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PROCEEDINGS

6.

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

1862.

1

VOLUME I.

(RE-PRINTED, WITH A TABLE OF CONTENTS AND AN INDEX)

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PROCEEDINGS  
OF THE  
LEGISLATIVE DEPARTMENT, BOMBAY.

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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 Act of Parliament 24 and 25 Victoria, Chapter 67.

BOMBAY, *Wednesday, 22nd January* 1862.

His Excellency the Honorable SIR GEORGE RUSSELL CLERK, Knight of the Most Exalted Order of the Star of India, and Knight Commander of the Most Honorable Order of the Bath, Governor and President in Council of Bombay, having, in accordance with Section 29 of the Act passed in the 24th and 25th years of Her Most Gracious Majesty, Chapter 67, appointed the following Gentlemen to be additional Members of his Council, for the purpose of making Laws and Regulations, namely —

M. R. WESTROPP, Esq., Acting Advocate General,  
W. B. TRISTRAM, Esq.,  
H. H. the NAWAB OF SAVANOR,  
RUSTOMJEE JAMSETJEE JEJEEBHAY, Esq.,  
MADHOWER VITTUL VINCHOORKUR,  
JUGONNATH SUNKERSETT, Esq.,  
SHET PREMABHAI HEMABHAI.

And His Excellency the Governor having, in accordance with the 35th Section of the said Act, summoned to the first Meeting of His Council for the purpose of making Laws and Regulations the additional Councillors so appointed, as well as the other Members of his Council:

Additional Mem-  
bers  
  
First Meeting of  
the Council, 22nd  
January 1862

There were present this day—

His Excellency the GOVERNOR,  
 His Excellency Sir W. MANSFIELD, K C.B., Commander-in-Chief,  
 The Honorable Mr. REEVES,  
 The Honorable Mr. FRERE,  
 The Honorable the ADVOCATE GENERAL,  
 The Honorable Mr. TRISTRAM,  
 The Honorable the NAWAB OF SAVANOR,  
 The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY,  
 The Honorable MADHOWROW VITTUL VINCHOORKUR,  
 The Honorable Mr. JUGONNATH SUNKERSETT,  
 The Honorable Shet PREMABHAI HEMABHAI,  
 And the SECRETARY.

Affirmations of  
 office and declara-  
 tion of allegiance  
 made by the addi-  
 tional Members

Opening address  
 of the President

The aforesaid additional Members made the necessary affirmations of office and declaration of allegiance, which were ordered to be recorded.

The PRESIDENT spoke as follows —

“ I have called a Council in order to open the Legislative Department in accordance with the Act of Parliament which restores to this Presidency the power of making its Laws and Regulations. The new form in which this Government will exercise the power consists principally in the appointment of Non-Official Members. Such Members have therefore been appointed, and have now taken their seats. I feel satisfied that the zeal which some of them have at all times manifested for the public good, and the high character borne by the others in the management of their Estates and Chiefships will ensure their undertaking these responsibilities with a due sense of their importance.

On the manner in which these duties may be performed, it will depend whether many millions of our subjects enjoy contentment and security, or lead a life of uncertainty and confusion. On the one hand, by over-legislating, you will be liable to keep the people in a state of doubt and alarm. On the other hand, by bearing in mind that none know better to govern themselves individually and parochially, you may be constantly in the course of ameliorating their condition, while safely maintaining Her Majesty's just sway over a contented people. And be assured that your Consultations will lose nothing of safe guidance, by occasionally looking for it in Native discernment.

Although your functions will be important, they need not be difficult. The several races subjected to our Laws in this Presidency, and generally throughout India, are not of a restless character, unless rendered restless by misgovernment—and, everywhere they have an innate respect for authority, whenever authority is respectable and wise.

You will remember, that you owe to those whom you represent a strict account of the fulfilment of your duties—to a people who reasonably desire your protection of their acknowledged rights, and to live in peace.

An assembly on this scale has naturally a tendency to expand, and, seeing it has pleased Her Majesty's Government to consider that the time has arrived for conferring this privilege on you, it will doubtless, in due time, be enlarged, provided that, in its early exercise, you give proofs of sound judgment and discretion in your views of British Dominion in India.

During a short rule I have endeavoured to see something of all classes I find those of our Countrymen who, in this wealthy Settlement, are engaged in commerce, enterprising and enlightened as they always are when they have fair play, and the best feeling subsisting between them and the Government. I find the Native Merchant active and prosperous, our many Native Chiefs loyal, and most grateful for the liberal and just measures adopted towards them by the present head of the Government of India, while the agricultural classes are steadily advancing from poverty to better prospects, by means of well-regulated reductions in a land tax which had been exceedingly burdensome. In these favourable circumstances, this Government was transferred to my hands by my lamented predecessor, whose unprejudiced and single-minded course of administration was such as always serves to improve British India, and to satisfy all classes of its inhabitants. With the aid of my experienced colleagues, I have sought to uphold that system. It will now devolve mainly on your counsel to preserve so satisfactory a condition of affairs in this Presidency.

I have directed the Secretary to lay before you some Bills which appear to me to require your early attention. With these, and others which individual members may propose to move, you may find your duties at present more laborious than it is probable that they will be hereafter, for there are a few of our projects of Law to consider, which there has not been time in the Legislature entrusted with them in Calcutta. These must of course come back to us. And there are some which I have not transmitted to that Council, because I foresaw that they must ultimately be disposed of here."

The President then declared the Meeting to be adjourned until Tuesday next the 28th of the present month of January

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

M J SHAW STEWART,

Acting Secretary to Government.

*Bombay Castle, 22nd January 1862*

**PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.**

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

*Tuesday, 28th January 1862.*

The Council of the Governor of Bombay, for the purpose of making Laws and Regulations, met according to adjournment.

**PRESENT :**

The Honorable Mr. REEVES,  
 The Honorable Mr. FRERE,  
 The Honorable Mr. TRISTRAM,  
 The Honorable the NAWAB OF SAVANOR,  
 The Honorable Mr. JUGONNATH SUNKERSETI,  
 The Honorable Mr. RUSTOMJEE JAMSETJEE JIJEEBHOY,  
 The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR,  
 And the SECRETARY.

The Honorable Mr. REEVES being the Senior Ordinary Member present, took the chair in the absence of the Governor.

Bills in preparation by Government

The Honorable Mr. REEVES said, that he regretted that Government had not as yet been able to prepare any Bills for submission to the Council. The Rules require that each Bill shall be published for at least a week before it is discussed. The time of the Government has of late been so entirely occupied with the introduction of the various measures of general legislation passed by the Legislative Council of India, that it was found impossible to have any Bills in such a forward state as to be ready for discussion at this Meeting. He and his Colleagues, however, had not neglected to give their attention to their new duties, and they hoped to have Bills on the following subjects ready for immediate publication, after which they would be brought before the Council.

Bill for subjecting all Lands ceded by His Highness the Guicowar for the use of Railways to the Laws and Regulations of the Presidency of Bombay

I A Bill for the purpose of subjecting to the Laws and Regulations of this Presidency all lands ceded by His Highness the Guicowar, for the use of our Railways passing through his Dominions.

2. A Bill for repealing Regulation III of 1829 and Act XV of 1851, and re-enacting in a single law the useful provisions of those laws, with the view of meeting the provisions of the Penal Code and Code of Criminal Procedure, and securing, if possible, the important object of suppressing the production in the market of Cotton in an unclean state, and checking the practice of packing Cotton falsely.

Bill for the suppression of Cotton frauds.

3. A Bill for empowering Municipal Commissioners, under Act XXVI of 1850, to expend Municipal Funds on Dispensaries and Schools and other suitable objects

Bill for empowering Municipal Commissioners, under Act XXVI of 1850, to expend Municipal Funds on Dispensaries, Schools and other suitable objects

4. A Bill for the purpose of authorising Magistrates of the Town and Island of Bombay to appropriate fines imposed and realised by them for the maintenance of Reformatories. This, as well as such additions as may be thought necessary, it is contemplated to produce as an amendment to the Municipal Act.

Bill to authorise the Magistrates of Bombay to appropriate fines for the maintenance of Reformatories

In order to give time for these Bills being duly published before the Council sits again, he would adjourn the Council till Saturday the 8th proximo, at 1 P. M.

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

M. J. SHAW STEWART,  
Acting Secretary to Government

*Bombay Castle, 28th January 1862.*

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## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

*Bombay, Saturday, 8th February 1862.*

The Council of the Governor of Bombay for the purpose of making Laws and Regulations met according to adjournment.

*PRESENT :*

The Honorable Mr. REEVES,  
 The Honorable Mr. FRERE,  
 The Honorable Mr. WESTROPP,  
 The Honorable Mr. TRISTRAM,  
 The Honorable the NAWAB of SAVANOR,  
 The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHAY,  
 The Honorable Mr. JUGONNATH SUNKERSETT,  
 The Honorable Mr. PREMABHAI HEMABHAI,  
 And the SECRETARY.

The Honorable Mr. REEVES, being the Senior Ordinary Member present, presided in the absence of the Governor.

Letter dated  
 13th Jan 1862  
 from the Secretary  
 to the Government  
 of India in the  
 Home Department,  
 respecting the  
 proposed rules  
 of the Council,  
 read and discussed

Under direction of the President, the Secretary read a letter, No. 214, dated the 13th January last, from the Secretary to the Government of India in the Home Department, in which the Government of India desired that the Rules for admission of Strangers should be passed in accordance with the 37th Section of the Indian Councils' Act, and not as separate rules for the purpose.

Further, expressing the great doubt of the Governor General in Council as to whether the revised Rules 11 to 15 provide sufficiently for the full deliberation and discussion on measures such as the Secretary of State contemplates, and such as is essential to good legislation; and whether the incidental allusion to Select Committees in the revised Rule 23 is enough to signify that, as an ordinary, if not an invariable Rule, Bills will be referred to a Select Committee before they are considered in detail by the Council and passed.

