders of the Collector."

In Section IX., add at the end of the Clause 2: "The decision of the Collector as to what is the full rent shall be final."

In Section X., line 8, after the word "assigned" insert the following words: "under Section 23 of this Act."

In Section X., line 10, after "passed" add "or may pass."

In Section X., lines 20 and 21, for the words "that such alienation has been decreed," substitute: "stating that the property to which the decree or order relates is a Watan or part of a Watan, or that such property constitutes the profits or part of the profits of a Watan, or is assigned as the remuneration of an officiator, and is therefore inalienable."

In line 22, for the words "placed on" substitute "then pending against," and at the end of the section add "and shall cancel the decree or order complained of so far as it concerns the said Watan, or any part thereof or any of the profits thereof."

In Section XI., line 4, for the words "have taken" substitute "take."

Instead of the present Section XII. substitute—

"XII.—It shall be lawful for the Collector whenever it may be necessary in carrying out the provisions of Sections 8, 9, and 11 of this Act

(a)—To summarily evict any person wrongfully in possession of any land, or

(b)—To levy any rent due by any person in the manner that may be prescribed in any law for the time being in force for the levy of a revenue demand."

In Section XIII., line 3, after the word "officiator" insert the words: "under Section 23 of this Act."

In Section XV., Clause 4, line 1, after "holder" insert the words: "for the purposes of this Section."

In Section XVI., line 1, for the words "in this Act" substitute the words "in the last preceding Section."

In Section XVIII., line 3, after the word "Watan" insert the words "of lower degree than that of Patel or Kulkarni."

In Section XIX., line 10, in lieu of the last five words insert "and to decide whether the payment shall be made in kind or in money."

In Section XXII, line 5, after the word "assign" insert the words: "subject to such sanction as may be required by any law or order of the Governor General of India in Council for the time being in force."

In line 18, after the word "Government" insert "subject to the sanction mentioned in the first Clause of this Section."

In Section XXIII, line 14, after the word "Officiators" insert "The existing assignments shall, until altered by competent authority, be taken to have been made under this Section"

The honourable member then proposed that to Section XXV. the following proviso should be added —

"Provided that only heads of families shall be so recognised"

The Honourable RAO SAHIB objected to this amendment, which would only raise up the whole question again of wattan representation.

The Honourable Mr. ROGERS—Section XXVI, shows that it is only heads of families that are meant to be recognised, and this amendment will make the Council's intention more apparent.

His Excellency the PRESIDENT—It is already laid down that the Collector must be guided by the custom of a watan, and if the custom were that of others, then heads of families might be elected as representative watandars, by carrying this amendment, it will clash with the rule already laid down for the Collector's guidance.

The Honourable RAO SAHIB mentioned that he knew of cases in which the custom of many years had marked the succession to a representative watandaship to be different from mere primogeniture

The Honourable Mr. CHAPMAN—But we take our stand from 1843, and we have been told by experienced Collectors that it is only since that date that all such abuses have crept in, and we now wish to revert to the practice which prevailed before 1843.

After some further discussion the amendment was not pressed

The following amendments were then proposed and agreed to —

In Section XXVI, line 7, after the word "into" the words "and take into consideration" be inserted

In Section XXVII, lines 2 to 5, for the words "practice has been to appoint a member of one family only," substitute "custom has been for a member of one family only to serve."

In Section XXVIII, line 2, for the word "practice" substitute the word "custom"

In Section XXIX., line 3, omit the words "except that."

In Section XXX., line 1, for the word "custom" substitute the word "practice"; and in line 3 after the word "introduced" insert the words "under the British rule."

In Section XXXI., line 1, for "the" substitute "any"; and at the end of the Section add the words "with such agreement."

In Section XXXIII., line 4, after the word "registered" insert "representative"; in line 5 after the word "Watandar" insert "or his widow"; and in line 12 after the word "shall" insert "be shown to have been or shall."

In Section XXXIV., line 4, after the word "registered" insert "representative"; and in the same line after the word "Watandar" insert "or his widow"; and in line 8 after the word "or" insert "by his widow, or in case of their death then."

In Section XXXV., line 7, instead of the words "granted by" substitute "or of a final decree of"; and at the end of the Section add "establishing the validity thereof."

In Section XXXVI., omit the proviso and substitute the following, viz. "A certificate of heirship, or a decree of a competent Court shall, until revoked or set aside, be conclusive proof of the facts stated or determined in such certificate or decree."

In Section XXXVII., line 5, after the word "may" insert the words "subject to the provisions of Section 49 of this Act."

In Section XXXVIII., line 7, after "27" insert "the first clause of Section", and after the word "and" in the same line insert "Section", and in line 9 after "28" insert the words "the second Clause of Section 29 and Section 30"; and in line 12 after the word "period" insert the words "shall be fixed at the discretion of the Collector, but."

In Section XL, line 7, for the word "unless" substitute "but may be"

In Section XLII., line 3, omit "or" and after "44" insert "or 46"

In Section XLIV., line 1, after the word "any" insert "representative", in line 6 omit the words "or mental"; in line 7 omit the words "in the former case"; in line 9 omit the words "the latter,"; after the word "case" insert the words "of his mental incompetency", and in line 11 after the word "Watandar" insert the words "unless himself mentally incompetent."

In Section XLVIII., line 6, after the word "misconduct" insert the words "under the provisions of Section 56 of this Act."

At the end of Section LI. add the words "and in the event of the representative Wataudar declining to appoint a Watandar as his deputy, the Collector shall himself appoint one"; and at the end of the Section add

"When the Collector himself appoints a deputy under the provisions of Section 48 of this Act he may, if Government so direct, appoint other than a Watandar"

In Section LII, in line 10, after the word "ceasing" insert the words "or on the death of his principal"

In Section LIII., line 6, for "and" read "but," and in line 7 for the words "penalties for the acts of the substitute" substitute the words "the penalties prescribed in Sections 55 to 59 of this Act."

In Section LVI. omit the last part beginning with the words "and appoint a deputy."

In Section LVII, lines 9 and 10, for the words "the Collector shall appoint" substitute the words "appointment of," and at the end of the Section add "shall on the recurrence of such period be made by the Collector and not by him"

In Section LVIII., in line 2, add the words "or substitute" after the word "deputy"; in lines 3 and 4, omit the words "as such"; in line 8 after "or" insert "any", and in line 9 for the words "and profits" substitute the words "or of the profits thereof."

In Section LIX., line 2, for "are" read "shall be"; in line 8 after the word "Wataudais" insert "themselves are subject to when"; and in line 15 after the word "Watandar" insert "himself."

In Section LXII, line 28, for the words "The Collector shall also" substitute "to"; in line 33 omit the word "shall"; and in lines 34 and 35 omit the words "have power to attach."

In Section LXVII., line 5, after the word "bound" insert the words "subject to the provisions of this Act."

In Section LXVIII., line 5, after the word "or" insert the words "of the present or former"; and in line 6 omit the words "or the Native Government."

In Section LXX., line 5, omit the words "on oath or affirmation."

In Section LXXI, Clause 1, line 1, at the commencement of the clause insert the words "except as hereinafter provided in Clause 2 of this Section."

In Section LXXXIV., line 10, for the word "by" substitute the words "according to law or under the."

In Section LXXV., line 4, after the word "investigation" insert the words "recorded"

To Section LXXX add the words "not less than seven days before action is required to be taken by any person thereon."

At the commencement of Section LXXXIII. insert the words "except as is otherwise provided in Section XVIII of this Act"

In the Schedule in the third column opposite to "Act XI. of 1843" for "the whole Act" substitute "so much as is not already repealed"

Colonel Anderson proposes the introduction of a system of elections in watan where the watan dar entitled to officiate gives his consent

The Honourable COLONEL ANDERSON moved that the following new sections be added to the Watan Bill as Sections XL. and XLI. —

"In the case of a watan in which the representative watan dars are entitled to perform the duties in successive periods, the Collector shall on the occurrence of the turn of any such representative watan dar to perform the duties, issue a notice to the whole body of registered representative watan dars, calling upon them to appear before him at a certain time and place to elect an officiator, or such number of officiators as may be required by the Collector under the provisions of Section 41 of this Act.

Clause 2.—If not less than three-fourths, including the watan dar whose turn it is to officiate, of the representative watan dars appear at the appointed time and place and unanimously nominate a fit and proper person or persons, being a watan dar or watan dars of the same watan, the person or persons so nominated shall be entitled to officiate in the place and for the period of service of the representative watan dars whose turn it is to perform the duties.

Clause 3.—If the person or persons so nominated be other than the representative watan dar whose turn it is to perform the duties, he or they shall for all the purposes of this Act be deemed to be the only appointed deputy or deputies of the said representative watan dar.

If, in the case of a watan in which the representative watan dars are entitled to perform the duties in successive periods, the representative watan dars shall not appear at the time and place appointed under the provisions of the last preceding section, or

shall fail to nominate an officiator, or the requisite number of officiators, unanimously, then the provisions of this Act as to service by the representative watandar entitled to officiate and as to appointment of deputies shall apply."

The Honourable COLONEL ANDERSON—The object of this Bill is so to regulate successions and appointments that the intriguing and corruption which prevail in watans may be greatly mitigated. As regards single watans the matter is disposed of. In rotation watans it is proposed to fix the rotation once for all, which certainly will have the effect of preventing any intriguing as to the order in which the representative watandars are to officiate. It is perfectly immaterial to Government who fills the position of officiator so long as fit men are procured, though undoubtedly the best man would be preferable. Some of the Collectors allege that fixing the order of rotation finally will have the effect of preventing the best men from being always got. In fact, they consider this regulation to be too hard and fast, and that it will have the effect of doing away with all interest on the part of the watandars as to who shall officiate in the watan, inasmuch as the whole thing will be reduced to a certainty. This interest in the affairs of a watan should not, I think, be done away with. As far as such an interest can be created, it is desirable to allow it full play. Watandars as a rule have not much to think about. The succession to the duties of a watan has hitherto been a subject of great interest with them, and it is not altogether advisable to deprive them of that interest and give them nothing whatever to think about so far as public life is concerned. It is asserted that the amendment I propose will be entirely inoperative, as no representative watandar with a turn to officiate would be induced to forego his turn. But all I have heard makes me doubt that assertion. A representative watandar might be too old or too young, or one afraid of assuming heavy and responsible duties, and who would be glad to see somebody else to do them. At the same time he would be very unwilling to confess that he did not feel equal to performing the service and would prefer a deputy appointed. He would probably rather attempt to fulfil the duties himself, and therefore we would have a man serving who certainly would not be the fittest person to do the duties of the watan justice. I think it would be much better to give him an opportunity of getting a substitute in the way proposed by the amendment. All the watandars would meet and point to so and so as the best man to officiate, and if the Collector's voice were thrown into the debate, I doubt not that the most suitable person would, as a rule, be appointed as officiating watandar. This would at the same time preserve some electoral privileges to the people, and induce in them a public spirit which would be well for them and for Government. It may be said, "Why not go further, and carry election through all parts of the Bill, and make majorities predominant?" But that is the very difficulty which it is the object of this Bill to remove. We can only go a certain length, and beyond that the rights of parties will not permit us to go. The amendment I propose arises out of various amendments which have been passed to-day and suggestions made by officers learned in the law.

The Honourable RAO SAHIB—Now that we have come once more to the elective principle, I would suggest for the consideration of Council whether it would not be more practical to agree to election by a majority of the watandars whose families hold three-fourths of the watan emoluments.

The Honourable COLONEL ANDERSON—If we get into majorities we get into a number of difficulties.

His Excellency the PRESIDENT—Might not three-fourths actually turn out the man who is entitled to officiate ?

The Honourable COLONEL ANDERSON—No : the representative watandar must agree before any election can take place.

The Honourable Mr. CHAIRMAN—Practically, then, the representative watandar will always have the power of electing his own deputy.

The Honourable COLONEL ANDERSON—I do not mean to say that in a little trumpery watan, worth Rs 10 a year, the privilege contained in the amendment would be great ; but in the case of larger watans it would be looked forward to with some interest by the watandars. It may give rise to some corruption, but corruption and khutput in elections are not unknown in England as well as India. As far as khutput itself goes, I do not think it is advisable to stop it altogether. When it is external khutput it ought to be interfered with, but as to internal khutput it might be left alone, for it amuses the people and does no harm to us, as it exists entirely among themselves. There would be many cases, I am sure, in which unanimity would be gained. I think the amendment is decidedly a move in the popular direction.

The Honourable RAO SAHEB approved of the amendment as it was an advance towards the principles he contended for.

The Honourable Mr. ROBERTS supported it because it would cut the ground from under the feet of those who argued that it would be unjust to make the whole body of watandars responsible for the acts of one person.

The amendments were agreed to.

The Council then adjourned.

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

JOHN NUGENT,

Acting Under Secretary to Government.

*Poona, 9th October 1874*



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 Poona on Thursday, the 15th October, 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 COLONEL M. K. KENNEDY.

The Honourable COLONEL W. C. ANDERSON.

The Honourable F. S. CHAPMAN.

The Honourable RAO SAHIB VISHVANATH NARAYAN MANDLIK.

The Honourable KHAN BAHADOOR PADAMJI PESTONJI.

The Honourable Mr. ROGERS moved the third reading of the Watandars Bill. He would not trouble the Council with any remarks upon it as it had been under their consideration for a long time past, and previously had been carefully considered by the officers of Government.

Mr Rogers moves the third reading of the Watandars Bill.

The Honourable Mr. CHAPMAN—SIR,—Before this Bill is read a third time I wish, by way of summing up the results of our labours, to state what I conceive to be the scope of the measure and the objects which we hope to obtain by its enactment. In the first place, I think we may congratulate ourselves that on this occasion, at all events, we cannot be charged with having legislated in a hasty and precipitate manner. The subject has been under the consideration of the Government for many years past. Conferences have from time to time been held, which have been attended by the most able and experienced Collectors from different parts of the Presidency, and since the introduction of this Bill into the Council, more than a year ago, it has been translated, widely distributed over the Presidency, and the fullest and freest criticism has been invited from all quarters. The voluminous papers that have been placed before honourable members will show how unreservedly this invitation has been responded to. We have, in fact, taxed not only our own patience, but that of the official world generally to the utmost. Well, broadly speaking, the end sought to be attained by all this enquiry has been to strengthen and build up from their foundations the ancient village forms of Government as they are found to exist in the offices of patel or head [man, of kulkarni or accountant, of watchman, and of mhar or man of all work. It is a great satisfaction to know that the measure we are now about to enact has, with the one exception of the question of maintaining the existing law in regard to the joint responsibility of watandars, to which I shall refer hereafter, been unanimously approved by the Council.

Mr. Chapman summarises the objects of the Bill.

I will now briefly review the principal provisions by means of which we hope to preserve, as far as possible, the status of the officers I have enumerated; and stay the process of disintegration which has so rapidly set in of late years.