The Honorable Mr. FRERE thought this was hardly the time to consider this letter, and that it was matter for his Excellency the Governor, under whose authority the Rules had been made. On reference, however, to the Act of Parliament, the Honorable Member perceived that the Council had power to make alterations in the Rules, subject to the Governor's assent, and withdrew his objection.

The Honorable Mr. WESTROPP recommended that every Bill should be read a first and second time, and then referred to a Select Committee, and on receipt of their report, read a third time and passed.

The PRESIDENT proposed that the present Rules should be tried, and that on the occurrence of any practical difficulty, the necessary amendments should be recommended to the Governor for his approval.

Mr. WESTROPP urged that there was still a difficulty, and asked how the Bills now before Council were to be treated.

Mr. FRERE suggested that they should be read to-day for the first time.

Mr WESTROPP said that he thought the leave of the Council should be asked before any Bill be brought forward

It was then agreed that the discussion of the letter from the Government of India should stand over for the present, and that the Council should proceed to other business

Discussion of the Letter postponed

The Honorable Mr. FRERE observed that there are numerous precedents for bringing lands under Regulations, and proposed (the preamble and) the Bill for subjecting to the Regulations the lands ceded by the Guicowar for the Railway, drawn up in accordance with the usual form

Bill for subjecting to the Regulations the Lands ceded by the Guicowar for the Railway, considered

The Honorable Mr. WESTROPP said it does not appear to what Zillah these lands are to be attached, or what Officers should have jurisdiction over them. If they are not to be formed into a separate Zillah, which he presumed the Government do not intend, he considered it would be better to define this point but he approved of the Bill in other respects

Mr FRERE would therefore add these words to the Bill, "and to be annexed to the Zillah of Surat" The Railway itself would facilitate any prisoners apprehended on the ceded lands being brought to Surat for trial

Mr WESTROPP thought it would be better to let this Bill stand over for further consideration, and that the Honorable proposer should be asked to perfect the Bill before the next Meeting of Council

The PRESIDENT thought it should be either passed or referred to a Select Committee.

Mr FRERE thought the further consideration of the Bill should be adjourned to the next meeting, when he promised to bring it forward with the requisite amendments.

Further consideration of the Bill adjourned to the next meeting

*Agreed to*

The Honorable Mr. REEVES said he thought it very desirable that the Bill regarding Juvenile Reformatories should be made over to a Committee for careful examination

Bill regarding Juvenile Reformatories considered

The Honorable Mr FRERE said that this was a very complicated question, as the Bill not only provides for the confinement of Juvenile Offenders, but

mulets the Municipal Commissioners of Bombay of a part of their revenue. It should therefore be referred to a Select Committee.

The Honorable Mr. TRISTRAM asked why this Bill should not have general application in the Mofussil, where benevolent individuals might be found ready to found reformatories like the "David Sassoon Institution." He would suggest that a wider scope be given to the Bill.

The Honorable Mr. JUGONNATH SUNKERSETT doubted the policy of sending a Juvenile Offender to prison with hard labour when he escaped from the reformatory. Confinement in a Jail would demoralize him, whereas suitable punishment administered within the walls of the reformatory would have a deterrent effect, Magistrates should therefore have discretionary power as to the punishment to be given to those who escape.

The Honorable Mr. WESTROPP remarked that the Honorable Mr. TRISTRAM'S objection is met by Act XXV. of 1861, Section 433 (Criminal Procedure Act), which is now the law throughout the Mofussil

Referred to a  
Select Committee

The Honorable the PRESIDENT then proposed,—

The Honorable Mr. FRERE,

The Honorable Mr. WESTROPP,

The Honorable Mr. JUGONNATH SUNKERSETT,

and

The Honorable the NAWAB of SAVANOOR, to be a select Committee to consider this Bill.

*Agreed to.*

Bill for extend-  
ing the powers of  
Municipal Com-  
missioners ap-  
pointed under Act  
XXVI of 1850,  
considered

The Honorable Mr. REEVES observed that the remaining Bill is one to provide a remedy for what has been long considered a defect in the Municipal Act.

The Honorable Mr. WESTROPP remarked that an entirely new principle is introduced, *i. e.* of making Education a charge on Municipal Funds. This he believed to be quite unprecedented, and contrary to the practice in England. It is, indeed, a project to which he would object entirely, were it not for the provision in the Clause of the Bill by which the assent of Government, was required to all such disbursements.

The Honorable Mr. TRISTRAM observed that this Bill would enable the Municipal Commissioners to introduce a series of schools of different religious denominations, he therefore wished that it should be considered in full Council, and that some Rules should be laid down to ensure the due fulfilment of its provisions. He considered that it was necessary that such schools



should be open to all classes and all religions, and that they should be under the control of Government Educational Department

Mr. WESTROPP understood that Dispensaries in England were managed by Grand Juries, and not by Municipal Corporations, but he had no objection to the Municipal Funds in India being made available for the support of Dispensaries

The PRESIDENT thought as Municipal Commissioners were properly and carefully selected so as to represent different religions, there was no fear of any ill results coming from a preponderance of any one creed, he would, however, propose to nominate the following Select Committee to consider the Bill —

Referred to a  
Select Committee

The Honorable Mr REEVES,  
The Honorable Mr. TRISTRAM,  
The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHAY,  
and  
The Honorable Mr. PREMABHAI HEMABHAI.

*Agreed to*

With reference to the letter of the Government of India, Mr WESTROPP thought it would now be admitted to be advisable that there should be some more precise Rules laid down, so that the Honorable Members might be aware of the stage to which any Bill had advanced

Further discus-  
sion on the letter  
from the Secretary  
to the Government  
of India respecting  
the proposed Rules  
of the Council

Mr. FRERE would ask Mr. WESTROPP to bring forward at next meeting any amendments which he may consider to be called for

Mr WESTROPP said that he would agree either to bring it forward himself, or that the Governor should be asked to make such alterations as he may think required.

Mr REEVES thought the best way would be to consider the subject out of Council, and to settle some amendments at next meeting, which would then be submitted for His Excellency the Governor's assent

*Agreed to*

The PRESIDENT adjourned the Council till Saturday, the 15th, at 1 P.M.

*By order of His Excellency the Governor of Bombay in Council,*  
M. J. SHAW STEWART,  
Acting Secretary to Government.

*Bombay Castle, 8th February 1862*

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

*Saturday, 15th February 1862.*

The Council of the Governor of Bombay met for the purpose of making Laws and Regulations according to adjournment.

### *PRESENT :*

The Honorable Mr. REEVES,  
 The Honorable Mr. FRERE,  
 The Honorable Mr. WESTROPP.  
 The Honorable Mr. TRISTRAM,  
 The Honorable the NAWAB OF SAVANOR,  
 The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY,  
 The Honorable Mr. JUGONNATH SUNKERSETT,  
 The Honorable Mr. PREMABHAI HEMABHAI,  
 And the SECRETARY.

Proposed Rules  
of the Council.

The Honorable Mr. REEVES, being the Senior Ordinary Member of Council present, presided in the absence of the Governor.

The Honorable Mr. REEVES, with reference to the subject which stands first on the paper, asked the Honorable Mr. WESTROPP to favour the Council with his promised observations on the letter from the Government of India referring to the Rules of the Council.

The Honorable Mr. WESTROPP said the Secretary had furnished him with copies of the rules of the former Legislative Council, as well as the rules enacted by the Governor General for the business of his Council when assembled for the purpose of making laws and regulations. He considered that the rules of the late Council were too intricate for adoption here, but that the rules of the present Council of the Governor General would answer well. He had no doubt that the appointment of Select Committees to consider all Bills introduced into the Council was necessary, and he would propose that any Honorable Member, desirous to introduce a Bill, should apply for leave in the first instance, stating its objects and the necessity for its

being passed. He might at the same time propose that the Bill should be read a first time. The Bill should then be discussed in Council, and if leave be granted to introduce it, and if it be read a first time, the Bill should be referred to a Select Committee, and printed and published. The Committee should be directed to report on it after a certain date, to be fixed according to the nature of the Bill, a longer or shorter period being allotted as may be considered necessary. The period should not always be limited to the present Session, but might be fixed after the close of the Session, or at some time in the next Session, so as to give time to the public to express an opinion.

In the case of Bills of less importance, the Committee's report might be made during the sitting of Council.

If measures are passed with too great rapidity, he feared that they will not stand the test of practice in the Courts of Justice, and he was therefore anxious that no undue haste should take place in passing any Bill.

Before a Bill is read a second time it should again be discussed, and if necessary, amended in a Committee of the whole Council, without any recommittal to a special Committee, and on being twice read it should be passed by the Council and entrusted to an Honorable Member of the Executive Council for the purpose of being submitted to His Excellency the Governor for his assent.

This plan he proposed was in entire accordance with the rules for the Council of the Governor General, and he would therefore suggest that those rules beginning at No. 14 and as far as No. 27, should be adopted by this Council.

The Honorable Mr. REEVES thought that Bills introduced by Government should be brought forward without going through the form of requiring the leave of the Council, but a Bill originated by any individual member should not be introduced without the leave of Council. With this exception he approved of Mr Westropp's propositions, and would order the Secretary to prepare a draft of Rules in accordance therewith.

The Honorable Mr. WESTROPP doubted the necessity of giving Government any preference in this matter; but he expressed his willingness, with the Secretary's assistance, to prepare a draft of Rules for consideration at next meeting.

A Draft of Rules to be prepared for consideration at next meeting

*Agreed to.*

The Honorable Mr. FRERE stated that he had altered and amended the Bill for bringing under the Regulations and Acts certain lands ceded by His Highness the Guicowar for Railway purposes, which he proceeded to read as amended.

Bill for bringing under the regulations and Acts certain Lands ceded by His Highness the Guicowar for Railway purposes as amended by W E. Frere.

*A Bill for bringing under the Regulations and Acts certain Lands ceded by His Highness the Guicowar for Railway purposes.*

WHEREAS HIS Highness the Guicowar has ceded to the Government of India certain lands for the construction of a Railway through his Territories, and it is necessary that those lands should be annexed to the Presidency of Bombay and made subject to the Laws and Regulations of that Presidency, it is enacted as follows:—

1 All such parts of Villages mentioned in the Schedule annexed to this Act as have been delivered over by His Highness the Guicowar to the Government of India for the construction of the Bombay, Baroda, and Central India Railway shall, from and after the passing of this Act, form part of the Zillah of Surat, and be subject to the Regulations and Acts which are or shall be in force within the Territories subject to the Presidency of Bombay

SCHEDULE.

*Baroda Purgunnah.*

1 Hulderwa.	17 Maritha.
2 Tosrod.	18 Manaja
3 Wullun.	19 Wursur (Inamee).
4 Dethan (Inamee).	20 Mazulpoor (Inamee)
5 Lakodra.	21 Nagurwarra.
6 Wurwa.	22 Akota.
7 Meeagaum.	23 Jetulpoor
8 Kurjun.	24 Gorwa.
9 Kundaree	25 Kuodia.
10 Kairda	26 Oondera.
11 Surar (Inamee).	27 Bajwa.
12 Kassipoora.	28 Kurchia
13 Etola.	29 Runnolee.
14 Wursula.	30 Puddumla.
15 Wurnama	31 Nundesree.
16 Dulleepoor	32 Fazulpoor (up the river Mahee).

*Surat Attawsee Purgunnah.*

33 Sukhpoor-oorf Rond, Purgunnah Gullet	42 Morwar, Purgunnah Telaree.
34 Pellotha, Purgunnah Wesranee.	43 Chinum, ditto ditto.
35 Choowacha, ditto ditto	44 Tuvree. ditto ditto.
36 Koosoomha ditto ditto	45 Nowsaree Kusha.
37 Tursalee ditto ditto	46 Sagura Purgunnah Nowsaree (Inamee).
38 Hatoorun ditto ditto	47 Kudolee, ditto ditto
39 Wurrudla ditto ditto	48 Danoda, Purgunnah Gundavee
40 Murolee Kusha.	49 Billimora, ditto ditto.
41 Posra, Purgunnah Morolee.	50 Desra, ditto ditto.

The Honorable Member proposed that the Bill, as amended, should now be printed, and that it should be considered at the next meeting of Council.

The Honorable Mr. WESTROPP observed that the preamble of the Bill says, that the cession has been made to the Government of India and not to the Government of Bombay,—it may therefore be a question how far we have power to legislate for these lands.

The Honorable Mr. FRENE observed, that at the time this cession was made, the political relations with His Highness the Guicowar were under the Government of India, and that they have since been replaced under the Government of Bombay. He thought, therefore, that as the Bill could not become law till approved by the Governor General in Council, the objection taken by the honorable and learned Member would have but little force.

The Bill, as amended by the Honorable Mr. FRENE, was therefore ordered to be printed.

Ordered to be printed.

The Honorable Mr. REEVES proposed that the Secretary shall read the amended Bill for extending the powers of Municipal Commissioners, appointed under Act XXVI. of 1850, which has been submitted by the Select Committee.

Bill for extending the powers of Municipal Commissioners appointed under Act XXVI of 1850 as amended by the Select Committee

The Secretary read the Bill accordingly :—

“ WHEREAS by Act XXVI. of 1850 it was enacted that the Taxes raised from the inhabitants of any Town or Suburb under the said Act should be applied to the making, repairing, cleaning, lighting, or watching, any public streets, roads, drains, or tanks, or to the prevention of nuisances, or for improving the said Town or Suburb in any other manner ;

AND WHEREAS it is expedient that, in addition to the above purposes, the Commissioners appointed for putting the said Act in force should be authorised to apply the said Taxes to the construction and support of Dispensaries, Ho-pitals, Schools, and other similar works of utility to the inhabitants of the said Town or Suburb ;

AND WHEREAS it is also expedient that the Governor in Council should have power to enforce the right and just appropriation of the Taxes raised under the said Act for the benefit of the Community paying the same ,

It is hereby enacted that the Taxes raised under Act XXVI. of 1850 are and shall be applicable to the construction, support, and maintenance of any Hospital, Dispensary, School, or similar work of public utility ; and it

shall be competent to the Commissioners appointed under the said Act to expend the said Taxes to the extent of not more than 25 per cent. of the annual revenues of the Municipality for the purpose of such last mentioned works, with the approval of the Governor in Council.

And it is further enacted that, whenever it shall have been ascertained by the Governor in Council, through the Commissioner of Police or Magistrate, and other person or persons appointed by the Governor in Council to inquire and report, that the Commissioners appointed under the said Act in any locality have neglected any necessary work, act, or duty, it shall be lawful for the Governor in Council to issue an order to the said Commissioners to execute such work, act or duty; and if that order shall not be obeyed within one week from the date of its issue, it shall further be lawful for the Governor in Council to order the Commissioner of Police, or the Magistrate, to execute the said necessary work, act, or duty, and to recover the expense thereof from the Municipal Funds; and in failure of immediate payment of the said expenses by the Municipal Commissioners, it shall be lawful for the Governor in Council to make the said Commissioners, collectively and individually, personally responsible for payment of such expenses, in the manner laid down in Section 9 of the said Act, as for money due to, and at the suit of Her Majesty's Secretary of State for India in Council."

The Honorable Mr. REEVES said that he would be inclined to omit the words "act or duty" in the last Section: he thought the word "work" would be sufficient, but he would leave his point for discussion at the next meeting. In the mean time he proposed that the Bill should be printed and circulated, and that its further consideration should be postponed till the next meeting.

Ordered to be printed and circulated. Further consideration postponed till next meeting.

*Agreed to.*

The Honorable Mr. REEVES observed that the next Bill which he would submit, was one to amend Act XI. of 1843 by Section 4, of which the approval of Government was necessary for certain appointments to Hereditary Offices. This has been found to be very inconvenient, as the Local officers are well acquainted with the circumstances of each case, and able to dispose of them: it has resulted in a long list of all such appointments being sent up at the end of each year for the formal approval of Government, and this approval is granted as a matter of course, as there are no data before Government whereon to form a disapproval.

Bill to amend Act XI of 1843 introduced.

This Bill was read by the Secretary:—

"WHEREAS it is desirable that the Government of Bombay should be empowered to depute authority to the Revenue and Police Commissioners of

sanctioning the term for which a sharer in a Wuttun nominated under Section 4 of Act XI. of 1843 shall hold office, and of approving of selections made by the Collector or Controlling Officer under the same Section ;

It is hereby enacted that the words " or *Revenue Commissioner when authorised by Government*" shall be inserted after the words " with the sanction of the Governor in Council " in Section 4, Act XI of 1843, and that the words " or *Revenue Commissioner when authorised by Government* " shall be added after the words " to the approval of the Governor in Council " at the end of the said Section, and that the words so inserted shall be taken as part of the said fourth Section of Act XI. of 1843."

It was ordered that it should be printed and circulated to the Honorable Members and considered at the next meeting.

Ordered to be printed, circulated, and considered at next meeting

*Agreed to.*

The Honorable Mr. FRERE said that he had to introduce a Bill for extending the jurisdiction of the Native Subordinate Civil Courts to the same as that exercised by similar Courts on the other side of India.

Bill for extending the jurisdiction of the Native subordinate Civil Courts, to the same as that exercised by similar Courts on the other side of India, introduced.

The Bill was read by the Secretary —

" WHEREAS it is deemed expedient to enlarge the Appellate Jurisdiction of Principal Sudder Ameens, to lessen the pecuniary jurisdiction of Sudder Ameens and Moonsiffs, and to invest Moonsiffs with a final jurisdiction in certain cases : It is therefore enacted as follows —

I. In extension of the provisions of Regulation XVIII. of 1831, Section 3, Clause 1, it shall be lawful for the Zillah Judge to refer for trial appeals from original decisions passed by Sudder Ameens or Moonsiffs in any District of the Bombay Presidency, to the Principal Sudder Ameen of such District, without restriction as to the amount in dispute

II. In modification of Clause 2, Section 3, of the aforesaid Regulation, it is hereby provided that Sudder Ameens shall be authorised to try suits to the amount of Rs. 1,000 only, and Moonsiffs to the amount of Rs. 300 only.

III. In all suits of the nature described in Act XLII. of 1860, Section 3, in which the debt, damage, or demand does not exceed in amount or value Rs. 20, the decisions and orders of the Moonsiff trying the same shall be final."

It was ordered to be printed and circulated and considered at next meeting.

Ordered to be printed, circulated, and considered at next meeting.

*Agreed to.*

Proposed hour  
of meeting of the  
Council.

The Honorable Mr. TRISTRAM referred to the Rules of the Council, and thought that 11 o'clock A.M. should be the hour of meeting instead of 1 o'clock P.M.

The Honorable Mr. JUGONNATH SUNKRSETT thought that 1 o'clock would be more convenient to the majority of the Members.

The Honorable Mr. REEVES informed the Council that His Excellency the Governor is opposed to the alteration of the hour of meeting to 1 o'clock, and that His Excellency thought the hour of meeting should be at 11.

The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR considered that long as the rule stands as it is, the Council should meet at 11, and that no other hour for meeting should be fixed until the rule be altered.

The Honorable PRESIDENT then adjourned the meeting till Saturday, 2nd instant, at 11 A.M.

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

M. J. SHAW STEWART,

Acting Secretary to Government.

*Bombay Castle, 15th February 1862.*

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## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

*Saturday, 22nd February 1862.*

The Council of the Governor of Bombay for the purpose of making Laws and Regulations met according to adjournment.



*PRESENT.*

The Honorable Mr. FRERE,  
 The Honorable Mr. WESTROPP,  
 The Honorable Mr. TRISTRAM,  
 The Honorable the NAWAB OF SAVANOR,  
 The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEBHOY,  
 The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR,  
 The Honorable Mr. JUGONNATH SUNKERSETT,  
 The Honorable Mr. PREMABHAI HEMABHAI,  
 and the Secretary and DEPUTY SECRETARY

The Honorable Mr. FRERE being the only ordinary Member of Council present, presided in the absence of the Governor

The PRESIDENT informed the Council that His Excellency the Governor in Council had been pleased to appoint Mr L. H. Bayley, Deputy Secretary to the Government of Bombay in the Legislative Department

Mr L H Bayley having been appointed Deputy Secretary to Government in the Legislative Department, took the usual oath.