In the first place, I would draw the attention of honourable members to Sections V. to XIII. They will see that we have recognized the all-important necessity of providing adequate remuneration. To this end we have made the most effectual and stringent provisions against the alienation of watan property. Under Native Governments fixed cash salaries, such as we are in the habit of paying, were hardly known, and the cost of the administration was mainly defrayed by assignments of land. It must be obvious to any one who considers the subject that it is hopeless to expect efficient service without sufficient remuneration, and it must be also clear that it would not be possible on financial grounds to increase the pay of this vast host of officials scattered over every part of the country, except by having recourse to additional taxation to an extent that could not be thought of. Therefore, it behoves the Government to jealously guard the assignments that have from old been attached to those offices, and prevent their being alienated and falling into the hands of money-lenders. In the steps we have taken in this direction, we are merely enforcing and enacting what has been well known to be the common law of the country. I am happy to believe, too, that this policy accords with the feelings of the people themselves, especially as it has been accompanied by the concession of the unreserved right of adoption. While on the subject of remuneration, I would wish to direct attention to the provision in Section XVIII, for the enforcement of the payments in kind due to the watchman and the mbar by the villagers. In the Deccan, especially, it has long been felt that some such provision was necessary, and that it was a perfect mockery to tell these people to enforce their rights against the village at large by means of a civil suit. There can also be no doubt that the villagers have frequent cause for complaint against this class of servants for not doing their work properly. The relative duties and obligations of the parties are so indefinite and obscure, that it would be hopeless to attempt to provide for their precise performance. We have therefore thought it best to provide for the adjustment of disputes by reference to the ancient village punchayet or jury. The Government are quite alive to the objections that exist to any official interference being exercised in these matters, and care will be taken in the executive instructions that will be issued for the working of this Act to enjoin on Collectors and their assistants the greatest caution in the exercise of their power, and to abstain from interposing their authority except in cases where it is clearly proved that one or other of the contending parties are persistently in the wrong. It will be especially necessary to enjoin care, because there will be perhaps not an unnatural tendency on the part of junior European officers to sympathize with the mhar, as the poorer and weaker party, whereas there can be no doubt that this class of people may, perhaps, take to the wide and lucrative field of employment that is now open to them as domestic servants, and are apt to become somewhat too independent and insubordinate to the villagers, and neglectful of the duties that appertain to their hereditary office.

The next and certainly the most difficult and perplexing question we have tried to deal with, has been the manner in which appointments to the hereditary offices of patel and kulkarni are to be regulated. As I said on a previous occasion, very great difference of opinion has been found to prevail amongst our oldest and best authorities regarding this moot subject of officiating by rotation. It may, I think, be safely assumed, that there

was no precise or uniform system; and that in the case of patels, at all events, the strongest and most influential member of the watan managed to keep all the power and authority of the office in his own hands. It is certain that we have neglected hitherto to lay down any precise and uniform legal rules for nominating to these offices; and that the consequence has been the prevalence of the great confusion, with its attendant evil results, which we hope by the passing of this Bill to put a stop to. We have provided (Section XXVI.) that the custom of the watan anterior to the introduction of Act XI of 1843 shall be enquired into by an officer of not lower standing than an Assistant or Deputy Collector; and that after the parties interested have had a full opportunity of adducing their proofs and urging their claims, the register is to be prepared, containing a list of those entitled in their own right to hold office. To prevent the future ramifications that must inevitably arise from the growth and multiplication of the offspring of the people thus registered, we have insisted on the principle of primogeniture, and all further sub-divisions with the confusion inseparable therefrom will be prevented. We have carefully guarded against encroaching on the rights and privileges of the other members of the watan except in the matter of service, and we have provided that they shall be eligible for service as deputies of the men entered in the registers. By a recent amendment we have attempted to relax the hard and fast rule of fixed order of rotation, and have allowed the representative watandars to meet together and appoint an officiator by the voice of a majority, including the man whose turn it was to serve. These then are the means by which we hope to secure uniformity and system in nominating to these appointments, and to do away with the objectionable and demoralizing practices that formerly prevailed. Much will depend upon the judgment and discernment of the officers who will have to superintend the preparation of these registers. It will be the duty of the Government to furnish them with as precise rules as possible for their guidance; and they will be strictly enjoined to interfere as little as possible with the past, and not to re-open old disputes and feuds. The provision of Clause 2 of Section LXXIII. will, we hope, prove effectual in preventing decisions which have been arrived at after full enquiry before a competent and trustworthy officer being disturbed. As regards registers that have already been prepared, it will, I hope, be only necessary to make alterations in cases where palpable innovations and wrongs have sprung up since the introduction of the Act of 1843, and which have been perpetuated. Cases which will come under decision for the first time will, I hope, be dealt with in a liberal spirit, and in conformity with the wishes and sentiments of the watandars themselves.

Lastly, I hope we have laid down in a clear and perspicuous manner the responsibilities and liabilities of hereditary village officers. I wish here briefly to refer to the one point regarding which there has been a difference of opinion in the Council, namely, the principle of joint responsibilities as contained in this Bill, and to say that we have merely re-enacted the provisions of the existing law. I am persuaded that, judging from the past, there is no fear of this power being exercised by the Government in a harsh and hasty manner. Looking, too, to the organization of native village society, where every man's character and pursuits are so well known to his neighbours, I believe it would be impossible for any systematic or organized crime to be perpetrated and shielded by the Government village officers without the cognizance of the other watandars; and I think, therefore, it would be impolitic to relieve them from the responsibility of giving information

If honourable members will turn to Clause (d) of Section LXIV. they will see that this principle of responsibility has been laid down for the first time in the case of the crime of cattle poisoning, of which the mhars of the village are often believed to be guilty, either from motives of revenge on account of non-payment of their dues, or in order to obtain the skins of the animals. This is a crime which is most difficult to detect and punish, and which entails the most ruinous consequences on the ryots. I believe the very guarded provision which we have made is most necessary, and I hope it may prove effectual. Here, again, the power of punishment is reserved to the Government alone, and will certainly never be exercised except in very flagrant and extreme cases.

I have endeavoured to explain the ways by which we hope to utilize and to maintain the old village system. These ways are: 1.—By enacting and enforcing the common law of the country against the alienation of watan property; and by providing a means for enforcing the remuneration by payments in kind of the humble but invaluable services of the watchman and mhar. 2nd.—By regulating the manner in which appointments to the offices of patel and kulkarni are for the future to be made; and by putting a stop to the demoralizing and objectionable mode of proceedings which have hitherto prevailed on these occasions. 3rd.—By defining the obligations and the liabilities of the holders of these hereditary offices.

It would be folly to attempt to conceal the fact that the inevitable tendency of our centralized system of administration, with its precise and uniform laws and regulations, and rules of procedure, is and must be to emasculate the vigour, and to contract the freedom and latitude of action which were the characteristics of this form of separate village government. I say that it would be idle to suppose that by any efforts of ours we can restore these ancient institutions to their original political power, even if we were desirous to do so. But I do say that we shall have accomplished no unimportant task if we succeed in gathering up and binding together the valuable remnants of these institutions, and utilizing and adapting them to the wants and requirements of the present day. For my own part I am far from confident that we shall succeed in this endeavour. But whether we fail or whether we succeed we shall at all events have the satisfaction of knowing that we have bestowed the most unremitting care on this difficult subject, and have dealt with it in the most cautious and conservative spirit.

The Honourable Rao Sahib VISHVANATH NARAYAN MANDLIK—Sir,—I do not wish to detain the Council, but after what the Honourable Mr. Chapman has said, I think it right to express my opinion upon the measure. I consider many of the provisions in this new law to be improvements; but I am not so hopeful regarding others, which I will specify in order that the action of the Executive officers entrusted with carrying out this law may be more cautious, and that they may be more anxious to secure the objects which the Legislature had in view in framing it. When the Bill was being considered in detail I differed, as I do now, from the policy of alienations which is now contained in it. I think that the common law in regard to alienations was for the sale and mortgage of watans, with the sanction of the ruling power, during the time of the Peishwas. The Elphinstone Code was more rigid and did not permit of alienations. But a loose practise sprung up and having gone on for thirty years, I defer to the opinions

Rao Sahib Vishvannath Narayan Mandlik still objects to certain points in the measure

of those on whose advice the present provisions of the law have been framed. Regarding the recognition of adoption, the present law is an improvement upon the old practice, and it will prove entirely in conformity with the laws of the country generally. Regarding representative watan-dars, notwithstanding the great care that has been bestowed upon this part of the Bill, and notwithstanding the elective principle introduced by the Honourable Colonel Anderson, I think there is still great room left for improvements which may possibly be suggested by further administrative experience. I hope we may yet see our way to throwing more life into watans in the direction indicated by the Honourable Colonel Anderson's amendments. At present, if I may say so, most of the watans are in a fair way of going through a process tending to gradual petrification. As to the question of joint responsibilities in watans, I am sorry that I stand in a minority in opposing the theory that one man should be held responsible for the deeds of another over whom he may have no control whatever. Education has now spread, and is still spreading over the Presidency, and it may take away many watan-dars from the actual scene of their watans to places where they may be educated, and where they may go in search of employment. Surely the principle of joint responsibility, if it operated to depriving these people of their interest in their watan, would not be a just one. It is no argument that because this is an old principle which we are now re-enacting, therefore it ought to stand, and I hope circumstances may yet induce this Council to modify their opinions on the subject. Giving information to Government is no doubt the duty of all village officers, and if it was in respect of political offences I would say, let there be joint responsibility in watans; but seeing that His Excellency has introduced a change in the Bill, by which offences are not to be tried at the Magistrate's Court, but at Courts of Session, I hope there will yet be further concessions in favour of the watan-dars. As to Sections 18, 19, 20, and 21, defining the rights and duties of village officers and the way they ought to be remunerated, I think they contain a very great innovation. I was only restrained from pressing my opposition to a division by the distinct declaration from the Executive members of Government present, that the principle *quæta non moveri* would regulate the operations of the officers entrusted with the carrying out of the Bill. If it is only a few districts in which the crime of cattle poisoning prevails, I hope it will be a point of careful consideration before the sections I have quoted are carried into execution in other districts. The provisions in Part X, referring to the duties which are to be laid down and the registers to be prepared about mhars, are also an innovation which will require to be very carefully worked. I omitted to make one remark upon the last occasion that the Honourable Mr. Rogers withdrew two sections from the Bill affecting jurisdiction. I did not move any amendment then, because there was a decision reported in the sixth volume of the High Court Reports before the present Bombay High Courts Act was passed; and I was not therefore prepared to say how far the authority of this Council, as interpreted by the old laws of the High Court, would be affected under the new laws. We have been told that those provisions would be considered in another Bill elsewhere. It may be so. But we are now passing exact and rigid laws giving large powers to the executive officers of Government. I am quite prepared to support the passing of such laws, when their necessity is proved. But when such laws are passed, I would hold the executive officers strictly bound to carry them out; and when they are transgressed, the ordinary tribunals of the land should have the right to adjudge about such transgressions. So that the meanest subject of Her Majesty may be able to say that every wrong has a remedy.

His Excellency the PRESIDENT remarked that it had been contended in the memorials addressed to the Council in the early stages of the discussion on this Bill, that it would interfere with the rights of inamdars, jaghirdars, &c., and he wished therefore to point out, before the final passing of the measure, that a special clause had now been introduced which would amply protect these interests.

The Bill read a third time  
and passed.

The Bill was then read a third time and passed, and the  
Council adjourned

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

JOHN NUGENT,  
Acting Under Secretary to Government.

Poona, 15th October 1874.

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PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

1875.

VOLUME XIV.

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

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

The Council met at Bombay on Thursday, the 28th January 1875, 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 Colonel M. K. KENNEDY.

The Honourable J. K. BYTHELL.

The Honourable Colonel W. C. ANDERSON.

The Honourable F. S. CHAPMAN.

The Honourable Rao Sahib VISHVANATH NARAYEN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY

The Honourable Khan Bahadoor PADAMJI PESTONJI

The letter from the Secretary to the Government of India, conveying the assent of  
His Excellency the Viceroy and Governor General to the  
Papers presented to Council  
Bombay Jails Bill, was presented to the Council

The Council then proceeded with the Bills and orders of the day

**BILL No. 1 of 1875 —THE BOMBAY REVENUE OFFICERS AND LAND  
REVENUE CODE BILL.**

The Honourable Mr. CHAPMAN, in introducing the Bombay Revenue Officers and Land Revenue Code Bill, said,—In the first place, I wish to assure the Council, and all who are interested in this Bill, that it has not been hastily considered and prepared. For a long time past, I have felt that it would be very useful to put together the various Regulations and Acts relating to

Mr. Chapman moves that Bill No. 1 of 1875, "the Revenue Officers and Land Revenue Code Bill" be read a first time



the land revenue administration of this Presidency and re-enact them in the shape of a comprehensive, complete, and intelligible Code. This, then, was the origin of the measure. After the work had been commenced, I thought it would be a great pity not to embody such improvements and alterations in the substantive law, as the experience of past years had shown to be necessary. I was

The Bill meant to be a codification of former Regulations and Acts relating to land revenue administration in the Bombay Presidency.

conscious that I had neither the ability nor leisure requisite for the task of codification ; and I induced my friend Mr. Naylor, who is at present conducting the duties of Legal Remembrancer, to undertake the work I wish, therefore, it should be known that he is the real author of the Code, and entitled to the full credit of the labour and research that have been expended on its preparation.

The work of codification performed by Mr. Naylor, C.S., and opinions asked upon the draft from officials concerned.

I will now explain the course that has been followed. Honourable members have been in possession for some months past of the first draft, and will have been able to judge for themselves of the care and accuracy with which Mr. Naylor, so to speak, rough-hewed it. In order that there might be no risk of any portion of the existing law being omitted, he adopted what, in book-keeping language, is known as the system of "double entry." That is to say, he made in the first instance a complete list or catalogue of the substance of each section of every existing Regulation or Act, and then proceeded to account for the way in which its provisions had been dealt with in the Draft Code, and to specify the corresponding sections. The original draft having been prepared in this careful and laborious manner, copies were circulated to the most experienced and able officers in both branches of the service, with a circular letter which I will now read to the Council :—

"I have the honour to forward, for the favour of your opinion and any amendments you may think fit to suggest, a draft of a Revenue Code for this Presidency.

"2. The existing revenue laws are, as you are aware, only to be found scattered through the Acts and Regulations of the last fifty years in detached portions, and in consequence have not that intimate connection one with the other which is necessary to prevent inconsistencies and to ensure a sound revenue administration upon fixed recognized principles. The accompanying draft, which has been prepared by Mr. J. R. Naylor, C.S., has been accepted as the frame work upon which, it is hoped, after full consideration, a complete and satisfactory Revenue Code may be based, but Government do not at this stage wish it to be understood that they adopt all or any of the changes or modifications of the existing law suggested therein.

"3. The first and principal object to be attained in framing the proposed Code is to consolidate all the *general* revenue laws now in force, and your attention is in the first place particularly requested to this object with a view of ascertaining whether anything has been omitted that ought to have been included.

"4. In the next place, Government will be pleased to receive any suggestions with a view of simplifying the arrangement of the Code, and of rendering it, if possible, clearer for facility of reference.

"5. It will then be desirable to have the opinions of those most conversant with the different branches of the revenue law as to the completeness and suitability of the proposed provisions of the Draft Code with reference to those various branches, and with this view

you are requested to follow up the sections thereof which deal with any subject with which you are most familiar, and to point out any shortcomings or errors of wording, or of principle, which you may detect, and to suggest any alterations or improvements in either respect which may occur to you.

“6. Such subjects as the following commend themselves most particularly for notice —

- I. The sufficiency of the powers of Revenue Officers of the different grades.
- II. The completeness of provisions as to the punishment and dismissal of subordinate officers.
- III. The sufficiency of the provisions as to sureties.
- IV. The thoroughness of the rules with regard to the survey and assessment of culturable lands, and of lands within the sites of towns, villages and cities respectively.
- V. The adaptability of the provisions as to assessment, and as to the rights and liabilities of holders generally to all the varieties of existing tenures.
- VI. The sufficiency of the proposed new enactments or re-enactments for the settlement of all possible claims to exemption or limitation of any kind in respect of the amount of land revenue payable by any class of holders.
- VII. The suitability and sufficiency of the provisions as to (1) the realization of revenue demands, (2) the procedure of Revenue Officers, and (3) appeals and revision ”

By this means we received from time to time very valuable suggestions and criticisms, and we had besides the advantage of personally consulting the survey and other officers during the rains at Poona. After all the suggestions thus obtained had been duly considered, I got my friend the Honourable Mr Justice West to give us his assistance ; and I wish to take this opportunity of gratefully acknowledging the valuable aid rendered by him. We owe it to Mr. West that the definitions have been expressed with so much perspicuity and precision ; and that the language and arrangement of the subsequent sections have been kept in harmony with those definitions. He has besides been the author of several useful amendments of a substantive character which have suggested themselves to him from his experience as a judge, and from his intimate acquaintance with the decisions of the courts on various points connected with revenue administration. This, then, is a brief account of the manner in which the Bill has been prepared. I am not presumptuous enough to say that some slips may not yet be discovered , but I do say that no pains have been spared to render it as complete as possible, and I venture to think the work of the Select Committee has, in a great measure, been forestalled. I propose now to point out the main and principal alterations that have been made in the existing laws, regarding the propriety and expediency of which alterations there will, I hope, be but little room for discussion. Chapters I. and II. and IV and V. call for no remarks. They merely contain the substance of the provisions of the existing law re-arranged and expressed with a greater degree of perspicuity and accuracy, and amplified where necessary. Chapter III. contains *verbatim* the provisions of the Wuttun Bill, which has so recently passed through this Council, after so much laborious

The contents of the Bill generally described Forests are to be protected more than at present.

Pro public interests to be protected in the transport of timber

Chapter III. contains *verbatim* the provisions of the Wuttun Bill, which has so recently passed through this Council, after so much laborious

consideration. Chapter VI, besides containing emendations of a minor character, which experience has shown to be necessary, contains several entirely new sections which I will here explain. Provisions for the protection of the Government forests appear here for the first time. Looking to the magnitude of the public interests, both economic and financial, which this important and growing department represents, I don't think exception can reasonably be taken to the moderate extent to which we propose to provide for their protection. Section 116 authorizes the Government in certain districts to require that all timber in transit should be covered by a pass, and to prescribe the route by which it shall be taken. This power seems to me absolutely necessary in forest districts, where the property of inamdars is so mixed up with that of Government, and where a man can now without fear of contradiction answer when questioned (if indeed he condescends to answer at all) that the timber he is carrying, and which has probably been stolen from a Government reserve, has been obtained from an imaginary inamdar. It will be observed that the section does only apply to persons transporting timber beyond the limits of the village in which it was produced, and will not affect that required for the domestic use of the villagers themselves; and further that the power is not to be indiscriminately exercised all over the country, but only at certain specified localities. The next section to which I would ask attention is No 117, for the protection of road-side trees. I confess to being an enthusiast on this subject, and I believe that next to providing a good water-supply, few benefits of a really more simple and practical character can be conferred on the country than by planting avenues of trees. A great deal of attention has been given to this subject of late years, and a great deal of public money is now annually expended on this description of planting. I think, therefore, it is well to take this opportunity of recognizing the public rights in these trees. The next provision in Chapter VI, to which I beg to draw attention is that contained in Section 134. There is no part of the Code on which greater attention has been bestowed than this, and I am happy to be authorized to inform the Council that the principle embodied in this section meets with the approval of the Honourable the Chief Justice and the Honourable Justices West and Nanabhai, with whom I have had the advantage of consulting. It is not my intention to trouble the Council with a disquisition on the law of landlord and tenant. My own opinion is that we in this Presidency may be congratulated on having hitherto escaped precise legislation for the regulation of the varied and complex relations between these classes. While, however, I should be very averse to any attempt at making precise and definite laws as to the rights and privileges of particular classes of tenants, which questions I am very decidedly of opinion had better be left to the courts to determine on their merits, and, according to the common law and custom of the country, I hold nevertheless that a Code of this character would be incomplete without a broad general

Section 134 proposes to draw a distinction between ancient tenants, who have a certain hereditary right to the soil, and tenants-at-will, who may be treated regarding their occupancy as seems fit to the landlord.

recognition of the difference between the ancient cultivators of the soil, known as Wuttunee Kools in the Konkan and Kadeem ryots in the Deccan, and ordinary tenants in the modern acceptance of the term. The principle we have endeavoured to enunciate is this, that when either an inferior holder or tenant has been in occupation of the land before, for example, the grant of a village in inam, his status in respect to proprietary rights only is not to be affected by the fact that the village has passed from the hands of Government into those of the alienees. And further that when owing to lapse of years there is no evidence to show how an ordinary tenant first obtained possession, then the period of duration

of the tenancy may be presumed to be co-extensive with the duration of the tenure of the landlord. It must not be forgotten that this presumption is not to override a contract or usage at variance with it. I believe legislation to this limited extent will be of much value in protecting those whose status is far different from that of the ordinary tenant in the English sense of the term, and that it will be in conformity with usage and native opinion. It is only a short time ago, when, in consequence of the great excitement in the cotton trade, land in Dharwar became very valuable, holders were turned out of their properties right and left. I think it is necessary that a recurrence of such hardships should be prevented. Since the Bill has been published, I have ascertained from the Chief Justice that he considers "shall be presumed," might advantageously be substituted for "may be presumed," as he considers greater uniformity of decision will be thereby secured. He further considers that instead of the words, "and there is not any such evidence of the period of its duration," the words "and there is not any such evidence of the period of its intended duration" might be substituted. The suggestions of so eminent an authority will no doubt be attended to by the Select Committee. I wish further to explain that the Chief Justice does not wish to be understood as expressing any opinion on the rest of the Code, as he has not had sufficient time at his command to study them. I do not think it necessary to dwell on the other alterations contained in this chapter; they are all of a simple and practical character, and no doubt will be duly attended to hereafter by the Select Committee and the Council. I pass on to Chapter VII, which deals with the subject of claims to exemption from payment of land revenue. To a great extent, this chapter contains nothing more than the provisions of the existing laws, which provisions, in point of fact, have happily become obsolete, owing to these claims, which at one time were the cause of much disquietude, having been set at rest by the summary settlement. The only new part is that contained in Sections 162 to 179, which relates to claims to uncultivated lands in villages, towns and cities. I

Five years' occupation of uncultivated lands to give a prescriptive title to possession.

will be observed that five years' occupation from the passing of this Bill will give a prescriptive title, and I imagine no objection can be taken to this on the score of want of liberality. An exception has been made in the case of villages not being kusba towns in Guzerat, but this is a point of detail which will be dealt with in the Select Committee. I do not think it necessary at this stage to trouble the Council with any remarks on Chapters VIII and IX. They contain substantially the existing law regarding survey and boundary marks re-arranged and amended. Chapter X. contains the provisions for surveying and assessing lands in towns and villages. As already explained, five years' prescriptive enjoyment gives an exemption from taxation, and I imagine there can be no doubt of the propriety of declaring the right of Government to land revenue where this liberal condition cannot be fulfilled. I would ask the attention of the Council to Section 211, which authorizes the levy of a survey fee in certain cases. The amount of this fee will be determined hereafter, but I think there can be no doubt that the holder should pay for the cost that will be incurred in surveying his property and giving him a plan and title-deed. It must be remembered that he will not be able to assist in these operations in the same way that the occupants of agricultural fields are. Chapter XI. on Local Funds hardly calls for remarks. We have recognized the existence of Taluka Committees, and we have provided that the appointment of members of the Committees should be for a limited period, and by this means useless and indifferent men will be got rid of without difficulty. The law relating to the realization of land revenue will be found very precisely and carefully laid down

Means to secure Government being paid dues on the land before the payment of sowcars.

in Chapter XII. The new provision to which I beg to draw the special attention of the Council is that contained in Clause 1st of Section 224, by which the Collector is authorized to follow the crop into the hands of the person who has purchased it with the knowledge or means of knowledge that the current year's assessment on the land which has produced it has not been paid. This is intended to meet the case of the village Marwadees and money-lenders, who step in and deprive Government of what, by the usage of the country, is their prior lien. The remaining chapters refer to procedure. I venture to hope the course we have laid down will ensure the quasi-judicial functions of Revenue Officers being performed with more system and method than have hitherto been the case. The defect in our practice up to the present time, in my opinion, has been, that small and great matters have been liable to be dealt with in the same way, and that there has been no provision for the more important class of cases affecting individual rights being fully heard. It will be observed that under the arrangements we propose, we have laid down distinct rules as to the manner in which the different classes of cases are to be investigated and decided. Then, as to the important question of appeals, I am no advocate for curtailing the existing privileges; but I do say that there should be some kind of limit placed upon the time within which parties feeling themselves aggrieved should apply for redress, and on this point we have followed the laws relating to civil appeals. Under the head of revision, the widest latitude is given to Government and supervising officers to examine at any time the proceedings of those subordinate to them and to modify or annul them whenever it may appear necessary to do so. With these safeguards I hope there is no fear of the humblest person being deprived of the right he has hitherto enjoyed of carrying his grievance to the highest authority in the land, while I feel confident that the system under which the executive officers of Government will be obliged to regulate their procedure in accordance with the importance of the class of business before them will be highly beneficial and will conduce to a higher sense of responsibility. With these remarks I beg to move that the Bill be read a first time and referred to a Select Committee for report. As I have already explained, we are in possession of the views and opinions of the best and most experienced officers of both branches of the service, and I hope the Committee will see their way to decide on the proposed changes of principle within a few weeks. I would suggest that a report to this extent be submitted, and that the Bill be then translated and circulated. In this way, I hope it may be read a second time and passed during the next Poona Sessions.

The Honourable Mr. ROGERS—In what the honourable mover of the first reading of the

The definition of "Tenant" differs from former definitions of the term.

Bill has just said regarding Chapter VIII. on "revenue surveys and the assessment of lands and the partitions of estates," he omitted reference to a slight matter which I may now call attention to. By the old law, Survey Officers were enabled to fix the demands of a khote on his tenants at the time of the general survey of the district. According to Act I. of 1865 a tenant was "a person holding under an occupant or superior holder by a right derived from him and otherwise than by ownership or inheritance," and the Survey Officers accordingly proceeded to fix the rents in cash of all tenants. By Section 190 of this Bill, the Survey Officer's powers will be more clearly defined and he will be able to interfere only in fixing the demands of the khote on all inferior holders not being tenants by a right derived from him.

The Honourable Rao Sahib VISHVANATH NARAYEN MANDLIK—Your Excellency,—I did not intend to make any lengthy remarks upon the honourable member's motion; but I think it necessary to make a few remarks on the principal points raised by the Bill, because of the desire which has been expressed to dispose of it rapidly. I have not yet had time to examine the Bill carefully, or even to go through the whole of it, and compare it with the laws as they now stand. Some of the definitions will require to be very carefully looked into, and the whole must be deliberately considered; but at present I do not propose to say anything regarding the first five chapters. The third chapter we have recently discussed in Poona and Chapters 2, 4 and 5 substantially relate to official organization, the discussion on which will most properly take place in Select Committee, where (since we have been assured by those who are particularly concerned in the jurisdiction and duties referred to in the Bill that it has already been carefully examined) doubtless all the necessary modification will be effected. But at Chapter VI. I think we come upon material for discussion of a very important character. I think that this Bill will entirely change the position of the

Rao Sahib Vishvanath Mandlik objects to Section 84 as an unnecessary interference between landlords and tenants.

landlords of this Presidency as compared with the position they occupied under Regulation XVII. of 1827. That regulation simply introduced rules regarding assessment and for the guidance of revenue officers in respect of the administration of land revenue. But the present Bill goes much further. 'It seeks to enact in positive terms laws regarding a certain description of landlords, which, I apprehend, have now been proposed to be promulgated for the first time in India. Judging from the labour I have already had in going through the first draft of this Bill, I do say that the changes now sought to be introduced call for the most earnest and deliberate consideration. If the Select Committee, in the course of their deliberations, refer to the recent decisions of the Lords of the Privy Council on several Madras cases relating to the land law in that Presidency, they will probably come to the conclusion that it will be a matter for their most serious consideration how far positive enactments of the kind proposed in this measure can safely be made when there is no necessity for them. If I saw it was necessary to promulgate a new law, I would say, by all means do so; but there is a positive mischief done by making positive declarations when they are not needed. I am simply repeating the sentiments of the late Court of Directors when I urge that we ought to avoid making new laws unless we are convinced of some proved mischief existing in the body politic. In regard to forest rights, I think it will be found that the sections upon that subject contained in

The section as to forest rights will require improvement

this Bill require considerable improvement. Forest rights differ all over this Presidency, and no definite law can be applied to them. I may take the liberty of saying that even the decisions of the Secretary of State in regard to the forests of the three Presidencies, as published in the Blue-books up to 1871, must affect considerably the provisions sought to be passed in this Bill. I would ask that some considerable time be granted for the consideration of the propositions contained in this Bill, for it is impossible to understand its important bearings in a brief period such as is alluded to by the Honourable Mr. Chapman. Regarding roadside trees, I think that some distinction will have to be made between trees planted by private individuals in their own properties adjoining highways and trees which are *bona fide* roadside public trees. It must also be borne in mind that people in this country have been in the habit of planting roadside trees as an act of piety, and scores of miles of roads have been planted in this way, an instance of which is the old road between Satara and