Mr BAYLEY took the usual oath

The PRESIDENT said that the first subject for the consideration of the Council was to consider further the letter from the Government of India, No 214, dated the 13th January, desiring certain amendments to be made in the Rules of the Council

Letter dated 13th Jan 1862 from the Government of India, further considered.

Mr WESTROPP stated he had prepared new Rules, that among other provisions he proposed that every Bill when read a first time should be referred to a Select Committee, and that the Committee might report during the interval between the Sessions; but, as he would suggest that the Rules should be printed and circulated, it would be unnecessary to state the provisions in detail on the present occasion

New Rules

The PRESIDENT proposed that the Rules be printed and circulated

Ordered to be printed and circulated

*Agreed to.*

The PRESIDENT stated that they were now to consider a "Bill for bringing under the Regulations and Acts certain lands ceded by His Highness the Guicowar for Railway purposes," and he moved that the Bill be read a second time.

Bill for bringing under the Regulations and Acts certain lands ceded by His Highness the Guicowar for Railway purposes, second Reading

The NAWAB OF SAVANOR stated that, in his opinion, the Council should not legislate on the subject of Railroads piecemeal. That there should be one general Act to bring under the Laws all lands that had been or might be ceded by Independent Chiefs or Jageerdars.

The PRESIDENT supported the necessity for the Bill in its present shape. Mr. WESTROPP did the same.

Mr. JUGONNATH SUNKERSETT saw no objection to the Bill.

Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY agreed to the Bill.

Amendment proposed by Mr. Premabhai Hemabhai

Mr. PREMABHAI HEMABHAI moved, as an amendment, that the villages mentioned in the Schedule, and numbered from 23 to 32, both inclusive be annexed to the Ahmedabad Zillah, to which they were adjacent, and the rest to the Surat Zillah.

Mr. FRERE explained that, if the Resident at Baroda was appointed a Magistrate, he could try offences committed in the neighbourhood of Baroda, so that few cases would be sent either to Ahmedabad or Surat; and that it was advisable, to prevent any question of jurisdiction, that all the lands should be annexed to one Zillah

Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY stated he was in favour of the amendment.

Negatived

On the amendment being put to the vote, there being two in favour of the amendment, and five against it, the amendment was lost.

The Bill was read by the Deputy Secretary a second time, and passed.

Bill read a second time and passed.

Bill for extending the powers of Municipal Commissioners appointed under Act XXVI of 1850, considered

The PRESIDENT stated that the next subject for consideration was a " Bill for extending the powers of Municipal Commissioners appointed under Act XXVI. of 1850 "

The DEPUTY SECRETARY read the Bill.

Mr. TRISTRAM said that the Bill was brought forward by Mr. Reeves who was unable to attend to-day in consequence of illness.

Mr. TRISTRAM mentioned some of the provisions of the Bill, and argued in their favour. There was recently a case at Poona which illustrated his remarks, and proved the necessity for some such provisions as are made in this Bill. He concluded by moving that the Bill be read a second time.

Mr. WESTROPP thought the Bill ought not to pass in its present form. It gave too great a latitude to Government. He agreed in thinking that, in the case of any dereliction of duty on the part of the Municipal Commissioners in respect to sanitary arrangements, power should be given to Government to enforce the performance of the Act; but that that power should only be allowed to Government in the cases of overruling necessity.

He called attention to the proviso at the end of the 2nd Section, and thought it preposterous to make the Commissioners individually and personally responsible, because they happened to differ in opinion from the Government of the day, on the other hand, the 9th Section of Act XXVI. of 1850 was a perfectly fair one, because, under it, a penalty could only be inflicted where there was *mala fides*.

He thought the words in the 2nd Section "other similar works of utility" ambiguous. He proposed that the Schools, &c should be under the control of Government, and that unless two-thirds of the members of the whole body of Municipal Commissioners agreed, and not merely a majority of those members present at a meeting, no expenditure should be allowed. He concluded by proposing that the words "other similar works of utility" be struck out wherever they occurred in the preamble or Bill.

Mr. JUGONNATH SUNKERSETT asked whether the Act would sanction support being given to Dispensaries, Hospitals, and Schools already in existence out of the taxes raised under the Act.

Mr. WESTROPP said that as the words were "to apply the said taxes to the construction and support," and not "construction or support," the Act would only apply to Dispensaries, &c. hereafter to be erected.

It was then put to the vote that the words "and other similar works of utility to the inhabitants of," in the 2nd Clause of the preamble, and the words "or similar works of utility," in the 4th Clause of the preamble, be struck out.

Amendments  
carried

*Carried unanimously*

Mr. WESTROPP proposed that the word "and" be inserted between the words "Hospitals" and "Schools" in the 2nd Clause of the preamble, and the word "in" before the words "the said Town and Suburb" in the last line of that Clause.

*Carried unanimously*

Mr. WESTROPP proposed that the words "in certain cases" be inserted in the second line of the 3rd Clause of the preamble between the words "should" and "have."

*Carried unanimously*

Mr. WESTROPP then proposed the following amendments in the 1st Clause of the Bill.—

That the word "or" be inserted between the words "Dispensary" in the fourth line, and "School" in the fifth line, and that the words following the word "School" be left out, and the following inserted.—"If such application be adopted by a majority consisting of two-thirds of the Members of the whole body of the Municipal Commissioners of the Town or Suburb provided always, that it shall not be competent to the said Commissioners to expend annually the said taxes to an extent exceeding 25 per cent. of the annual revenues of the Municipality for the purposes last aforesaid, or to extend any portion thereof for such purposes without the approval of the Governor in Council."

The above amendments were put, and *carried unanimously*

Mr. WESTROPP proposed the following amendments in the 2nd Section  
\* of the Bill —

That the words “ necessary ” and “ Act ” be omitted wherever they occur in this Section, and that after the word “ duty ” in the ninth line the following be inserted, “ falling within the scope of this Act or of Act XXVI. of 1850, and indispensable in the opinion of the Governor in Council for the public health or safety. ”

That between the words “ or ” and “ duty ” in the twelfth line, and between the same words in the 17th line, the words “ perform the said ” be inserted.

The amendments were put, and *carried unanimously*.

Mr. WESTROPP then proposed the following amendments .—

To insert the words “ out of the said Municipal Funds ” between the words “ Municipal Commissioners ” and “ it ” in the 21st line, and to strike out all that follows the word “ to ” in the 22nd line of the same Section, and to substitute the following, “ recover the amount thereof by suit in the Civil Court or Courts having jurisdiction in the said Town or Suburb, and the costs of the said suit from the said Municipal Commissioners or any one of them, and the said Municipal Commissioners may, out of the accruing municipal rates, reimburse themselves in any sum or sums which they or any one of them may be compelled to pay to the Governor in Council for the expenses of the execution of such work or performance of such duty, but not the costs of any such suit as aforesaid ; and the said suit may be instituted in the name of the Secretary of State for India in Council, and no Municipal Commissioner shall be exempt from responsibility in such suit by reason of his having resigned his appointment after the order of the Governor in Council for execution of the work or performance of the duty was issued to the said Commissioners. ”

The amendments were put, and *carried unanimously*.

Mr WESTROPP then moved that the Bill, as amended, be reprinted, and circulated to the Council, and be reconsidered at their next meeting .

*Agreed to.*

Bill as amended ordered to be reprinted, circulated and reconsidered at the next meeting

Bill to amend Act XI of 1843 Referred to a Select Committee

The PRESIDENT said the next subject was to consider a “ Bill to amend Act XI. of 1843. ” The Bill had been read at the last meeting, and he proposed that it now be referred to a Select Committee, consisting of Mr. Reeves and Mr. Madhowrow Vittul Vinchoorkur, to report on it at the next meeting

*Agreed to*

The PRESIDENT then proposed that the next subject for consideration, a “ Bill for extending the jurisdiction of the native subordinate Civil Courts to the same as that exercised by similar Courts on the other side of India,” which had also been read at the last meeting, be referred to a Select Committee

Bill for extending the jurisdiction of the Native subordinate Civil Courts to the same as that exercised by similar Courts on the other side of India Referred to a Select Committee

Mr JUGONNATH SUNKERSETT moved that Mr. Frere, Mr Westropp, and Mr Madhowrow Vittul Vinchoorkur form the Committee, and to report at the next meeting.

*Agreed to.*

The PRESIDENT said the next subject for consideration was a “ Bill for regulating the establishment of Markets,” brought in by Mr. Reeves He moved it to be read a first time.

Bill for regulating the establishment of Markets Read a first time

The Deputy Secretary read the Bill.

*A Bill for Regulating the Establishment of Markets*

WHEREAS the establishment of new Markets in the neighbourhood of places where Markets have been previously established leads to disputes between the owners of the lands on which such new and previously established Markets are held, and such disputes not unfrequently occasion breaches of the peace, and serious inconvenience to the frequenters of such Markets, it is enacted as follows —

I. After the passing of this Act no person shall establish a new Market, without permission, in writing, from the Magistrate of the District. If any person shall attempt to establish a new Market without such licence, he shall, on conviction by the Magistrate, be subject to a fine not exceeding two hundred Rupees.

II. When any person desires to establish a new Market, he shall make application in writing to the Magistrate The application shall specify the name of the place at which it is proposed to establish such new Market; the days on which it is to be held; the name of the place where the nearest existing Market is held, and the days on which it is held; the distance, in English miles, between the two places, and the reasons of the applicant for desiring to establish the new Market.