Poona. I shall now say a few words with regard to tenant right. I am at present preparing a summary of the whole law in India upon the subject as it has existed during the last seventy-five years, and I have not yet had time to complete my labours. I think, however, so far as I am able to judge at present, that the sections on the subject introduced in this Bill will effect a radical change in the position of land-owners, and unless the Select Committee are satisfied that such a change is required on general grounds, I trust they will see their way to specify the particular cases in reference to which such a positive enactment is required. At present it is made applicable to the whole of the tenantry in this Presidency—a state of matters which may induce a great deal of litigation just as the recent introduction of a similar section in the Punjab has been proved to cause more lawsuits than existed before. The distinction between ancient tenants and new tenants is one which is well known, but unfortunately I think it is one in regard to which more mistakes have been committed than in the case of any other vexed question I know of. Proprietary right, we are told under this section, is to be distinguished from a right to increase rents, but I think that provision requires modification, and I hope the Select Committee will make the necessary alterations in order to make the intentions of the sections unmis- takable. At the same time I think the section will be found to be a useless innovation in view of some possible contingencies which this section may provoke, but which I cannot think will arise otherwise within the next fifty years. As to the illustration about the sale of lands in Dharwar, a more unfortunate illustration could not have been given, and in my opinion it would have been quite as reasonable to cite the Bombay share mania as a standard of ordinary commercial enterprise in Bombay. In all excited periods, exceptional circumstances do occur, but as these do not represent the usual state of matters, it would be absurd to introduce general legislation because of those exceptional circumstances. In my opinion the sales of land at Dharwar was such an exceptional case, and therefore no legislation regarding the tenantry founded on that unusual solitary instance is requisite. In regard to the Summary Settlement Acts being embodied in this Code, I must say that I hope in Select Committee it will be found advisable not to incorporate those Inam Acts into this Code, but leave them aside altogether. It ought to be considered as a matter of principle to terminate these summary enquiries as quick as possible, and relieve the State from its connection with the Inam Acts. As has been done in Madras, the enquiry being completed, a sort of Inam enfranchisement Act should be passed as soon as possible so as to restore the status of those property-holders. Regarding surveys, the Statement of Objects and Reasons says that they were carried on under departmental orders up to 1865, when they required to be legalized by an express law. Now, I think it is erroneous to suppose that any special legislation was required in that year. What was ignored in that and previous years, was the fact that in this Presidency there existed, and do now exist, not one or two but many tenures. I take it that the original Survey Act was intended simply for one class of tenures, viz., those above the ghauts; and when the provisions of it were introduced into districts where different kinds of tenures prevailed, it is no wonder that they were found to be defective. The section to which the Honourable Mr. Rogers has drawn attention refers to one of these kinds of tenures and by no means a very important kind of tenure, considering that there are nearly eight districts in Gujarat and the Konkan in which tenures prevail different from those of the Deccan. I think that Section 190 will really require great attention and, possibly, some essential modifications. The Select Committee should also consider how far the local fund pro-

visions should be worked in the case of Summary Settlement holdings. There have been two cases in Tanna where the levy of enhanced assessment has been resisted under the plea that the Summary Settlements made by the State were a settlement once for all. I think that that contention is to a certain extent well founded, but I should still hope that the original settlements will be taken for what they were intended; and that even if there is a small sacrifice of revenue involved, the first settlement will be made the final settlement, so that it may not be said there has been any breach of good faith as regards these original settlements. Our attention has been drawn to Section 224 regarding the land revenue. I entirely agree with that and the other corresponding sections. I do not object to what is proposed regarding appeals. In conclusion, I beg to state that if I have the honor to be placed upon the Select Committee, I shall do all I can to expedite their labours; but, we must have ample time, and I repeat that the Select Committee cannot be too cautious as to how they deal with a measure of so much importance as the Bill now introduced.

The Honourable Mr. CHAPMAN, in reply to the Honourable Rao Sahib, pointed out that the Dharwar illustration was as fortunate as it well could be, because it revealed the presence of an evil which the Government was bound to correct. It was the duty of good statesmanship to provide for difficulties such as those which had arisen in the case of the Dharwar inamdars. It was easy to sail smoothly along on quiet seas, but responsible officers should nevertheless be prepared for bad weather, and this was the principle which ought to actuate the Honourable Members of Council in preparing a measure which would not only provide for the carrying out of ordinary revenue duties, but also secure justice to certain classes of people in such a crisis as that which had caused the recent speculations in land at Dharwar. It ought not to be forgotten that the land in the southern portion of the Presidency was being daily found to be a valuable marketable article, and it behoved the Government to see that in these interchanges of property there was no infringement upon the rights and privileges of the ancient cultivators of the soil.

His Excellency the PRESIDENT—Is not the declaratory enactment to have the effect of preventing Courts of Law from doing what they now do? This Bill is not merely a codification. It is evident that a change in the present law is contemplated.

The Honourable Mr. CHAPMAN—I say that at present, as far as I can understand, there is an absence of definite principle in the law regarding tenants, and the Judges of the High Court say that the declaration of principle to the limited extent proposed would be of great value in guiding the decisions of courts upon this subject.

The Bill, not only a codification pure and simple, but the embodiment of a new law.

The Honourable RAO SAHIB—I think that the effect of this new section will be to make substantially a new law. I am preparing a summary of decisions of the late Sudder Adawlut and the High Courts in other Presidencies, and I think that the result will prove that the law now sought to be introduced in this Bill is different to what has hitherto existed elsewhere in India.

The Honourable NACODA MAHOMED ALI ROGAY—Sir,—I had no intention to speak on the Bill at this stage, but after the remarks made by the Honourable Mr. Chapman, I feel it necessary to say a few words. The scope of the Bill now before the Council is of so extensive a character, that the law in force on the subject for nearly half a century has to be considered and digested to suit the altered circumstances of the various towns and villages throughout the Bombay Presidency. The land revenue of the Presidency is, I should think,



one of the chief sources of the revenue derived by Government, and would therefore affect the interest of the great masses of the people of all classes and conditions, and legislation on such an important subject should not be carried out without patient and mature consideration. The Bill has been in the hands of members for not more than ten days, which time, though virtually sufficient according to the rules, is not practically so for the thorough consideration of such an important enactment. The list of Regulations and Acts repealed, as shown in Schedule A, is of so formidable a character as to frighten even a member conversant with law; how much more so would it be the case with those members who are not acquainted with the Regulations and Acts that have been in existence during a period of nearly half a century? I have, with all the time at my disposal, only been able to go hastily through the Bill, but I have not been able to compare its sections with the old Regulations and Acts proposed to be repealed according to Schedule A. I have, therefore, been unable to see whether there is really a necessity for introducing the present Bill. I believe there may be other members in the same predicament as myself. I should therefore propose that the first reading of the Bill be postponed for three months. In the meantime the Bill should be translated in the various languages of the Presidency, and wide publicity be given to it. Copies of the Bill, at the same time, should be sent to the principal Revenue Officers throughout the Presidency with instructions to give their own opinions on the subject, as well as of those affected by the Bill.

The Honourable Mr. BYTHELL did not think that any good would be obtained by translating and circulating the Bill before it had been referred to the Select Committee. He would therefore oppose the amendment.

His Excellency the PRESIDENT—As I understand the scope of the Bill, the first question of principle, which applies to the whole of it, is whether all the revenue laws of this Presidency shall be embodied in one Code. To that, I think, no one can object. The next question is this. As the Bill treats of a great variety of subjects in different chapters, are all of them fit subjects to be introduced into the Code? This must be a matter for the careful consideration of the Select Committee, who, having arrived at a conclusion as to what subjects should be retained in the Bill, will proceed to the examination of the chapters relating to them respectively. It seems to me also that it would facilitate the business of the Council, if the Committee could forward separate reports upon each important part of the Bill as completed. These reports with the chapters as amended could be translated and circulated for observations; and thus great progress might be made with the measure when the Council assembles at Poona. On this understanding the Honourable Member may perhaps be disposed to withdraw his proposal to deter the First Reading.

The Honourable Colonel ANDERSON—I wish to make a few remarks on the subject of the discussion which has now taken place regarding the position of landlords and tenants. There are two very different classes of each, first, landlords holding land directly under Government, and sub-letting those lands to other persons. These tenants frequently hold under written agreements, but often by some kind of understanding with their landlords. The question of regulating the relations of

this class is a large and complicated one, and I do not propose to go into it now. The

Colonel Anderson explains the position existing between certain landlords and tenants, and points out the necessity for legislation in order to prevent the wrongful absorption of land by landlords

second class of landlords and tenants are the inamdars of whole villages, and the people cultivating the lands of those villages. The inamdar was granted the right to receive the Government revenue which the cultivators would pay to him instead of into the Government treasury. He had also a full right to dispose at his pleasure of lands which were waste, at the time of the grant of the revenues of the village to him, but he had no right whatever over the lands held by a cultivator so long as he paid his customary revenue. During the last twenty-five years land has been acquiring an ever-increasing value, and inamdars have all over the country, not in Dharwar only, been endeavouring to increase the revenue leviable from the cultivators, or to eject them from their lands, and to a great extent they have succeeded in doing so. In one case a decision was given by a Court of Law that the power to increase assessment by an inamdar was not in any way limited by the ancient kumal or standard assessment of the village, and that he was free to impose what assessment he pleased. No appeal, I believe, occurred in this case, though regarding the violation of equity and the custom of the country, there would appear to be no doubt. I was some ten years ago asked by the Collector of Dharwar to meet with him some inamdars and their tenants between whom a dispute regarding an increase of assessment had occurred. The inamdar had given notice to his ryots of his intention to levy an assessment very much in increase of that of the previous year, in fact, an excessive assessment. The inamdar made no secret of his object and intention. He said "if the ryot will pay me even ten rupees per acre this year, I will demand more next year. I don't in fact want his money at all. I want the land." Cultivators in inam villages have frequently rights far antecedent even to those of inamdars to receive the revenues from them, as Government would eject no ryot who paid the revenue due from him, which is, in fact, the sole condition on which he holds the land, so the inamdar, whose right is strictly confined to the right of receiving the Government revenues, can have no right to eject an ancient cultivator except under the same circumstances. A clear definition of the rights of each party in this case will be of immense benefit to a very large portion of the ryot population, for, on the average, it may be said, that at least one-tenth of the villages of the Deccan and Southern Maratha Country are held by inamdars. With reference to the question of the Select Committee, I would only observe that the Bill after revision by the Select Committee would go out before the public in a much more complete and final form than it previously could. We have already heard complaints that Bills are materially altered in Committee after first publication, and that the public had no opportunity of considering them in their revised form. Translation and publication after revision would obviate this complaint.

The Honourable Mr. GIBBS—Sir,—There can be no doubt that the principle adopted by the Government of India of codifying the law on different subjects is one which has caused considerable benefit to all concerned in knowing or carrying out the law. Therefore I think that, in determining to codify the revenue laws of this Presidency, the Honourable Mr. Chapman has followed an excellent precedent, and I feel certain that if this Bill is passed, it will be a matter for gratification to all who are affected by the present fragmentary laws. With regard to the manner in which the Bill ought to be treated, I am inclined to agree with His Excellency the President. The subjects are so various and the Bill altogether so comprehensive, that I think it would be a matter of great difficulty for the Committee to prepare one report upon the whole Bill, and, moreover, to do so would require a very long time. If

Mr. Gibbs thinks that each part of the Bill should be separately reported upon, and the reports translated and published

they reported upon each of the fifteen chapters of the Bill *seriatim*, I think business would be greatly facilitated. This is not a new law, although there are certain portions of it original, and there need be very little difficulty in dealing with the greater portion of the Bill. Each report might be published and translated. I see no necessity for hurrying on the Bill too rapidly; whether it is passed this monsoon or next monsoon is of less importance than having a full and thorough discussion of it both here and by the public press; and I therefore think that if His Excellency's suggestions and those I have thrown out were adopted, the Bill will be more likely to become a satisfactory law than if we adopted the ordinary course regarding it.

The Honourable Mr. CHAPMAN remarked that nine-tenths of the Bill related to purely departmental concerns, and did not affect the general public.

His Excellency the PRESIDENT—The Honourable Mr. Chapman's remark calls up prominently a difficulty which it will be necessary for the Select Committee to decide. As a portion of the Bill has, strictly speaking, nothing to do with a codification of revenue laws, and the newly-introduced matter is likely to cause some discussion, it should be for the consideration of the Committee whether the Council ought not to make the measure strictly one of codification, leaving all foreign matter to be dealt with in other Bills.

The Honourable Mr. GIBBS and the Honourable Mr. CHAPMAN concurred in His Excellency's views.

The Honourable NACODA MAHOMED ALI ROGAY said that if the reports of the Select Committee were translated and circulated, he would have no objection to withdraw his amendment.

His Excellency the PRESIDENT said the other Members of Council would not object to this course.

The amendment was then withdrawn, and the Honourable Mr. Chapman's motion, that the Bill be read a first time, agreed to.

The Bill was then referred to a Select Committee composed of the Honourable Messrs. Rogers, Gibbs, Chapman, Colonel Anderson, Rao Sahib Vishvanath Narayen Mandlik, Nacoda Mahomed Ali Rogay, and the Advocate General, with instructions to submit separate reports on the several subjects or chapters contained in the Bill, as soon as they may find themselves in a position to do so, with a view to their translation and publication.

His Excellency the PRESIDENT then adjourned the Council

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

JOHN NUGENT,  
Acting Under Secretary to Government.

*Bombay Castle, 28th January 1875.*

*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 31st March 1875, 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 COLONEL M. K. KENNEDY.

The Honourable J. K. BYTHELL.

The Honourable RAO SAHIB VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable KHAN BAHADOOR PADAMJI PESTONJI

The Honourable E. W. RAVENSCROFT.

Affirmation of office, &c.,  
taken by Mr Scoble and Mr  
Ravenscroft

The Honourable the Advocate General and the Honourable E. W. Ravenscroft took the usual affirmation of office and declaration of allegiance to Her Majesty.

Papers presented to the  
Council

The following papers were presented to the Council by Mr. Nugent, Under Secretary to Government :—

1. Letter from the Secretary to the Government of India, No 91, dated 27th January 1875, returning with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the " Bill to amend the law relating to hereditary offices."

2. The following letter from the Secretary to the Government of India, No. 123, dated 13th February 1875.—

FROM

WHITLEY STOKES, ESQUIRE,

Secretary to the Government of India, Legislative Department,

TO

J. NUGENT, ESQUIRE,

Acting Under Secretary to the Government of Bombay.

*Fort William, the 13th February 1875.*

SIR,—I am directed to acknowledge the receipt of your letters No. 366, dated 4th December 1873, and No. 31, dated 29th January last, addressed to the Secretary to the Government of India in the Department of Revenue, Agriculture and Commerce, with the former of which was forwarded for the assent of His Excellency the Viceroy, the Bill for enabling Government to levy tolls on public roads and bridges in the Presidency of Bombay.

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2. His Excellency the Governor General regrets that he is obliged to withhold his assent from the measure, and in accordance with the rule prescribed by the Indian Councils Act, Section 40, I am directed to signify the following reason for this course.

3. The Bill purports to repeal, so far as it affects Bombay, Act XV. of 1864 of the Governor General's Council, which was passed since the Indian Councils Act, 1861, came into operation, while the Bombay Legislative Council has only power to repeal or amend Acts of the Legislative Council of India passed before the 16th November 1861, when the Councils Act came into force.

4. Though this is a point of form yet it is a very important one, and His Excellency cannot deliberately sanction any action of the Bombay Legislative Council in excess of their lawful powers.

5. I am to state that His Excellency sees nothing objectionable in the substance of the Bill, and that an Act might be passed in the Council of the Governor General to legalize the levy of tolls in the Bombay Presidency, if that course should appear to the Government of Bombay to be more convenient than that the Bill should be re-introduced, with the necessary modification in the local Legislative Council.

6. I am in conclusion to express the Viceroy's regret that His Excellency's opinion with respect to this Bill should, through accident, not have been officially communicated to the Government of Bombay many months ago.