III. On receipt of the application the Magistrate shall issue a proclamation, stating the desire of the applicant to establish a Market at the place named by him, and the days on which it is proposed to be held, and calling upon any person who may have any objection to the establishment of the Market to state his objection in writing within six weeks from the date of the Proclamation The Proclamation shall be affixed in a conspicuous place in the Village or Town in or near to which it is proposed that the new Market

Preamble

No new Market to be established without permission of Magistrate

Application for permission

Issue of Proclamation and Notice

shall be held; and a copy of the same shall be affixed at the Police Station within the jurisdiction of which the Village or Town is situate, and in the Court of the Magistrate. If it shall appear that any existing Market is held within a distance of four miles from the place where it is proposed that the new Market shall be established, the Magistrate shall cause a Notice to the effect of the Proclamation to be served upon the owner of the land where such existing Market is held. The Proclamation and Notice (if any) shall be issued and served at the expense of the applicant.

IV. If, within the time specified in the Proclamation and Notice (if any) no objection is preferred to the establishment of the proposed Market, the Magistrate shall pass an order permitting it to be established. If, within the time specified, any objection is preferred, the Magistrate shall inquire into the objection, and pass such order as may appear proper in the circumstances of the case.

V. If within six months from the passing of this Act, any objection shall be preferred to the Magistrate in respect of any Market which has been newly established within a period of two years before the passing of this Act, the Magistrate shall inquire into the objection, and, if it shall appear that such new Market has been established within a distance of four miles from any previously existing Market, and that the establishment of the new Market has been the cause of disturbances or other inconvenience to the people of the neighbourhood, the Magistrate may, if he think necessary, change the days upon which such new Market is held, or, at his discretion, order that it be discontinued.

VI. Every order passed by a Magistrate under this Act shall be open to appeal to the Commissioner of Police, and the order of the Commissioner, subject to the control of the local Government, shall be final.

VII. Every person who shall contravene any order duly passed under this Act, shall be liable to a fine not exceeding two hundred Rupees.

VIII. All the provisions of this Act relative to the establishment of new Markets shall be applicable also to the establishment of new fairs.

Referred to a  
Select Committee.

The PRESIDENT moved that the Bill be referred to a Select Committee, consisting of Mr. Reeves, Mr. Jugōnnath Sunkersett, and the Nawab of Savanoor, to report at the next meeting but one.

reed to.

The PRESIDENT moved that a "Bill for the preservation of the Bhagdaree Tenure" be read a first time.

Bill for the preservation of the Bhagdaree Tenure  
Read a first time

The Bill was read by the Deputy Secretary.

*Draft.*

WHEREAS it has been found that the permanence of the tenure known as the Bhagdaree tenure, which has existed from time immemorial in certain parts of the Presidency of Bombay, is endangered by the increasing practice of attachment and sale by civil process of the homesteads and building sites appertaining to, and forming integral parts of, the constituted Bhags, or the recognised sub-divisions of such Bhags, in Bhagdaree Villages, and whereas it is undesirable that the said ancient tenure should be subjected to destruction by the action of the Civil Courts, it is therefore enacted as follows —

I. No portion of a Bhag in any Bhagdaree Village other than a recognised sub-division of such Bhag shall, from and after the passing of this Act, be liable to seizure, sequestration, attachment, or sale by the process of any Civil Court, and no process of such Court shall be enforced so as to cause the dismemberment from any such Bhag, or recognised sub-division, of any homestead, building site, or premises forming an integral part thereof.

II It shall be lawful for the Collector of the District in which any Bhagdaree village is situated, though not a litigating party, to represent, when necessary, to any Civil Court having jurisdiction in the case, any objection which may exist to the attachment, seizure, or sale of any land or premises to which this Act may be applicable; and it shall be lawful for such Court to pass such order thereon as shall be equitable and just, and such order shall be appealable in the same manner as a decree of the Court in which it is made.

The PRESIDENT moved that the Bill be referred to a Select Committee consisting of Mr. Reeves, Mr. Westropp, and Mr. Premabhai Hemabhai, to report at next meeting but one.

Referred to a Select Committee

*Agreed to*

The President then adjourned the Meeting till Saturday, the 1st March next, at 11 A M

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

LYTTELTON H. BAYLEY,

Deputy Secretary to Government

*Bombay Castle, 22nd February 1862.*

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

*Saturday, 1st March 1862.*

The Council of the Governor of Bombay, for the purpose of making Laws and Regulations, met according to adjournment.

### PRESENT:

The Honorable Mr. REEVES,  
 The Honorable Mr. FRERE,  
 The Honorable Mr. WESTROPP,  
 The Honorable Mr. TRISTRAM,  
 The Honorable the NAWAB OF SAVANOR,  
 The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY,  
 The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR,  
 The Honorable Mr. JUGGONATH SUNKERSETT,  
 The Honorable Mr. PREMABHAI HEMABHAI,  
 And the DEPUTY SECRETARY.

Mr. REEVES being the Senior Ordinary Member of Council present, presided in the absence of the Governor.

Petition

The DEPUTY SECRETARY said he had just received a Petition in the Gujarati Language addressed to the Legislative Council.

Mr FRERE said that there were two objections to its reception—

1st—That it was addressed to the Legislative Council, instead of the Governor in Council.

2nd—That it was not accompanied by any translation.

The petition was accordingly not received.

Not received.

Letter from the Government of India dated 13th January 1862, desiring certain amendments to be made in the Rules of the Council, and the Draft Rules prepared by Mr Westropp, considered.

The PRESIDENT said that the first subject for the consideration of the Council was to consider further the letter from the Government of India No 214, dated 13th January 1862, desiring certain amendments to be made in the Rules of the Council, and the Draft Rules prepared by Mr. Westropp.

Proposed Rules of the Council considered.

These rules were presented at the last Meeting of the Council, and the question now was whether they should be adopted.



Mr. WESTROPP said he had some formal amendments to make which he had furnished to the Deputy Secretary ; but before they were read, he should be glad to know if any objections existed to the substance of them.

Mr. FRERE suggested that the Members should be asked whether there was any objection to them *seriatim*.

The PRESIDENT put the question as to Rule 1.

*Agreed to.*

Rule 1

Agreed to.

The PRESIDENT put Rule 2

*Agreed to.*

Rule 2

Agreed to

The PRESIDENT put Rule 3

*Agreed to*

Rule 3

Agreed to

The PRESIDENT put Rule 4

Rule 4

Mr. FRERE thought there would be no necessity for the proviso at the end

Mr. WESTROPP thought that, if the Governor was to have power, it would be better to say so, that frequently circumstances might take place which would render it desirable for the Council to meet at another hour besides 11 o'clock

Mr. TRISTRAM agreed with Mr. Westropp

The PRESIDENT thought the hour might very well be left to the Council, that the Governor had a very strong objection to frequent alterations.

Rule as printed *agreed to.*

Agreed to.

Mr. WESTROPP asked whether there would be any objection to the day of meeting being changed from Saturday to Wednesday.

*No objection was made.*

The PRESIDENT put Rule 5.

*Agreed to.*

Rule 5

Agreed to

The PRESIDENT put Rule 6.

*Agreed to.*

Rule 6

Agreed to

The PRESIDENT put Rule 7.

*Agreed to.*

Rule 7

Agreed to.

The PRESIDENT put Rule 8.

*Agreed to.*

Rule 8

Agreed to.

The PRESIDENT put Rule 9.

*Agreed to.*

Rule 9

Agreed to.

- Rule 10 . The PRESIDENT put Rule 10.  
 Agreed to *Agreed to.*
- Rule 11 The PRESIDENT put Rule 11.  
 MR. MADHOWROW VITTUL VINCHOORKUR suggested that the word "Secretary" should be inserted instead of "Member" in the first line.  
 MR. FRERE thought that the word "Member" should be retained, as it was not desirable that the Secretary should take part in the debates  
 MR. JUGONNATH SUNKERSETT and the other members agreed that the word should remain as it was.  
 Agreed to *Agreed to.*
- Rule 12 The PRESIDENT put Rule 12.  
 MR. FRERE asked why the word "Canarese" was left out.  
 MR. WESTROPP said he had learnt from Mr. Shaw Stewart that it would be attended with considerable expense, and that there was at present no necessity for the translations being made into that language.  
 MR. FRERE said there were a great many people who did not know Marathi.  
 MR. RUSTOMJEE JAMSETJEE JEJEEBHOY said the word should be Hindustanee.  
 The NAWAB OF SAVANOR said that Canarese was necessary for the people in the country  
 MR. JUGONNATH SUNKERSETT was in favour of Canarese.  
 MR. FRERE said the copies for the Members of the Council were in manuscript.  
 The PRESIDENT said it was unnecessary for the Members of the Council.  
 MR. TRISTRAM thought that when a Bill was passed into law it should be translated into every language.  
 MR. WESTROPP said he was in favour of a Bill, directly it was proposed, being translated into Canarese.
- Amended and The PRESIDENT put the question whether the word "Canarese" should be  
 agreed to inserted after the word "Marathi."  
*Agreed to.*
- Amended and MR. WESTROPP proposed the amendments, viz. to substitute "amongst"  
 agreed to for "to" in the last line but three, and to insert "Bombay" before "Government" in the last line but one.  
*Agreed to.*

The PRESIDENT put Rule 13.	Rule 13.
<i>Agreed to.</i>	Agreed to
The PRESIDENT put Rule 14	Rule 14
Mr. FRERE suggested the insertion of the word "Canarese" after the word "Marathi" in the 5th line.	Amended and agreed to.
<i>Agreed to.</i>	
The PRESIDENT put Rule 15.	Rule 15
<i>Agreed to.</i>	Agreed to
The PRESIDENT put Rule 16.	Rule 16
<i>Agreed to.</i>	Agreed to
The PRESIDENT put Rule 17	Rule 17
A discussion then ensued on this Rule between the PRESIDENT, Mr FRERE, and Mr. WESTROPP	
<i>Agreed to.</i>	Agreed to
The PRESIDENT put Rule 18.	Rule 18
Mr. WESTROPP proposed a formal amendment by the insertion of the following words after the word "Bill" in the 3rd line "or not published by order of the Governor in Council under Rule 14." That amendment was necessary to render the rule consistent with the other rules.	Amended and agreed to
<i>Agreed to.</i>	
The PRESIDENT put Rule 19.	Rule 19
Mr. FRERE hardly thought the rule necessary, as we could trust the Members not to bring forward a rejected bill again during the same session.	
Mr. WESTROPP thought that if the course of conduct provided against by the rule was expected it would be better to retain it	
<i>Agreed to.</i>	Agreed to,
The PRESIDENT put Rule 20.	Rule 20
<i>Agreed to.</i>	Agreed to
The PRESIDENT put Rule 21.	Rule 21.
<i>Agreed to.</i>	Agreed to
The PRESIDENT put Rule 22.	Rule 22.
<i>Agreed to.</i>	Agreed to
The PRESIDENT put Rule 23.	Rule 23
<i>Agreed to.</i>	Agreed to.

- Rule 24. The PRESIDENT put Rule 24.  
 Mr. FRERE would not suggest that the reports be circulated in Canarese.  
 Agreed to. *Agreed to.*
- Rule 25. The PRESIDENT put Rule 25.  
 Mr. FRERE doubted the necessity of the words "but not until a week after the report has been furnished to the Members."  
 Mr. WESTROPP thought the rule necessary in order to prevent hasty legislation, which the Council might fall into unless the rule was retained.  
 The PRESIDENT thought it a doubtful point.  
 Mr. WESTROPP thought that three weeks was the shortest time for a legislative measure to be before the Public.  
 Mr. FRERE thought that as the Council had power to adjourn the consideration of any measure, he was not in favour of the rule as it stood.  
 The other members expressed opinions in favour of the rule.  
 Agreed to. *Agreed to.*
- Rule 26. The PRESIDENT put Rule 26.  
 Mr. WESTROPP argued in favour of the rule, and said that the President could not refuse, under Rule 27, to allow an amendment to be considered. The two Rules 26 and 27 were to be taken together.  
 Mr. FRERE asked whether there was any objection to the substitution of the word "may" for "shall" in the 5th line.  
 Mr. WESTROPP said he had no objection.  
 Amended and agreed to. The PRESIDENT put the question whether the word "may" should be substituted for "shall."  
*Agreed to.*  
 The rule as amended was then agreed to.
- Rule 27. The PRESIDENT put Rule 27.  
 Agreed to. *Agreed to.*
- Rule 28. The PRESIDENT put Rule 28.  
 Agreed to. *Agreed to.*
- Rule 29. The PRESIDENT put Rule 29.  
 Agreed to. *Agreed to.*

The PRESIDENT put Rule 30.

*Agreed to.*

Rule 30

Agreed to

The PRESIDENT put Rule 31

*Agreed to.*

Rule 31

Agreed to

The PRESIDENT put Rule 32.

*Agreed to.*

Rule 32

Agreed to

The PRESIDENT put Rule 33.

Rule 33

Mr FRERE thought the concluding words ought to be omitted, as provision was already made in the 45th Section of the 24th and 25th, Victoria, c 67

Mr. WESTROPP had merely followed the Governor General's rule, but had no objection to Mr. Frere's amendment.

The PRESIDENT put to the vote whether the words "in case of an equality of voices, the President shall have the casting vote" be omitted.

Amended and  
agreed to

*Agreed to.*

The rule as amendment was then *agreed to.*

The PRESIDENT put Rule 34

*Agreed to.*

Rule 34.

Agreed to

The PRESIDENT put Rule 35.

*Agreed to.*

Rule 35

Agreed to

The PRESIDENT put Rule 36.

*Agreed to.*

Rule 36.

Agreed to.

The PRESIDENT put Rule 37.

*Agreed to.*

Rule 37

Agreed to

The PRESIDENT put Rule 38.

Rule 38.

Mr FRERE thought the words "Under Secretary or Assistant Secretary" should be omitted

The PRESIDENT agreed that there was no necessity for the words "Under Secretary or Assistant Secretary," inasmuch as the word Secretary was fully defined in Rule 44.

The PRESIDENT proposed that the words "Under Secretary or Assistant Secretary" be omitted.

Amended and  
agreed to

The Rule as amended was then *agreed to.*

The PRESIDENT put Rule 39.

*Agreed to.*

Rule 39

Agreed to.

The PRESIDENT put Rule 40.

*Agreed to.*

Rule 40.

Agreed to.

- Rules 41. The PRESIDENT put Rule 41.  
 Agreed to. *Agreed to.*
- Rule 42 The PRESIDENT put Rule 42.  
 Agreed to *Agreed to.*
- Rule 43 The PRESIDENT put Rule 43.  
 Mr. FRERE thought the rule unnecessary.  
 Mr WESTROPP was of opinion that it was better to make the provisions as clear as possible.  
 Mr. JUGONNATH SUNKERSETT saw no objection to the Rule.  
 Mr RUSTOMJEE JAMSETJEE JEJEEBHOY thought the Rule might be dispensed with, as the matter was sufficiently provided for by Rule 8.  
 The PRESIDENT thought as the members were in general averse to it, it should be rejected  
 Rejected *Rule rejected.*
- Rule 44 The PRESIDENT put Rule 44, and suggested that 44 should be altered to 43  
 Altered to Rule 43 and agreed to. *Agreed to.*  
 Mr. WESTROPP suggested that in printing the Rules as amended the references to the Bombay Rules be omitted  
*Agreed to.*
- Rules as amended ordered to be printed, and a copy forwarded to His Excellency the Governor for his approval  
 The PRESIDENT moved that the Rules as amended be printed, and a copy of them forwarded to His Excellency the Governor for his approval.
- Bill for extending the powers of Municipal Commissioners appointed under Act XXVI of 1850  
 Second Reading.  
 The PRESIDENT said the next subject was that a Bill (No. 2) for extending the powers of Municipal Commissioners appointed under Act XXVI. of 1850 be re-considered. He moved that the Bill be read a second time.
- Amendments carried  
 Mr. WESTROPP proposed the omission of the word "accruing" in the 15th line from the end of the Bill.  
*Agreed to.*  
 Mr FRERE moved that the word "Suburbs" in the 8th line of the 1st Section be altered to "Suburb."  
*Agreed to.*  
 Mr. FRERE said that under the 1st Section, 25 per cent. might be expended on a Hospital, 25 per cent on a Dispensary, and 25 per cent. on a School, in other words 75 per cent., in one town or suburb.

Mr. WESTROPP thought the legal construction would not be so.

Mr. JUGONNATH SUNKERSETT said there was no provision for watering the streets. He moved that the word "watering" be added.

Mr. FRERE thought it better to wait until complaints were made.

Mr. JUGONNATH SUNKERSETT then proposed that after the words "paying the same," another recital be inserted, "and whereas it is also expedient that in addition to the above purposes, the said Commissioners should be authorised to apply a reasonable portion of the said taxes in the watering of public streets and roads in the said town or suburb," that a third Section be added as follows —

3rd. "It is hereby also enacted, that the said Commissioners may also apply a reasonable portion of the Municipal taxes in watering the public streets and roads of any such town or suburb as aforesaid "

Mr. FRERE thought it far better to leave the Bill as it was

Mr. TRISTRAM thought it rather fine-drawn legislation

Mr. WESTROPP said it was very doubtful whether by Act XXVI. of 1850 the Commissioners had power to water the streets. He thought it most desirable that they should have it, if they had not got it already, and further that an indemnity clause should be added.

Mr. PREMABHAI HEMABHAI was against the amendment

The PRESIDENT, after the opinion of the members had been asked, said that the amendment was carried.

Mr. WESTROPP then proposed the indemnity clause.

The PRESIDENT put the following clause —

4th. "And it is hereby also enacted, that any portion of the Municipal taxes heretofore *bonâ fide* employed in watering any public street or road in any such town or suburb as aforesaid, shall be considered to have been legally and properly so applied."

*Carried unanimously*

Mr. FRERE proposed that the word "not" be inserted in the 10th line of the 1st Section between "extent" and "exceeding," and the words "in the whole" added after the word "exceeding," and the words "all or any of" inserted between the words "for" and "the" in the 12th line, and the word "three" inserted between the words "the" and "purposes" in the same line

*Carried*

Mr. FRERE proposed the insertion of the words "on the subject" after the word "report" in the 6th line of the 2nd Section.

*Carried.*

The PRESIDENT proposed that the Bill as amended be now read a second time and passed.

Bill as amended read a second time and passed.

The Bill was read by the Deputy Secretary a second time and passed

Report of Select Committee on a Bill to amend Act XI. of 1843.

The PRESIDENT said the next subject was "a Bill to amend Act XI. of 1843," which was referred to a Select Committee.

The Committee had reported, and he requested the Deputy Secretary to read the Report

Read.

The DEPUTY SECRETARY read the following Report —

*Report of the Select Committee appointed to consider and report on a Bill to amend Act XI. of 1843.*

The Committee having considered the Bill beg to suggest the following amendments —

That the words "in future" be inserted between the words "should" and "be" in the 2nd line of the Preamble of the Bill, and the word "or" be substituted for "and" in the 3rd line of the Preamble.

That the word "to sanction" be substituted for the words "of sanctioning" in the 4th line of the Preamble, and the words "to approve" be substituted for the words "of approving" in the 7th line of the Preamble.

That the words "a Holder of or" be inserted before the words "a sharer in a Wuttun" in the 5th line of the Preamble.

That the word "a" be inserted before the word "Revenue," and the words "or a Police" before the word "Commissioner" in the 2nd and 6th lines of the Bill; and that the word "respectively" be inserted between the words "when" and "authorised" in the 2nd and 7th lines of the Bill.

That the words "from and after the passing of this Act" be inserted between the words "shall" and "be" in the 11th line of the Bill.

The Committee would therefore suggest that the Bill be read as follows —

*A Bill to amend Act XI. of 1843.*

WHEREAS it is desirable that the Government of Bombay should in future be empowered to depute authority to the Revenue or Police Commissioners to sanction the term for which a Holder of or sharer in a Wuttun nominated under Section 4 of Act XI. of 1843 shall hold office and to approve of selections made by the Collector or Controlling Officer under the same Section.