I have, &c.,

(Signed) WHITLEY STOKES,  
Secretary to the Government of India.

The Honourable Mr. ROGERS—Your Excellency, I beg to propose the second reading of the Bill (No. 2 of 1874) to amend Bombay Act No 1 of 1865.

Honourable Mr Rogers  
moves second reading of Bill  
(No 2 of 1874) to amend  
Bombay Act No 1 of 1865.

The general scope of the measure was explained by me when I introduced the Bill last October. The Bill has not been referred to a Select Committee, but although it has been before the public since October no objections have been raised to its general provisions. In case Honourable members should have forgotten the purport of the Bill, I may be permitted to explain that the only object of the Bill is to enable Government to postpone the date up to which land may be given up under the Survey Settlements Act in the year in which an original or revised survey settlement may have to be introduced from the 31st March to the 5th June or any date between these two dates. The object of this is to give the Survey Department more time to prepare all the detailed measurements and have all the necessary papers made out which may be required before the introduction of the survey settlement. Up to this time also it has been the custom, sanctioned by Government, that in the year in which a revised settlement was introduced the difference between the old and the new assessments should be remitted. That custom is made plainer in the proposed Act, and practically what has been authorised hitherto by Government and has been the custom of the country will be legalized. In addition to this another boon is conferred upon the occupants of land. You will observe that in clause three of the second section of this Bill it is proposed that in the year after the revised settlements shall have been introduced, landholders,

if they choose to throw up any land before the 31st March of the following year, may be at liberty to do so instead of being restricted, as under the present custom, to throwing it up at the introduction of the settlement. With these words I beg to move the second reading of the Bill

The Honourable Rao Sahib VISHVANATH NARAYAN MANDLIK said he would not oppose the Bill at this stage, because since its introduction to the Council in October last the Revenue Officers' Code Bill had been introduced, which dealt more exhaustively with the matters contained in the Bill before the Council. After what the Honourable Mr Rogers had stated he still thought that the objection he had taken to the Code Bill remained as regards the Bill before the Council, namely, whether in trying to remedy a defect other evils might not be introduced. As to the case cited in the Statement of Objects and Reasons he begged to observe that the suit arose before the High Court because old customs had not been carried out. A new survey had been introduced in April, and the old occupant was sued for not having relinquished his land on the 31st March preceding.

The Bill read a second time

The Honourable Mr. ROGERS' motion was agreed to, and the Bill read a second time.

Honourable Mr Rogers moves that the Bill be read in detail in full Committee of the Council

The Honourable Mr. ROGERS then proposed that the Bill be read in detail in full Committee of the Council.

The Honourable Khan Bahadour PADAMJI PESTONJI thought with reference to section I. that the 1st August would prove an exceedingly awkward date for the coming of a new occupant, and he suggested that an earlier date—say, the 1st June—should be agreed upon. Under the section as it stood, an old occupant's lease would not expire until the 31st July and he might be disposed to keep possession until the very last day, so that the new occupier would have very little time left to enter upon possession if he determined to do so upon the 1st August.

The Honourable Mr. ROGERS—The reason for adopting this year (from the 1st August to the 31st July) was that that was the year for which all the revenue accounts were made up. The dates mentioned in the section have nothing whatever to do with the relinquishment of land or otherwise.

The Honourable Mr. GIBBS considered that the section had nothing to do with the question of occupancy.

The Honourable Rao Sahib VISHVANATH NARAYAN MANDLIK understood the first clause to be simply a statement of what the revenue year is to be.

His Excellency the PRESIDENT thought that as the section was almost an interpretation of what a 'year' should be, the Honourable Khan Bahadour's objections, if he had any, could more appropriately be discussed in connection with the following sections.

Section II., clause 1, was then read.

The Honourable Mr GIBBS—This is an improvement upon the law as it stands at present, when, supposing, in the event of the introduction of a new settlement, the papers could only be got ready and published on the 1st March, the occupiers would only have till the 31st March to think over the matter and decide whether they would give up their lands or continue to hold it under the new settlement. That was a hardship, and in order to obviate it I understand this clause has been framed.

His Excellency the PRESIDENT—Supposing a new settlement was introduced in a village on the 20th July, I apprehend that under this section a man might not have to give notice of his intention to relinquish till the following June? If, however, the settlement were not introduced till the 4th June, a man might have barely a day left to give a decision about keeping on his land

The Honourable Mr. ROGERS—That might be the effect in the case cited, but settlements are rarely introduced so late as June.

The Honourable Mr. RAVENSCROFT—Settlements are generally introduced in February or the early part of March.

His Excellency the PRESIDENT thought that this might be made clear in the Bill.

The Honourable RAO SAHIB concurred.

The Honourable Mr. ROGERS—The object of this Bill is to give more time to the ryots instead of to abridge it.

The Honourable Mr. GIBBS—It was found under the present law that there really was not time for the landholders to make themselves acquainted with the terms of the new settlement before they were called upon to decide upon accepting them, and therefore this Bill was introduced with the object of giving them more time for consideration

His Excellency the PRESIDENT—Look to the disputes regarding settlements which have recently occurred. Was it possible that a man could be called upon in half an hour to decide upon retaining or giving up his land?

The Honourable Mr. RAVENSCROFT—That was the law as it formerly stood. To-day (31st March) five revised assessments are to be introduced throughout the country, in some of which a considerable enhancement of revenue has taken place. In many instances landholders have not had more than a week's time to decide as to whether or not they would throw up their holdings. If this Bill had been in existence they would have had up to the 5th June to consider their decision instead of being obliged to give their decision by the 31st March

His Excellency the PRESIDENT—Then a man might be asked on the last day whether he would give up his land or accept the new settlement rates?

The Honourable Mr. RAVENSCROFT—Yes, but practically he would have plenty of time to consider his decision.

The Honourable Mr. GIBBS—By the present Bill, however, the time may be extended to the 5th June, so that Government would always have it in its power to see that the people got fair notice.

The Honourable Mr. RAVENSCROFT—In point of fact this Bill may shortly be described as a Bill to give tenants two months and five days more time in which to make up their minds than they now have.

His Excellency the PRESIDENT—That is what is now said will be given, but there does not appear to me to be any guarantee in this Bill that a man shall have due notice of proposed alterations in the rates of assessment.

The Honourable Mr. GIBBS—The extension of time rests with Government, who will surely see that the ryots are allowed plenty of time.

The Honourable Mr. BYTHELL asked whether it could not be stated in the Bill that a certain time of notice must be given to landholders.

The Honourable Mr. ROGERS—By the next clause you will perceive that each man will have practically till March in the subsequent year to consider whether or not he will retain his land at the new rates of assessment, for if at the end of that period he does not wish to retain his land the difference between the old and the new rate of enhancement will be returned to him, and he may vacate by giving due notice of his intention to do so.

His Excellency the PRESIDENT thought that to the end of the clause some such words as the following should be added—“Provided that not less than fifteen days’ notice of the date so fixed shall be given in the village.”

The Honourable Mr. GIBBS thought there was no necessity for these words unless Government meant to declare its distrust in itself. It would be the fault of Government if the ryots were ever left without due notice.

His Excellency the PRESIDENT, referring to what the Honourable Mr. Rogers had said about the powers of the second clause, said that they certainly gave some advantage to a man who considered he had made a bad bargain in taking the land at the new rate of assessment, but in the case of men hastily throwing up their land without having had time to consider the effects of the new settlement rates, there would be no redress. A man might be disgusted at the old rates being interfered with, and say hastily he would not pay the enhanced rates, although if he had leisure to look at the matter he might come to a different decision.

The Honourable Mr. GIBBS—A man never willingly gives up a bit of land even though retaining it may run him.

The Honourable RAO SAHIB thought that would be rather an unsafe principle to guide the Council.

The Honourable Mr. ROGERS—As a matter of practical experience, I may say that I myself have given out perhaps 100,000 fields in this way—namely, the two assessments, old and new, being read out to the people, and the people being asked what they would decide upon—and I have never seen the people show the slightest hesitation in expressing their opinion, yes or no.

The Honourable Mr. RAVENSBOFF suggested the addition to the section of the words “provided that no orders for introducing revised assessment shall be issued by Government later than the 31st March.”

The Honourable Mr. ROGERS—I do not think it would be advisable to restrict Government in this way. Even if a settlement were not introduced until the 3rd or 4th June, there would be no occasion for an occupant to decide there and then whether he would throw up, because he has practically till the end of the following March to experiment with his field under the new terms of settlement, and he may then give it up if he chooses.

The Honourable Mr. BYTHELL remarked that the proposed alteration would not tie the Government down to a later period than it was tied to at present.

The Honourable Mr. ROGERS—The object of this Bill is also to enable Government to introduce settlements later than the 31st March.

After some further conversation, it was agreed to amend the clause by deleting “later” in the fifth line, and substituting “earlier than the 31st March or later than” for the words “subsequent to” in the same line.



On clause 2 being read, the Honourable Mr ROGERS called attention to the wording of the clause, which showed that it would not be optional with the authorities to omit, but that they must remit according to the expression "shall."

The clause was agreed to.

Clause 3 was agreed to.

Section III. was amended as follows :—This Act shall be read with and taken and construed as part of Bombay Act No. I. of 1865.

The section was then agreed to.

The Honourable Mr. ROGERS then moved that the standing orders be suspended and the Bill read a third time and passed. His chief reason in desiring that the Bill should be passed as quickly as possible was because of sundry revisions of settlement for which the orders had just been issued, as there really had been no time to introduce them before that day (the 31st March).

The Honourable Mr. GIBBS and the Honourable the ADVOCATE GENERAL thought there was no occasion for the suspension of the standing orders, as no alteration upon the principle of the Bill had been made.

His Excellency the PRESIDENT suggested a slight alteration in the second clause of Section II. which was amended as follows :—"not be payable" was substituted for "be remitted" in the sixth line of the clause, and in the following line "shall be" was inserted before the word "levied."

The Honourable Mr. ROGERS suggested that the clause might be further altered so as to make it in accord with the actual custom which went beyond what was stated in the clause, and which custom was that where a new assessment was less than the old one only the new should be taken.

His Excellency the PRESIDENT did not think this alteration was necessary, as the people would not be likely to make any objection to the clause as it stood.

On the motion of His Excellency the PRESIDENT, the Bill was then read a third time and passed.

Mr Ravenscroft substituted for Mr Chapman on the Select Committee appointed to consider the Revenue Code Bill

The Honourable Mr. Ravenscroft was placed on the Select Committee on the Revenue Code Bill in place of the Honourable Mr. Chapman.

The Honourable Mr. RAVENSCROFT brought to the notice of the Council that many revenue officers had represented to him that they had not had time to give that consideration to the Revenue Code Bill which a Bill of such importance required.

His Excellency the PRESIDENT explained the course regarding the means of giving publicity to the Bill which had been adopted at the last meeting of Council on his suggestion.

The Honourable Mr RAVENSCROFT thereupon expressed himself satisfied that heads of departments would have an opportunity of considering the Bill.

His Excellency the PRESIDENT then adjourned the Council.

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

JOHN NUGENT,

Under Secretary to Government.

*Bombay, 31st March 1875.*

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

The Council met at Poona on Thursday, the 23rd September 1875, at noon.

*PRESENT*

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

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

The Honourable A. ROGERS

The Honourable J. GIBBS.

The Honourable Major-General M. K. KENNEDY.

The Honourable E. W. RAVENSCROFT

The Honourable Colonel W. C. ANDERSON.

The Honourable Rao Sahib VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY

The Honourable Khan Bahadur PADAMJI PESTONJI.

The Honourable DONALD GRAHAM

The Honourable Rao Bahadur BECHERDASS AMBAIDASS.

Affirmation of office, &c, taken by Mr D Graham and Rao Bahadur Becherdass Ambaidass

The Honourable Mr. DONALD GRAHAM and the Honourable Rao Bahadur BECHERDASS AMBAIDASS took the usual affirmation of office and declaration of allegiance to Her Majesty.

Papers presented to Council

The following letters were presented to the Council.—

Letter from the Secretary to the Government of India, conveying the assent of His Excellency the Governor-General and Viceroy to the Bill to amend Bombay Act I. of 1865.

Letter from the Secretary to the Government of India, communicating the sanction of His Excellency the Governor General to the Bill for enabling Government to levy tolls on public roads and bridges with the proposed clause as to exemptions from toll being taken into consideration by the Local Legislative Council.

The Council then proceeded to the consideration of the Bills and Orders of the day

The Honourable Mr. RAVENSCROFT, in moving the first reading of Bill No. 2 of 1875

Mr Ravenscroft moves the first reading of the Bill to amend the law relating to the Land Revenue administration of the city of Bombay. Explains that Bill is introduced because old regulation had been found deficient, and that a separate Bill for the town and island of Bombay is necessary because revenue administration system there differs from the system pursued in the Mofussil.

(a Bill to amend the law relating to the Land Revenue administration of the city of Bombay), said :—It was originally intended to devote a chapter in the Land Revenues Bill introduced last January to the town and island of Bombay, but on further consideration it was ascertained that the land revenue administration of the rest of the Presidency was not similar to the system carried on in the town and island of Bombay, and it was therefore considered advisable to include the provisions required for the town and island of Bombay in a

separate Bill. This separate Bill he now laid before the Council. Some of the members of this Council were aware that the law regulating the land revenue of the city of Bombay at the present time was Regulation XIX. of 1827. At the time that Regulation was passed no doubt its provisions were very suitable to the purposes for which it was intended. But as time went on, it was found that several modifications and alterations were requisite, because the old Regulation was not adequate to meet all the purposes for which it was originally passed. With the advice and concurrence of the Revenue Officers of Bombay, the Bill which he had now the honour to introduce had been drawn up with great care. The principles embodied in Regulation XIX. of 1827 had to a great extent been embodied in the present Bill No. II. of 1875. Certain alterations and modifications had, however, been introduced because they were essentially necessary; but all the amendments had been framed solely with the legitimate view of maintaining the lawful interests of the city at the same time that the rights of land-holders were left uninjured. When the Bill came to be discussed section by section, honourable members might differ as to particular portions of it, but the general principles would doubtless be approved. He might mention that there was one part of the Bill which was wholly new, and on this he would say a few words. It related to the Survey recently completed under the able management of Colonel Laughton and to the maintenance of the boundary marks which were found necessary for demarcating the different properties. This survey was carried through at great expense, and many of the survey records were most invaluable documents. It was important to maintain these records properly, and it was still more necessary to maintain due efficiency regarding the boundary marks. Different sections in this Bill had been framed to meet these contingencies. The provisions generally of the Bill had been borrowed from the law on the subject which had been in existence in the Mofussil for some time and which had been found to answer its purpose well; and he had no doubt that the Bill now introduced to the notice of the honourable members of the Council would be found to carry out the views of those by whom the Bill had been prepared, and by whom alterations in the existing Regulation were considered necessary. It was hardly necessary, he presumed, to explain that the Bill was meant to apply solely to the city of Bombay. It was therefore essential that a full discussion of the measure should take place in Bombay, where the persons interested resided, and where moreover the survey records were kept. With the concurrence, therefore, of His Excellency the President, he would propose that nothing further be done with the Bill at present than to refer it to a Select Committee, whose report should be considered along with the Bill in Bombay.