It is hereby enacted, that the words "*or a Revenue or a Police Commissioner when respectively authorised by Government*" shall be inserted after the words "with the sanction of the Governor in Council" in Section 4 of Act XI. of 1843, and that the words "*or a Revenue or a Police Commissioner when respectively authorised by Government*" shall be added after the words "to the approval of the Governor in Council" at the end of the said Section ; and that the words so inserted shall from and after the passing of this Act be taken as part of the said fourth Section of Act XI. of 1843.

Mr. FRERE objected to the words "or Police Commissioners" in the Preamble. He thought the Government ought not to have the power to authorise Revenue Commissioners to interfere with Police Commissioners.

Mr. WESTROPP said the objection might be removed by using the words "Revenue and Police Commissioners, or either of them "

Mr. FRERE finally proposed to substitute the word "and" for "or" in the 4th line of the Preamble, to omit the words "respectively" in the 2nd, 3rd, and 7th lines of the Bill, and to insert the word "of" between the words "or" and "a" in the 1st and 2nd lines of the Bill, and between similar words in the 6th and 7th lines of the same.

The PRESIDENT agreed and proposed that the Bill thus amended be read a second time and passed

Amendments  
carried.

The Bill as amended was then read by the Deputy Secretary a second time and passed.

Bill as amended  
read a second time  
and passed.

The PRESIDENT said the next subject for consideration was "a Bill for extending the jurisdiction of the Subordinate Civil Courts to the same as that exercised by similar Courts on the other side of India," referred to a Select Committee at the last meeting of the Council.

Report of Se-  
lect Committee on  
a Bill for extend-  
ing the jurisdic-  
tion of the Sub-  
ordinate Civil  
Courts to the same  
as that exercised  
by similar Courts  
on the other side  
of India

He moved that the Deputy Secretary should read the report

The DEPUTY SECRETARY read the following Report ;—

Read

*Report.*

"The Committee report that they are of opinion that provided it is considered necessary that the jurisdiction of Moonsiffs should in certain cases be final, decisions of the Sudder Ameens and Principal Sudder Ameens should in certain cases be also made final.

"The Committee are also of opinion that instead of referring to Section 3 of Act XLII. of 1860 the purport of that Section should be embodied in the Act, but as the first proposal if adopted would lead to a further reference

to the Judges of the Sudder Dewanee Adawlut, the Committee are of opinion that the whole Act should be recast, and they would further suggest that all Acts defining the jurisdiction of the Principal Sudder Ameens, the Sudder Ameens and Moonsiffs should be consolidated; there being some Zillahs in which there are no Sudder Ameens and another in which there is no Principal Sudder Ameen."

Mr. FRERE moved that the Report be adopted.

Mr. WESTROPP argued in support of the suggestions of the Select Committee, and that the subject should be more fully considered during the Recess.

Adopted.

The motion that the Report be adopted was then *carried unanimously*.

The PRESIDENT proposed that Mr. Frere should take his (the President's) place in the Select Committee on "the Bill for the preservation of the Bhagdaree Tenure."

*Agreed to.*

Notice given by Mr. Reeves of his intention to introduce a Bill for the restoration of the Grassias in the Ahmedabad Collectorate, and for their relief from debt, at the next meeting

The PRESIDENT stated that at the next meeting he intended to introduce a Bill for the restoration of the Grassias in the Ahmedabad Collectorate, and for their relief from debt.

The PRESIDENT then adjourned the Meeting till Saturday, the 8th instant, at 11 A M.

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

LYTTELTON H. BAYLEY,

Deputy Secretary to Government.

*Bombay Castle, 1st March 1862.*

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

*Saturday, 8th March 1862.*

The Council of the Governor of Bombay, for the purpose of making Laws and Regulations, met according to adjournment.

*PRESENT.*

The Honorable Mr. REEVES,  
 The Honorable Mr. FRERE,  
 The Honorable Mr. TRISTRAM,  
 The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY,  
 The Honorable Mr. JUGONNATH SUNKERSETT,  
 The Honorable Mr. PREMABHAI HEMABHAI,  
 The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR,  
 The Honorable Mr. ELLIS,  
 The Honorable Mr. SCOTT,  
 And the DEPUTY SECRETARY

Mr. REEVES being the Senior Ordinary Member of Council present, presided in the absence of the Governor.

Mr. BARROW HELBERT ELLIS and Mr. MICHAEL HUGH SCOTT having been appointed additional Members of the Council of the Governor of Bombay for the purpose of making Laws and Regulations, took the usual affirmation

Mr B H Ellis  
and Mr M H  
Scott appointed  
additional Mem-  
bers, affirmation  
taken

The PRESIDENT said that the first subject was to consider the Report of the Select Committee upon "a Bill for regulating the Establishment of Markets."

Report of the  
Select Committee  
on a Bill for re-  
gulating the es-  
tablishment of  
Markets

The Committee had reported, and he requested the Deputy Secretary to read the Report.

The DEPUTY SECRETARY read the following Report.

Read

*Report of the Select Committee appointed to consider and report on  
 "A Bill for regulating the Establishment of Markets"*

"The Committee having considered the Bill, beg to suggest the following amendments :—

That the words "and Fairs" be added to the title of the Bill, and the words "or Fairs" be inserted after the word "Markets" wherever it occurs in the Preamble of the Bill, and the words "or Fair" after the word "Market" wherever it occurs in the Bill

That the words "or in default of payment to imprisonment without hard labour for any period not exceeding two calendar months" be added at the end of the first Section of the Bill.

That the word "under" be substituted for "in" in the last line but one of Section IV. of the Bill.

That the words "within six weeks" be inserted between the words "shall" and "be" in the second line of Section VI of the Bill.

That the words "disobey or oppose" be inserted between the words "contravene" and "any" in the second line of Section VII. of the Bill, and the word "final" between the words "any" and "order" in the same line of the same Section, and that the following be added at the end of the Section "or in default of payment to imprisonment with or without hard labour for any period not exceeding two calendar months."

That Section VIII. of the Bill as printed be omitted, and the following substituted :—

VIII. This Act shall not extend to the Islands of Bombay and Colaba. That the following Section be added as Section IX. :—

IX. Nothing in this Act shall be held to apply to assemblages of people collected at, or concerned in the inauguration of sacred edifices, collected at or concerned in any other religious festivals or ceremonies.

The Sections  
considered, and  
amended

The PRESIDENT said that the Bill should be considered Section by Section.

Section I. was then read.

Mr. FRERE suggested that "simple imprisonment" should be substituted for "imprisonment without hard labour."

*Agreed to.*

Section II. was then read.

Mr. ELLIS said he should prefer that the application referred to in the Section should be made to "a Magistrate" and not to "the Magistrate."

He moved that the words "of the District" be inserted after the word "Magistrate" in the 4th line.

*Agreed to.*

Section III. was then read.

Mr. ELLIS asked why the limits of 4 miles were fixed.

The PRESIDENT said that Fairs were held in some places every day in the week, and it was desirable to have some limit

Mr. MADHOWROW VIRTUL VINCHOORKUR moved by way of amendment that the words at the conclusion of the Section "and served at the expense of the applicant" be omitted.

The opinion of the Council was then taken, and 8 being in favour of the retention of the words, and 1 for their omission, the amendment was lost.

Clause 3 was then agreed to.

Clause 4 was then read.

Mr ELLIS proposed the insertion of the words "of the District" after the word "Magistrate" in the 5th, 6th, and 9th lines.

*Agreed to.*

Clause 5 was then read.

Mr. ELLIS proposed the insertion of the words "of the District" after the word "Magistrate" in the 15th and 16th lines.

*Agreed to.*

Clause 6 was then read.

Mr. ELLIS asked whether it was intended to give an appeal to the Government.

Mr. FRERE thought it better to strike out the words "subject to the control of the Local Government"

*Agreed to.*

The Clause, as thus amended, was then agreed to

Clause 7 was then read.

Mr. ELLIS proposed the omission of the word "final" in the 3rd line

*Agreed to.*

Mr. FRERE proposed the substitution of the words "of either kind" for the words "with or without hard labour."

*Agreed to.*

Clause 8 was then read.

*Agreed to*

Clause 9 was then read

The PRESIDENT said this Section was introduced at the suggestion of his colleagues Mr. Juggonath Sunkersett and the Nawab of Savanoor

Mr. FRERE had no objection to the words "in the inauguration of sacred edifices," but he thought that the Magistrate's sanction should be obtained for any large assemblages of persons at the religious festivals or ceremonies which were proposed after the 1st year.

Mr. ELLIS said all fairs were religious.

Mr. FRERE said the difficulty might be obviated by inserting the words "not forming a part of a fair or market."

Mr. TRISTRAM put the question whether the Section should remain as amended by the Committee, or whether the words "not forming a part of a fair or market" should be added

The majority of the Council being in favour of the addition of the words, the Clause, with the above additional words, was agreed to

Mr. FRERE proposed the addition of the following Clauses —

X. Nothing in this Act should be held to restrict the general powers of Government to control the orders of the Magistrate or Commissioner of Police in regard to markets or fairs.

*Carried.*

XI. The word "Magistrate" when used alone, without the addition of the words "of the District," includes every officer authorised to exercise the full powers of the Magistrate.

*Carried.*

The PRESIDENT moved that the Bill be read a second time and passed;

Mr. JUGONNATH SUNKERSETT said that the people have had no opportunity of considering the Bill. The report of the Select Committee had only been read to-day. He begged to move as an amendment that the Bill be read as second time this day week.

Bill ordered to be read a second time this day week

The PRESIDENT then said that in that case he would not put the motion that the Bill be now read a second time and passed, but instead thereof he would put the question that the Bill be read a second time this day week.

*Carried.*

Report of the Select Committee on a Bill for the preservation of the Bhagdaree Tenure, Read.

The PRESIDENT said the next subject was to consider the report of the Select Committee upon "a Bill for the preservation of the Bhagdaree Tenure."