His Excellency the PRESIDENT put the motion, that this Bill be read a first time.

The Honourable Rao Saheb VISHVANATH MANDLIK said he had no objections to offer against the Bill at this stage. He thought the principle that the Revenue Administration law for the city of Bombay required revision might be accepted, but there were some matters both of procedure and substantive law in regard to encroachments, (amongst others,) which would require very careful consideration. The Select Committee would doubtless devote their attention to these matters, and in the meantime he would say nothing further about the Bill.

The Honourable Khan Bahadur PADAMJI PESTONJI remarked that Section 28 would require very great consideration.

His Excellency the PRESIDENT—Greater consideration in favour of those who have made encroachments?

The Honourable Khan Bahadur—No ; but I think that the section as it stands is too severe. This, however, can be considered in Select Committee

The Honourable Mr. ROGERS—With regard to what the Honourable Khan Bahadur has said about the penalties upon encroachments, I need only mention that the sections have been founded on the actual practice of a great many years.

The Honourable Khan Bahadur—There is a difference between practice and law.

The Honourable Mr. GIBBS—We are only going to make the practice into law.

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

The Bill was read then a first time.

The Honourable Mr. RAVENSCROFT begged to move the appointment of the following Select Committee on the Bill :—The Honourable Mr. Rogers, the Honourable Major-General Kennedy, the Honourable Rao Saheb Vishvanath Mandlik, the Honourable Mahomed Ali Rogay, and the mover.

The motion was agreed to.

It was agreed that the Select Committee should report on the 8th December 1875, and that the report should be translated into Guzerathi and Marathi.

The Honourable Mr GIBBS having remarked that a petition on the Bill had been received, it was agreed that the petition be referred to the Select Committee.

The Honourable Major-General KENNEDY, in moving the first reading of Bill No. 3 of 1875 (*a Bill for enabling Government to levy Tolls on Public Roads and Bridges in the Presidency of Bombay*), said that it had been previously before the Council in a different form, and would probably have become law by this time had it not been pointed out by the Government of India that this Council had gone somewhat beyond its powers in repealing Act XV. of 1864. The Bill had been returned by His Excellency the Viceroy in order to be amended in this respect, and therefore the part relating to Act XV. of 1864 had been omitted in the present Bill. Opportunity had at the same time been taken to make a further amendment so as to enable Government to exempt such persons as they may think fit from the payment of tolls. In other respects the Bill was almost identical with the previous Bill.

The Honourable Rao Saheb VISHVANATH MANDLIK said he had carefully read the discussions which had taken place on this Bill when it was previously before the Council, and also those which had taken place upon it since. It was, no doubt, correct to say that this Bill was now, so to speak, coming only technically before the Council, because of a certain error for which, perhaps, this Council was scarcely responsible. But at the same time, since the responsibility now rested with the Council of passing the Bill in its present form, he thought it right to say that there were several matters in it to which he entertained very grave objections. He objected, in the first place, to Section 2, which was a sort of retrospective section—the Legislative remedy for such errors as this section sought to cure. In the next section he objected to lines 8 and 9—that is to say, he thought it advisable that the funds which had been expended on making roads under Act III. of 1869 should not be made the cause of again taxing the people by levying tolls upon these very roads a second time. He understood that it was difficult to make a clear distinction

Rao Saheb Vishvanath Mandlik objects to tolls and to taxing foot passengers except in special cases, such as in the case of bridges over rivers where people had to pay for ferries.

between provincial roads and local funds roads, and also that there was a scarcity of funds for roads; but his objections were, first of all, to tolls in general as a source of revenue, and in the next place, to tolls being placed too near each other. In other countries there might be tolls every six or eight miles; but he thought that that was no justification of repeating what he considered an error in any revenue administration. He would pay double the amounts laid down in the schedule, but it was not these amounts that people feared; it was having to pay them so often. Between Paladpur (or rather Kineshvar) and Nagotna there were five tolls, and moreover there were municipal tolls. Now, that was a state of things which should be guarded against in this country, where it is not so much the amount to be paid as the number of times it was required to be paid, which requires to be seriously considered. As regards taxing foot passengers, he noticed that the Council had actually gone beyond Act VIII. of 1851; but as the present Bill was in accord with the Act of the Government of India (Act XV. of 1864), it might be assumed that the members of this Council were legislating in the footsteps of the higher Legislature. But in his opinion this Council was to a certain extent an independent Legislature, and except in those cases where taxes on foot passengers would be justifiable—such as in the case of bridges over navigable rivers where people had formerly to pay ferries—he did not think a foot passenger's tax should be sanctioned by the Council. It might be said that there was power reserved to the Executive Government to exempt persons, and that as a matter of fact no tax upon foot passengers was levied except at Matheran and some other places, but here the law was going to be entered on the statute book, and if it was not necessary, he did not see why the Council ought again to legalize it.

After some discussion, it was decided that it was unnecessary to refer the Bill to a Select Committee, as all the points raised by the Honourable Rao Sahab could be discussed in full Committee of the Council.

The Bill was then read a first time.

The Honourable Mr GIBBS begged to move the first reading of Bill No. 4 of 1875  
(a Bill to empower the Municipal Corporation of the City of

Mr. Gibbs moves the first reading of the Bill to enable Municipality of Bombay to subscribe Rs. 50,000 towards the reception of His Royal Highness the Prince of Wales.

Bombay to aid in the reception of His Royal Highness the Prince of Wales on the occasion of his visit to India). He said:—The Statement of Objects and Reasons showed the objects of the Bill very clearly. The Municipality of Bombay was anxious to contribute to the Fund which had been raised by private subscription to make a right hearty and loyal reception of His Royal Highness the Prince of Wales on his approaching visit; but doubts arose as to whether the Corporation had authority, without special legislative powers, to vote money for such a purpose. Hence the present Bill had to be introduced to enable the Municipality to subscribe towards the Reception Fund. The sum it proposed to give was Rs. 50,000, and the second section of the Bill showed by what means this sum would be recouped by payments spread over three years. The Corporation of Bombay is bound, at the end of every year, to have a cash balance of one and a half lakhs of rupees; and it was now proposed to have a cash balance at the end of 1875 of only one lakh; while at the end of 1876 and 1877 it should be one lakh and seventeen thousand rupees and one lakh and thirty-four thousand rupees respectively.

The Honourable Rao Saheb VISHVANATH MANDLIK said that speaking for himself as a member of the Corporation he approved of the Bill. It had been unanimously supported by the members of the Corporation, and it was a matter in which the native community took very great interest.

Native members, on behalf of native community, express their approval of Bill

The Honourable Khan Bahadur PADAMJI PESTONJI said he did not think that the Corporation could spend its money in a better way than that which was indicated in the Bill.

The Honourable Mr. GIBBS said that as the Bill had the entire approval of the representatives of the native community, and moreover had the approval of the Corporation of Bombay, the Government of Bombay and His Excellency the Viceroy, he would ask His Excellency the President to suspend the standing orders and permit the Bill to be passed at once.

His Excellency the PRESIDENT suspended the standing orders, and the Council proceeded to read the Bill a second time. Sections 1 and 2, the preamble and title, were agreed to without alteration. The Bill was then read a third time and passed.

Standing orders suspended, and the Bill read first, second, and third time and passed

The Honourable Mr. ROGERS, in moving the first reading of Bill No. 5 of 1875 (*a Bill to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts*), said that the objects were fully set forth in the Statement of Objects and Reasons. The members of this Council would be aware that the Collectorates in the Bombay Presidency are sub-divided into small portions which are presided over by native revenue officers, who are therefore conveniently situated for the purpose of settling on the spot, and without loss of time, any dispute which may arise with regard to possession at any time of the year, but especially at the critical period, the monsoon. It was therefore enacted in 1864 that the Mámlatdárs should have summary jurisdiction in cases where people had been dispossessed or kept out of possession of lands, premises, trees, crops, fisheries, and of all profits arising from the same. That Act had been in force for eleven years, but it was found to be defective, inasmuch as it gave no powers to the Mámlatdárs to settle disputes with regard to the rights to wells, water-courses, &c. A delay of a few days in deciding the right to take water from a well or water-course might prevent a field from being cultivated at all, and a whole season's crop might be lost. These Mámlatdárs were as well able to settle disputes regarding the possession of water as they were with regard to land, &c.; and this Bill therefore proposed to make it lawful for them to give immediate possession of the right to water from wells, tanks, canals, or water-courses, or of the profits arising from the same. The procedure of the courts presided over by the Mámlatdárs in these matters had been found to be defective, and the opportunity had been taken in the present Bill to amend it. Another matter which had been omitted from the original Act, and which it had now been found necessary to supply, was a provision relating to the question of costs. This Bill provided for the expenses of witnesses. It also proposed to lay down that decrees should be executed through the village officers. The only other point he would wish to notice was the question whether decrees passed in the Mámlatdárs' Courts should be subjected to appeal to the higher authorities. The framers of the Bill had come to the conclusion that as possession was merely meant

Mr Rogers moves the first reading of the Bill to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts.

to be temporary and to be carried out only until the dissatisfied party should obtain a verdict in a Civil Court, it was upon the whole advisable that the law should remain as it is, and that no appeal should lie from the decision of the Mámlatdárs.

The Honourable Mr GIBBS said that it was advisable for the Council to know that by a decision of the High Court, before Sir Richard Couch and Messrs. Newton and Warden, Judges, it was found that this power of the Mámlatdárs to give summary possession was not confined to Mámlatdárs' Courts alone, for since the introduction of the Civil Procedure Code of 1859 the civil courts were invested with powers co-extensive with those of Mámlatdárs' Courts. There was therefore no occasion for a person to go into the Mámlatdárs' Courts, for a Munsiff's Court would do just as well.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK thought that the Mámlatdárs' Act should now be amended thoroughly, so that its procedure might, as far as possible, be on a par with the amended procedure which was being devised for the Courts of Civil Judicature. Questions as to possession were often, he had found, decided by Mámlatdárs in a way which might be amusing to themselves, but which was certainly not amusing to the people who had to suffer. He also hoped that Kulkarnies and Patels would not be permitted to have anything to do with the execution of decrees, which ought to be carried out, as they had been hitherto, by the Mámlatdárs' establishment. Local feeling in village communities was in itself a sufficient reason why village officers should not be asked to carry out the Mámlatdárs' decrees. If necessary, one or more bailiffs should be employed, and the necessary fees should be charged to suitors.

After some further discussion, the Honourable Mr. Rogers' motion was agreed to, and the Bill was read a first time.

The Honourable Mr. ROGERS proposed that the Bill be referred to a Select Committee composed of:—The Honourable Mr. Gibbs, the Honourable Colonel Anderson, Rao Saheb Vishvanath Narayan Mandlik, Rao Bahadur Becherdass Ambaidass, and the mover.

This was agreed to, as also that the Select Committee should submit their report on or before the 15th October, and that the report should be translated into Marathi, Guzerathi, and Canarese.

The Honourable Mr. RAVENSCROFT, for the reasons previously mentioned, made the following notice of motion:—That the Bill No. 10 of 1873 (Bill to provide for the Survey, &c., of the lands of the City of Bombay and Island pertaining thereto) be withdrawn.

The motion was carried.

His Excellency the PRESIDENT then adjourned the Council till Thursday, the 30th September 1875.

*By order of His Excellency the Governor in Council,*  
W. LEE WARNER,

Acting Under Secretary to Government.

Poona, 23rd September 1875.

*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 COUNCIL'S ACT, 1861."*

The Council met at Poona on Thursday, the 30th September 1875, at noon.

**PRESENT :**

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

HIS Excellency the Honourable Sir CHARLES STAVELEY, K. C. B.  
The Honourable A. ROGERS.

The Honourable J. GIBBS

The Honourable Major-General M. K. KENNEDY

The Honourable Colonel W. C. ANDERSON.

The Honourable Rao Sahib VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY,

The Honourable Khan Bahadur PADAMJI PESTONJI.

The Honourable DONALD GRAHAM.

The Honourable Rao Bahadur BECHERDASS AMBAIDASS.

The Honourable Major-General KENNEDY moved the second reading of Bill No. III. of

Major-General Kennedy moves the second reading of the Road Tolls Bill, and points out that as the Bill only comes before the Council in order to adjust a technical error it is too late for Hon'ble members to object to the principle of it

1875 : a Bill for enabling Government to levy tolls on public roads and bridges in the Presidency of Bombay. He said—At the last meeting of Council my Honourable friend Rao Sahib VISHVANATH MANDLIK took exception to the principle of the Bill. Now, even if this were an abstract question and we were taking it up for the first time I should fail to agree with him ; but it is not an abstract question ; tolls having been levied by the Government of India since 1851, while as a matter

of fact we have been levying them in this Presidency since 1864. This Bill therefore involves very practical issues, and it cannot be said to come as a surprise upon the people. Under the present system by which we levy tolls we collect about 7 lakhs of rupees per annum—a revenue which we cannot consent to forego for abstract considerations in the present state of our finances. I trust, therefore, that my Honourable friend will not press his objections to the principle of the Bill, because I think it is now altogether too late to do so. The Bill has been returned to this Council merely for a technical reason, because this Council, through an inadvertence, had repealed an Act of the Government of India. In its present amended shape it has been approved of by the Government of India, and I may observe that if it were not passed in this shape, we could still continue levying tolls under the Acts of the Government of India. We could even levy tolls at a higher rate than we propose to do under this Bill, because when we discussed this Bill in 1873, and took into consideration the schedules of the Bill, we reduced the rates in the Government of India schedules very considerably. As regards the objection which has been taken to section 2, that it is a retrospective section, all that can be said is that



it is possible—I do not say it will be the case—that if this section were struck out, that we should have a crop of law-suits against Government springing up over the country, because through the mistake of not extending the Government of India Act of 1864 to this Presidency; it may be contended that there was a want of legal authority for the course we have pursued in levying tolls since that date. The other points to which exception has been taken are merely matters of detail, and can be considered when we come to the second reading of the Bill. I now beg to move that this Bill be now read a second time.

The Honourable Rao Sahab VISHVANATH NARAYAN MANDLIK—Your Excellency—I had not

Rao Sahab Vishvanath Mandlik says he will not oppose the second reading, but he would not vote for the second section nor for the section which empowers Government to levy tolls upon roads constructed from Local Funds

intended to speak upon the second reading of the Bill, because I understood, although my observations were directed to the inadvisability of tolls as a rule, that this Bill came before us as it were technically, and therefore it would be too late now, as the Hon'ble Major-General Kennedy is pointed out, to go back upon what has already been considered and passed. However, I think that in the case of *post facto* provisions of law, it ought to be a general rule as far as possible that in Acts relating to the revenue or to abridge contracts care should be taken to pass as few retrospective sections as possible. On that point I fear I should not consider it advisable to recede from what I hold to be the proper law for all countries and for all times. In the case of the present Bill, I think it has been agreed that the sanction of the Government of India to tolls has been in existence for a considerable time past, and that although by some mistake the Government of India's law was not extended to this Presidency, yet as the officers in this Presidency had been acting *bond fide* upon what they believed to be the law, it was desirable that the possibility of law-suits should be avoided. I shall not vote for the second section of the Bill, nor shall I vote against the second reading of this Bill; but in the course of the second reading I shall have several amendments to propose.

The Honourable DONALD GRAHAM—Your Excellency—I am entirely opposed to the principle of this Bill, and were it a measure brought forward

Mr D. Graham objects to tolls on principle, because they obstruct traffic

here for the first time, I should strongly oppose its second reading. Perhaps on bridges which there might be some difficulty in completing without tolls, and which were urgently required for public convenience, these tolls might be justifiable; but as regards tolls on roads I think it is not only impolitic to tax traffic, but it is a most vexatious and expensive way of raising revenue. In England there is a strong feeling against tolls, and in many counties they have been done away with altogether; and I believe that but for the complications which have naturally arisen out of a system which has lasted so long, the probability is that tolls ere this would have been abolished all over the country. Here in this country it seems to me that the people who are to be taxed by this Bill are the same as those who have already to subscribe to the Local Funds, and I therefore think it is a pity to keep up two sets of tax-gatherers when one might suffice. I don't wish to infer from this that the Local Fund cess should be increased, though even that would be a lesser evil, but the general feeling of those with whom I have discussed this Bill seems to be that the cess ought to be sufficient to maintain the roads, and I think that if Government could see its way to make it suffice, and abolish tolls, it would be conferring a great boon upon the poorer class in this country.

The Honourable Mr. GIBBS—I cannot help thinking we are now year by year drifting more and more into mere theoretical notions in regard to what ought to be done in this country. I do not know whether

Mr. Gibbs points out the advantage which the people in the Presidency now enjoy from good roads as compared with the state of the country a few years ago, and argues that in tolls the people are simply paying for benefits received by them

the Hon'ble member who has just spoken ever travelled in a country cart along an old-fashioned country track, because if he has, and has heard the oaths and other bad language used by the bullock-drivers, witnessed the many tail-twistings of the bullock, and finally seen the cart upset, had half his kit smashed, and been pitched out upon the road besides; if, moreover, at the end of his journey he had found one or both bullocks lame and the cart in a general state of disrepair—I think he would agree with what a native of Khandesh once told me comparing an old track we had just come along with a Local Fund road. Alluding to the latter this man remarked how good it was and how easily we went along. I asked him what he thought of the tolls; he replied that as the Sirkar had made the roads they must be kept up somehow, he did not object to the tolls, because he looked upon the roads as a saving of his bullocks and carts “*Jaissa ki mahal, waissa ki mohl*”—as is the article so is its value—he reaped benefits from the roads, and he was prepared to pay for them. I think that considering what the state of the roads was when I came to India twenty-eight years ago and what it is now—the difficulty that then existed of getting from village to village, and the disadvantages which people used to labour under to get their goods brought cheaply to a good market instead of being compelled to dispose of them at a low rate in a place where there was little or no market—the change for the better has been wonderful. It has been admitted over and over again that the only way to do the country good is to open up communications by means of local roads, and if you do this you must keep up the roads in repair. I have never heard anybody—except gentlemen who deal in theories—I have never heard any person with practical experience who has been in the habit of meeting country drivers say they have heard them object to the system of toll-levying upon roads. I myself have had some practical experience, and I doubt much if the people do object to these tolls. I know that the amount they have to pay in tolls is nothing in comparison to what they had previously to pay for cart repairs and doctoring their injured bullocks. I have seen piece goods, dubbas of oil and ghee, and other goods upset over and over again in the old country roads, and now loads of goods can be taken in safety throughout the country. I should not have made these observations if I did not feel compelled to take a practical view of the matter, and apply my own experience to a matter which has become surrounded with theories.

His Excellency the COMMANDER-IN-CHIEF—I understand that all this Bill seeks to do is to legalise what has been going on in this Presidency for a long time.

His Excellency the PRESIDENT replied in the affirmative.

The Honourable MAHOMED ALI ROGAY—So far as the principle of this Bill is concerned I have nothing more to say than that I concur with the Honourable Rao Sahib, but I shall take the liberty of suggesting one or two amendments when we consider the Bill in Committee.

The Honourable Rao Bahadur BECHERDASS AMBARDASS said that public roads and bridges had been made out of local funds, imperial funds, and by other means, and roads had also been kept in good repair from these sources. In Guzerat there was a reserve in the

Rao Bahadur Becherdass Ambardass opposes the Bill.

local funds of about a lakh of rupees, which sum ought to be applied to make new local roads, while as for imperial roads, commonly called Badshahae or King's Roads, they ought to be kept up out of Imperial funds, as when they were made by the Imperial Government it must have anticipated this charge upon its roads. To levy tolls in Guzerat upon people paying local cess already, municipal taxes would be unpopular and a burden. He thought it was unnecessary to introduce a Bill to remove the doubts about the legality of collecting tolls since 1864. As regards the proposed tax upon foot passengers he begged to point out that no such tax had hitherto been levied at the Ellis Bridge at Ahmedabad, which had unfortunately been lately washed away in the disastrous floods on the Saburmuttee. He felt that he must oppose the Bill.

The Honourable Mr. ROGERS—The general drift of the Honourable Rao Bahadur's speech seems to be that those who pay local funds pay sufficient without paying tolls on roads. He refers to their paying municipal tolls as another reason why they should not be compelled to pay the tolls contemplated under this Act. He also appears to think that in ancient days, before the introduction of the British Government, there were roads upon which no tolls were levied. If the honourable gentleman will point out one single road, in any part of the country with which he is familiar, made by a former native government, I will agree with his argument; but I say there is not one such road in existence, and there never was one. Notwithstanding this, the native governments used to burden trade by transit duties, which the British Government has abolished. With regard to the Honourable Mr. Graham's suggestion that the local funds ought to be made to suffice for all purposes, I have only to say that we have most accurate reports from all parts of the country as to what is done with the local funds, and we find that in very few cases are these funds sufficient to carry out even the most necessary public improvements, particularly those regarding water-supply. Consequently, if tolls were not imposed, the only alternative would be to impose additional taxation all over the country, and I think the honourable gentleman will agree that it is better to make the people who use the roads pay small tolls than to introduce more taxation. One of those two things must be done—either keep the tolls or impose extra taxation. If we had no means but the Local Funds to support roads with we should soon see road-making abandoned, and the whole of the funds swallowed up in simple repairing. The case of England does not apply, because there the authorities have county rates and other means to enable them to do away with tolls and yet keep roads in repair. As I have said before, we have no such means available in India, and we must depend for our resources upon the local funds and tolls.

The Honourable RAO BAHADUR acknowledged there was much truth in what the Honourable Mr. Rogers had said; but he still felt declined to pass the Bill. With regard to the remark that there were no transit duties, he thought there were, because a large income was derived from salt duty and land revenue.

The Honourable Khan Bahadur PADAMJI PESTONJI said one great objection to the present system was that the tolls were placed too near each other. He alluded to a Government resolution that tolls should not be set nearer each other than twenty miles. This resolution was alluded to in Mr. Nairne's book published in 1872, at page 293.

Khan Bahadur thinks tolls are now placed at too short intervals

The Honourable Major-General KENNEDY said there was no Government resolution to that effect, although he thought there was one saying that tolls should be about a day's journey from each other.

The Honourable KHAN BAHADUR—A day's journey is calculated in the Government resolution to be about twenty miles.

The Honourable Major-General KENNEDY—That may be ; but there was no special distance mentioned ; and as a matter of fact tolls are now placed about a day's journey apart, sometimes they are twelve miles and sometimes twenty apart

HIS EXCELLENCY THE PRESIDENT—There are several objections to fixing twenty miles as a particular limit. I understand that no member of this Council would object to the establishment of a toll where a ferry formerly existed. Consequently I can see nothing unreasonable in charging toll upon a bridge which has been substituted for a ferry. In the same way I look upon the substitution of a really good road for a bad one, say over a severe Ghaut, as being quite as important for the convenience of traffic as the substitution of a bridge for a ferry, and this good road nobody should object to pay for. Of course a bad part of a road may not necessarily be twenty miles apart from another bad part, and this at once shows how objectionable it would be to lay down a fixed distance of twenty miles for tolls. In regard to the question raised about local funds, I may say that these are kept totally apart from the maintenance of the main roads of the country for this reason—it has always been the avowed object of Government to restrict the application of local funds to strictly local wants, and therefore you cannot look upon the local funds as available for the maintenance of main roads from district to district. In discussing this Bill therefore it will be well to keep quite distinctly before us the tolls as affecting the main roads of the country and as affecting local roads. These two have no connection whatever. It is quite true perhaps that as a matter of policy it would be desirable to abolish tolls. But then comes the question, how are the roads to be supported? No one surely is going to advocate that the roads should be allowed to go into decay, and if you abolish the tolls you will have to find some other means of supporting the roads.

The Honourable Khan Bahadur PADAMJI PESTONJI remarked that it was a pity to employ local funds upon imperial roads.

The Honourable Mr. GIBBS said he did not think that that was done.

HIS EXCELLENCY THE PRESIDENT—I think, at all events, that the Government should do everything in its power to prevent the roads falling back again into their old state, and looking to the constant demand for new roads, I certainly should not advise the abandonment of tolls on a mere matter of principle.

The Honourable Colonel ANDERSON—Those who object to tolls do not sufficiently consider the great changes which have occurred in the communications of the country during the last 30 or 35 years. Previous to that time south of Poona there were but two made roads : first, the Bhoze Ghaut from Poona to Panwel, a distance of 71 miles, at that time considered a marvel of engineering science, though hardly passable for a laden cart with its ordinary pair of cattle, and the other on the Ram Ghaut, from Belgaum to Vingorla, a distance of about 75 miles.

Colonel Anderson points out the improvements that have taken place upon roads of late years, and the difference they have made upon the trade of agriculturists

This Ghaut was for the greater part at a slope of one in five or six, and was the cause of the death of hundreds of draught cattle annually. Now the country is intersected by roads in every direction and the superabundant produce of one part is able to supply the deficiencies of another to the great benefit of both the buyer and seller. In examining some old price lists, only a few days back, I found that in 1844-5, a famine year in every part of the Deccan, jowaree was quoted on the average of the year at 15 Indian seers in the Mareh Taluka, then in Poona, now in Sholapur; while in bazaars, not more than 50 miles distant, the average price of the year was nearly a third of that amount. Difficulties of communication alone prevented the transfer of produce necessary to produce some equalization of prices. Anomalies like this are now, through improved communications, become impossible. Brinjaree bullocks were formerly the main carrying agency of the country; now carts have supplanted them. Where there were 100 carts formerly, 500 and 600 will now be found, as shown by the comparative statistics of the present time and 30 years ago; where no carts at all existed in former times they are now numerous. Tolls are doubtless disagreeable as all taxes are, but in this case there is hardly any option; doubtless the people would prefer that the Government should provide funds from the general revenue to make and keep in repair all roads, but this is impossible. Tolls must either exist or roads be left to fall into disrepair, which the warmest opponents of the toll system would hardly select as the alternative. Doubtless the frequency with which tolls occur is a source of some irritation; they often occur in open places, near no visible obstacle, and the payer does not see how many bridges over rivers or bad nullas he has passed in the last few miles without payment; he only sees that he is called on to pay at a spot where no natural obstacle has been overcome, payment at which would appear to him quite reasonable. In this respect the present system appears open to remedy, and if tolls were even doubled on large bridges, ghauts, and other great natural obstacles, and their total number reduced, the people would be more satisfied and the toll revenue be far from suffering. No man takes the farm of any toll without looking for a large profit from it; the more numerous tolls are the larger becomes the wastage in remuneration of contractors. No toll is bought for Rs 1,000 a year without the purchaser looking to clear another 1,000 by the bargain. The more the number of tolls is reduced, and the rate on each is increased, the smaller becomes the amount collected on the traffic of the country which would be diverted from the gross toll revenue into the pockets of the contractor, as the establishment required for the collection of a 4 annas cart rate would equally suffice for an 8 anna rate, which would admit of every other 4 anna toll rate being abolished. In this direction might be found an alleviation of some of the points in which the present toll system presses most heavily. Those who object to tolls should point out some practicable alternative; this has never been done, and theoretically bad as tolls may be, until a workable remedy can be found, they must be retained or present progress lost and further progress rendered impossible.

His Excellency the PRESIDENT asked if any of the honourable members objected to the second reading of the Bill

The Honourable RAO SAHEB said he was afraid that some of his previous observations had been misunderstood. Although he objected on principle to *ex post facto* laws, yet he did not object to the second reading of the Bill, because practically the Bill had been in existence for twelve years past, and the only effect of rejecting it would be to undo what had *bona fide* been done by the officers of Government during that time.

The Honourable MAHOMED ALI ROGAY said he did not object to the second reading.

The Honourable Rao Bahadur BECHERDASS AMBAIDASS said he objected to the second reading.

A note was taken of the single objection to the second reading of the Bill, and His Excellency the President declared that the Hon'ble Major-General Kennedy's motion was agreed to by a majority.

Bill read a second time and considered in detail

The Council then proceeded to consider the Bill in detail.

Mr Nacoda Mahomed Ali Rogay proposes that section 2 should be omitted, and thinks Government should pay the penalty of not legalising the collection of tolls since 1864.

The Honourable MAHOMED ALI ROGAY proposed that section 2 of the Bill should be omitted. He could not see the good of introducing the present Bill if the Council had power to extend Act XV. of 1864 to the Presidency.

The Honourable Mr. GIBBS—We have in the present Bill reduced very considerably the schedule contained in the Act of 1864.

The Honourable Major-General KENNEDY—If my honourable friend were to succeed in repealing this section we should simply have to fall back upon the Acts of the Government of India with their higher schedules.

His Excellency the PRESIDENT—The practical effect of the omission of this section would be to hold out to all who have hitherto been paying these tolls an inducement to bring actions against the toll-collectors, who were acting *bonâ fide* under the authority of Government; and unquestionably if the toll-collectors were cast in these actions, the Government would have to refund all the tolls.

The Honourable MAHOMED ALI ROGAY—I do not see why parties who have been injured should not reap the advantage of the mistake which has been made by Government.

His Excellency the PRESIDENT—Do you mean that you want to see a quantity of law-suits filed against the Government?

The Honourable MAHOMED ALI ROGAY—Yes, if Government illegally imposes tolls I think it ought to pay for the consequences.

His Excellency the PRESIDENT—You must not forget that it is the public money that will have to pay, for Government merely represents the public.

The Honourable Mr. GIBBS—To be reasonable, I suppose that the honourable member would insist that the Government of the day, when these tolls were levied, should be called to bear the responsibility; and as Sir Bartle Frere will shortly be in Bombay, perhaps it would be possible to get him to adjust the claims of the persons who have been paying the tolls illegally.

The Honourable Rao Sahab VISHVANATH NARAYAN MANDLIK said he would not vote on the section at all. He was opposed to retrospective laws on principle. such laws were opposed to the very constitution of some states. And although such may not be the statutory law of India, all such acts which sought to abridge contracts or impose *post facto* burdens on the people ought to be avoided. He could not therefore vote for the clause. But he would not vote against it; because all the officers who were acting under the vetoed Act, and the previous Acts of the Council of India, have been acting *bonâ fide* and require to be protected under the particular circumstances of this Bill.

Section 2 passed after a division

A vote was taken on the Honourable MAHOMED ALI ROGAT's motion with the following result :—

*Ayes.*

The Honourable Nacoda MAHOMED ALI ROGAT.  
The Honourable Rao Bahadur BRCHERDASS AMBAIDASS.

*Noes.*

His Excellency the Honourable SIR CHARLES STAVELEY, K.C.B.  
The Honourable A. ROGERS.  
The Honourable J. GIBBS.  
The Honourable Major-General M. K. KFN-NEDY.  
The Honourable Colonel W. C. ANDERSON.  
The Honourable Khan Bahadur PADAMJI PESTONJI.  
The Honourable DONALD GRAHAM.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK did not vote.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—I wish to propose an amendment upon section III. with reference to the tolls levied upon roads made entirely from local funds. In legislative matters I think we must, to a certain extent, go upon theory, for that is simply a rule derived from practical experience. When I see what the experience of the Bombay Government has been in this matter, I am somewhat strengthened in the course which I wish to suggest upon the present occasion. In the last general report for the Bombay Presidency there is a passage in a minute recorded by His Excellency the President to which I wish to refer. His Excellency says.—“ The following general conclusions may be drawn from the replies received from the Revenue Commissioners, Collectors, Assistants, &c., to the circular letter No. 3821, dated the 20th August :—Tolls are unpopular, more particularly with those who pay the one-anna cess and therefore consider themselves entitled to the use of the roads without further charge.”

His Excellency the PRESIDENT—That merely recites the fact that tolls were unpopular.

The Honourable RAO SAHEB—That is all I wish to point out. What we have to examine here is whether the unpopularity in this case arises from a disposition somewhat common to humanity to avoid one's own burdens and place them on the shoulders of other people, or whether it is a just unpopularity founded upon the course which has been pursued by the Government. Now, I submit that those who pay the one-anna cess upon roads have a certain right to expect improvements upon these roads for the accommodation of their traffic without being subjected to additional taxation. Perhaps the case is different in regard to imperial roads made from the general revenues of the empire over navigable rivers or over ghauts or over very bad tracts of country which but for these roads would be dangerous to carts and animals; but when we talk of the necessary improvements within the local area of districts, the means of those who pay local funds ought to be taken into consideration before tolls are imposed. These means are determined by the proceeds of the road and school tax, and it is not the absolute means of com-

munication, but the relative means of communication which should be considered by the local funds department. However correct it may appear to be, that if a man uses a road he ought to pay something for that convenience, yet when a man does already pay taxes for the purpose of making the roads, it is not reasonable to tax him over again for the same convenience—namely, by compelling him to pay another tax for using the self-same roads. I hope that the country will be still further developed by roads, but at the same time I think there is a danger in spreading taxes over too many sources, and I think it would be more conducive to the general interests of the country if we had fewer of these tolls. My position is this—that if it can be shown that a man is using a road wholly or partially constructed from imperial revenues he might be made to pay tolls, but in the case of absolute local funds roads, the one-anna cess, which he has already paid, ought to suffice. I, therefore, beg to propose that the words “wholly or partially” be inserted between the words “repaired” and “at” in line 7, and that the words in lines 8 and 9 “or from funds collected under the provisions of Bombay Act III. of 1869,” be omitted.

The Honourable Colonel ANDERSON—It is too much to expect that the local funds are a mine of wealth which can supply everything. One-third of the

Colonel Anderson contends that the Local Funds must be supplemented by tolls, because the portion of them actually applied to roads is insufficient to make and maintain roads

local funds goes to schools, and dharamsallas which people occupy free are also constructed out of them. Again, in places where there is a scarcity of drinking water the improvement of the supply is thrown upon the local funds, and this is a point of the greatest importance, for it is doubtless to this beneficial improvement of the general water-supply that the great diminution of cholera, which has taken place all over the country during the last ten or fifteen years, is due. Again, roadside trees, a great source of comfort to travellers, are planted at the expense of the local funds. When all these things are done out of the local funds I do not suppose that there is more than five pies out of the one-anna available for the improvement of roads. Now, as five pies cannot do the work of one-anna I think it is impossible to dispense with tolls.

His Excellency the PRESIDENT—Can it be considered that the portion of the one-anna cess which is expended on the roads bears any proportion to the benefits which are derived from the fact that excellent communications with good markets are now available to the agriculturists of the Presidency? Admitting that these people do pay the one-anna cess, I think before we speak of the abolition of tolls we ought to make sure whether the cess bears any proportion to the benefits which they derive from possessing good roads unknown to their ancestors, who had to be contented with a limited local market for their produce.

The Honourable Major-General KENNEDY—I think my honourable friend the Rao Sahib draws a distinction between provincial and local roads, which is not justifiable. Provincial roads are made out of revenue derived from provincial sources, and the local roads are made out of the local funds levied under local Acts. The general public pay, in the way of tolls, for the maintenance of the provincial roads, and the general public have also to pay for the maintenance of local roads. No doubt a part of the general public contributes to the one-anna cess, but I do not think my honourable friend would contend that because a man builds a house therefore he need not keep it in repair. If the people who contribute to local



funds were to build a Town Hall or a dharamsalla it would have to be repaired and maintained at the expense of the local funds; and the argument is the same when it relates to the question of the obligation of the people to maintain the roads which they have constructed.

The Honourable Colonel ANDERSON—There is another point to notice. Who actually pays these tolls? The cultivator undoubtedly pays them in the first instance, but it seems to me that the person who has actually to pay them in the long run is the consumer of the cultivator's produce.

The Honourable Mr. ROGERS—I think that the Honourable Rao Saheb's argument might hold good if the only people who use the local funds roads were the people who pay the cess; but, as a matter of fact, the general public also use the roads, and why they should get the use of the roads as a present, I cannot understand.

The Honourable Mr. GIBBS—Again it would not be fair to throw the maintenance of the roads on the shoulders of a whole district, because many people who do not keep carts would be compelled to pay for the convenience of those who actually cut up the roads with their vehicles. When you go into the subject deeper it becomes more and more difficult. I quite agree with what my honourable friend Mr Rogers has said.

The Honourable RAO SAHEB—I regret that I shall have to repeat one or two things that I have already said. The question really is, what are necessary local improvements? It may be that to cover a whole district with a network of roads might be a very necessary improvement; but the word necessary is ambiguous. I do not say that many roads are not necessary in this sense, that positively speaking they would be improvements, but we must consider all improvements relatively, i.e., having regard to the means of the people who are to be taxed for making them. And I say, further, that the means to effect such improvements should be the local funds. I am entirely distinguishing between provincial roads and imperial roads, and I do say that the case of a man who pays a tax for making a road is very different from that of a man who is using a road made simply from that fund. The objection made by the Honourable Mr. Rogers will not practically arise, because all I propose is that the general public should get the advantages for which a portion of the public has already paid by means of contributions to the local rates. If, as is hoped, revenue improves under the new survey administration, there may be a large increase in the local funds; but until there is such improvement, we ought not to carry out schemes beyond the means of people in a district. We ought to look to the capacity of the people more than we do, and in the meantime I hope that the argument that the general public will derive benefits from the roads will not be permitted to weigh against the injustice of taxing a man twice for the same thing. The Honourable Colonel Anderson asked, who pays the rates? Although this is a great economical question, I think it would not be quite satisfactory to discuss it in a Bill for the levying of tolls. It may be quite true that many of the agriculturist's charges would fall upon the consumer, but at the same time many of these mofussil tolls will fall directly upon those who use them. The poorer districts do not export in large quantities, and yet the people have to pay three or four tolls. There ought certainly to be roads, but still we must keep within the means of the people.

A vote was taken upon the Honourable RAO SAHEB'S amendment, with the following result:—

<i>Ayes</i> —2	<i>Noes</i> —7.
The Honourable Rao Saheb VISHVNATH NARAYAN MANDLIK.	His Excellency the Honourable SIR CHARLES STAVELLEY, K.C.B.
The Honourable Nacoda MAHOMED ALI ROGAY *	The Honourable A. ROGERS
	The Honourable J. GIBBS.
	The Honourable Major-General M K. KENNEDY.
	The Honourable Colonel W. C ANDERSON.
	The Honourable Khan Bahadur PADAMJI PESTONJI.
	The Honourable Rao Bahadur BECHERDASS AMBAIDASS.

The Honourable DONALD GRAHAM did not vote

The Section was agreed to.

Referring to section IV His Excellency the President thought the first part of this section might prove exceedingly vexatious, and he thought it might be amended so as to make a toll-keeper entitled to seize only as much of a person's property as would suffice to pay the toll

The Honourable Major-General KENNEDY—This section is quite in accordance with former Acts.

The Honourable Colonel ANDERSON—I think the section as it stands invests a most dangerous power in the hands of toll-keepers.

His Excellency the COMMANDER-IN-CHIEF remarked that the custom in England was simply to let a toll keeper bar the way of a person who could not pay toll

His Excellency the PRESIDENT—The people in this country have to travel such immense distances, that it would scarcely do to bar their passages. I think the section might be made to read as follows —“In case of non-payment of any such toll on demand, the officers appointed to collect the same may in the first place seize any part of the burden or load of the carriage or animal on which the toll is chargeable of sufficient value to defray the toll, or in the event of the burden or load being insufficient, such carriage or animal,” &c

The amendment was agreed to

The President remarks that in the Bill there is no penalty laid down for evasions. His Excellency the PRESIDENT remarked that he could see no provision in the Bill dealing with evasion, although this was a very common offence in all countries.

The Honourable Major-General KENNEDY thought His Excellency's objection was a good one, for a man might travel fourteen miles and then turn off and evade the toll placed on the road at the fifteenth mile.

The Honourable RAO SAHEB thought it would be exceedingly difficult to make evasion laws.

The Honourable Colonel ANDERSON concurred with the Honourable Rao Saheb.

The Honourable Mr. GIBBS mentioned that the latter part of section V. was not in the Bill introduced last year, and that it had been put in subsequently at the suggestion of the Government of India.

The Honourable Khan Bahadur PADAMJI PESTONJI said that although he would not oppose the section, still he thought that Government stores should not be exempted from payment on Local Funds roads.

The section was agreed to.

Section VIII. was amended as follows :—the words “ shall be put up in a conspicuous place near such gate or station ” were struck out, and at the end of the section these words were added after “ toll ”—“ shall be furnished by Government to the collector of tolls, and the same shall by him be kept in a conspicuous place near such gate or station.”

Alluding to section IX., His Excellency the PRESIDENT asked, what would happen if the toll-collector with whom a composition had been made should be turned out before the expiry of the year? Would the man who had compounded be made to pay over again?

The Honourable Mr. GIBBS—No; if necessary the amount would be recovered from the sureties of the toll-collectors.

No alteration was made in the section.

The Council then proceeded to the consideration of the schedule.

The Honourable Khan Bahadur PADAMJI PESTONJI thought that a palkee with eight or six bearers should not be charged more than eight annas, as not more than four bearers carry the palkee at a time. The extra bearers may be charged as foot passengers.

The Honourable Colonel ANDERSON thought that certainly the charge of 2 annas upon every palankeen, dooley, palna or tonjon with two bearers should not be continued in the schedule. Many poor people carried their sick relative in palnas, and in such a case as two sons carrying their mother between them he thought that a toll would be a hardship.

On the consideration of the schedule, Colonel Anderson proposes that conveyances carried by two persons should be exempted from tolls

His Excellency the PRESIDENT concurred.

The Honourable Major-General KENNEDY did not approve of exempting any person carrying a palkee or palna from the schedule.

The Honourable RAO SAHEB sympathised with the Honourable Colonel Anderson's views. Poor people were generally moved about by being slung in a piece of cloth between two of their friends or relatives, or were taken in a small palna carried by two bearers.

The Honourable Colonel ANDERSON said he was disposed to put the matter to the vote. He begged to propose that the last line but one of the schedule should be omitted.

The following was the result of the vote:—

*Ayes*—8

His Excellency the Honourable Sir  
CHARLES STAVELLY, K.C.B.  
The Honourable J GIBBS  
The Honourable Colonel W C ANDER-  
SON  
The Honourable Rao Sahab VISHVANATH  
NARAYAN MANDLIK  
The Honourable Nacoda MAHOMED ALI  
ROGAY  
The Honourable Khan Bahadur PA-  
DAMI PESTONJI.  
The Honourable DONALD GRAHAM  
The Honourable Rao Bahadur BECHER-  
DASS AMBAIDASS

*Noes*—2

The Honourable A ROGERS  
The Honourable Major-General M H  
KENNEDY

The Honourable Major-General KENNEDY said:—To be consistent I shall propose that a line be inserted in the schedule by which every palankeen, dooly, palna, or tonjon with two bearers shall be charged one anna

After some conversation the subject dropped

The Honourable RAO SAHEB—Regarding the item authorising the taxation on foot passengers I think the difficulties which have been discussed as bearing upon the subject in this Council might be met by saying that foot passengers should be liable to tolls only on bridges over navigable rivers or upon hill roads, and that in all such cases the special sanction of Government would be required

Rao Sahab Vishvanath Mandlik proposes that foot passengers should be liable to pay toll only on bridges or heavy ghaut roads, and even then that the tolls should be collected from them only with the approval of Government

The Honourable Major-General KENNEDY—Throughout the length and breadth of the Presidency at the present moment tolls are charged upon foot passengers only at the Matheran Ghaut

The Honourable Mr GIBBS—During all these years we have not, with the exception just pointed out, levied tolls upon foot passengers, and I cannot vote for any such amendment as the Honourable Rao Sahab suggests, because it appears to me that by so doing I should be supporting a vote of want of confidence in the Government, who surely may be trusted for the future as they have been for the past, and I see no cause for having one law for this Presidency and another for all the rest of India.

The Honourable Major-General KENNEDY said he did not object to an amendment upon the subject if it were limited to bridges and hill-roads.

The Honourable RAO SAHEB then moved that the last line of the schedule stand thus:—“On every foot passenger, with the special sanction of Government, on bridges or hill-roads, 3 pies.”

The following was the result of the vote:—

<i>Ayes</i> —8	<i>Noes</i> —1.
His Excellency the Honourable Sir CHARLES STAVELEY, K.C.B	The Honourable J. GIBBS.
The Honourable A. ROGERS.	
The Honourable Major-General M. K. KENNEDY	
The Honourable Colonel W.C. ANDERSON	
The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK	
The Honourable Nacoda MAHOMED ALI ROGAY	
The Honourable Khan Bahadur PADAMJI PENTONJI	
The Honourable Rao Bahadur BACHER- DASS AMBAIDASS	

On the suggestion of His Excellency the President the following words were added to the Schedule:—“No second toll shall be levied on the same carriage or animal returning on the same day”

Rao Saheb's motion agreed to, and the Schedule passed as amended.

The preamble and title of the Bill were agreed to, and the Bill was then 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.

Poona, }  
30th September 1875 }