The DEPUTY SECRETARY read the following Report :—

"The Committee having considered the Bill, beg to suggest that it be extended to the Nurwadaree Villages, and that the wording of the Bill be amended as follows —

*Draft.*

Whereas it has been found that the permanence of the tenures, known as the Bhagdaree and Nurwadaree tenures which have existed from time immemorial in certain parts of the Presidency of Bombay, is endangered by the increasing practice of attachment and sale by civil process of the homesteads and building sites ("Gubhan") appertaining or appendant to the constituted Bhags or the recognised sub-divisions of such Bhags or Shares in Bhagdaree or Nurwadaree Villages; It is therefore enacted as follows :—

I. No portion of a Bhag or Share in any Bhagdaree or Nurwadaree Village other than a recognised sub-division of such Bhag or Share shall, from and after the passing of this Act, be liable to seizure, sequestration, attachment, or sale by the process of any Civil Court, and no process of such Court shall be enforced so as to cause the dismemberment from any such Bhag or Share or recognised sub-division thereof of any homestead, building site (Gubhan), or premises forming an integral part thereof.

II Whenever any process has issued out of any Civil Court for the seizure, sequestration, attachment, or sale of any portion of a Bhag or Share in any Bhagdaree or Nurwadaree Village other than a recognised sub-division of such Bhag or Share, or for the seizure, sequestration, attachment, or sale of any homestead, building site (Gubhan), or premises forming an integral part thereof, it shall be lawful for the Collector of the District in which any

such Bhagdaree or Nurwadaree Village is situated, although not a litigating party, to move in such Civil Court that such process should be set aside or quashed, and that the provision of this Act be put in force, and if such Court be of opinion, on the evidence adduced by the Collector on such motion, that the case is one falling within this Act, it shall set aside or quash such process; and it is hereby further enacted that any order which the said Court may make on such motion shall be appealable in the same manner as a decree of the Court in which it is made.

III. And it is hereby further declared that nothing in this Act contained shall be construed as prohibiting the issue and execution of any such process as aforesaid against any Bhag or Share or recognised sub-division of any Bhag or Share in any such Village as aforesaid, together with its homestead, building site (Gubhan), and other proper appurtenances if the issue and execution of such process be in other respects authorised by law."

Mr. FRERE said that after the meeting of the Select Committee it occurred to Mr. Westropp, who was unable to attend to-day, that several alterations should be made in the Bill. Mr. Westropp had also added two new Clauses; and it appeared to Mr. Frere that, as the Bill was thus nearly recast, it would be desirable to refer the Bill back to the same Select Committee.

Referred back to  
the same Select  
Committee

*Agreed to*

The PRESIDENT said that the third subject for consideration was a "Bill for the Restoration of the Grassias in the Ahmedabad Collectorate, and for their relief from debt."

Bill for the Re-  
stitution of the  
Grassias in the  
Ahmedabad Col-  
lectorate, and for  
their relief from  
debt

The PRESIDENT made the following remarks:—

First reading  
Speech of Mr  
Reeves in moving  
the same

In the Ahmedabad Collectorate of Guzerat there is a class of Landholders called Talookdars, really "Grassias," whose estates are situated in the Dholka, Veerungaum, Purantej, and Dundooka Districts. Most of these "Grassias" are Rajpoots, some are Mehwassees, *i e*, Coolies, and others. There is no doubt that they are sprung from an ancient race of hereditary proprietors who were found by the Moguls at their first appearance in Guzerat possessed of considerable power and wealth. The Moguls managed to expel the whole of them from their estates, but on a stubborn resistance being made, they felt themselves obliged to restore to the Grassias in the immediate vicinity of the Capital, Ahmedabad, a portion of their lands which is held to this day rent-free as "Wanta;" while to those situated more remote from the Capital, and whose resistance was still more resolute, restoration of their lands was made in full, burdened, however, with the obligation of paying tribute. This tribute, which was annual, amounted to about half the net revenue of each estate, and was payable in cash. It nowhere appears that the estates were

burdened in any other manner. And thus the Grassias were settled by the Moguls as actual proprietors of their estates, with the simple liability of paying tribute to the Government.

The accession and dominion of the Mahrattas effected no difference whatever in the tenure of the Grassias, though the annual payments varied under their administration; but although less than half the net revenue was sometimes taken by what was called Moolukgeeree, we find no record of the exaction of any more than one half.

For some time after their acquisition of Guzerat from the Mahrattas, the British Government continued to realize annual payments according to past years. But it would appear that very soon the nature of the payments was altered instead of tribute, the Government assumed it to be Rent or Revenue they were collecting. A significant change this, which ought to be borne in mind, for it had an all important effect on the conditions of the Grassias. Besides this, about the year 1821 an increase was made to the yearly rentals about 50 per cent, and this, as may be supposed, constituted a burden on the Grassia. Chiefs such as men accustomed to a free style of living, and who were at best inapt financiers, very soon found to be insupportable. They were obliged, nevertheless, to submit as they best could, and the consequence was that they fell into pecuniary embarrassment, and so became impoverished and needy.

The Honorable Mr. Elphinstone subsequently introduced annual leases, and also fixed the payments at 70 per cent. of the produce; but it is obvious that this large share, which was exacted without remissions of any kind, barely admitted of a livelihood to the Grassias, and could not arrest the ill effect of previous mistakes and oppressive treatment. The impoverishment of these landholders has therefore continued to this day, and we now find a number of them sunk into a state of irretrievable poverty, their estates have passed from them. Others are so far gone, that their restoration also to competency is hopeless, unless Government come to their aid in some very effectual manner to remedy the mischief produced by their own grievous errors.

Since the time of Mr. Elphinstone it has been frequently declared, and that too on the authority of the Legal Remembrancer, that the tenure of the Grassia or Talookdar is that of a hereditary Leaseholder dependent on the pleasure of Government.

The President then read extracts from the records of Government illustrative of this statement.

“ I There is no such thing as the Talookdaree ‘tenure’ as distinct from the provisions of the Talookdaree leases. The mutual rights of the Talookdars and the Government can only be determined by looking at the terms of the lease.

Legal Remembrancer  
to Government, No 123  
of 1855



“ II. By the usage of the country there may be right in the Talookdar to have his lease renewed, or rather to have a lease for a further period granted to him, but as Government can practically evade this by introducing any stipulations it pleases, the right to the lease obviously could not be enforced as a legal right.

Legal Remembrancer  
to Government, No. 43  
of 1855.

Legal Remembrancer  
to Government, No. 123  
of 1855.

Resolution of Go-  
vernment, No. 3455 of  
1855.

Legal Remembrancer  
to Government, No. 124  
of 1855

“ III Under the stringent provisions of the cases, Government can always protect themselves by annulling the lease, and resuming the village immediately on its being attached.

“ IV. Government might in this case, (Leea), without waiving their undoubted right to determine whom they will admit to hold the lease of the village as Talookdar, permit, &c.

“ V. The legal rights of Talookdars are defined by their lease, the provisions of which are so stringent as to make the Talookdar little better than a tenant-at-will of Government ”

He then proceeded :—

I must here observe that the annual leases are of the most stringent character, as may be readily seen by inspection.

We have thus seen the ancient chief, actual proprietor of his domain, and once powerful enough to resist Mogul invasion of his rights sword in hand, converted by British mismanagement, founded on error, but not the less most unrighteous, into an annual leaseholder or mere tenant-at-will of Government and reduced to extreme degradation.

On every principle of justice, I say, the British Government is bound to do its utmost to restore these Chiefs, so far as it is possible so to do, to the position in which they were found at the cession of the Ahmedabad Districts by the Mahrattas,—a position, be it remembered, in which the Grassias of the neighbouring district of Kattywar, of the same race, and only separated from their more unfortunate fellows by accident, are at this moment to be seen.

After anxious consideration, the Bombay Government has now acknowledged this obligation, and has come to the conclusion that nothing short of legislation will suffice to apply the necessary remedy. The Bill before the Council contains the measures which it is proposed to adopt to enable Government to discharge its duty effectually.

The creditors of the impoverished Chiefs, with whose estates it is now proposed to deal, oppose all attempts at amicable and reasonable compromise. They will generally, or with few exceptions, be satisfied with nothing that shall leave their debtors any property but their rags; and anything like a

Bankruptcy process will fall short therefore of the necessities of the case. If the Talookdar were unembarrassed, we might at once recant our misinterpretation of his tenure, declare him proprietor, and lower his tax, and there would be an end of the matter. But to declare him a proprietor under existing circumstances would be merely to enable his creditors to sell his whole estate from under him by process of the Civil Court, which hitherto has not had a lien on it. We cannot leave the Talookdar thus unprotected. We have, therefore, decided on bringing forward a strong measure, that of suspending the jurisdiction of the Civil Courts, so far as the Talookdar estates and their proprietors are concerned, for a period sufficient to admit of the usurious liabilities of the Chiefs being inquired into, dealt with on equitable principles, and liquidated. I am in hopes that the Honorable Members will concur in considering this measure not a whit stronger than is absolutely necessary. It really amounts to nothing more than the establishment of a kind of Chancery in behalf of men who, as they have been subjected to exceptional injustice, are certainly entitled to demand restitution by some exceptional legislative authority

It will further be seen that one provision of the Bill is to guarantee to the Talookdar those proprietary rights which have been so long withheld by Government. It is further contemplated, though not provided for in the Bill, to concede more liberal terms to the recognised proprietor in the matter of taxation.

Bill read a first  
time and referred  
to a Select Com-  
mittee

The PRESIDENT then moved that the Bill be read a first time, and be referred to a Select Committee, composed of

THE CHIEF SECRETARY OF THE ACTING CHIEF SECRETARY TO GOVERNMENT,  
Mr. WESTROPP, and  
Mr. PREMABHAI HEMABHAI.

The Committee to report progress this day week.

*Agreed to.*

The DEPUTY SECRETARY read the Bill.—

*A Bill for the restoration of the Grassias in the Ahmedabad  
Collectorate, and for their Relief from Debt.*

Whereas the lands held in the Zillah of Ahmedabad, in the Province of Guzerat, under the Talookdaree Estates, are only held on leasehold tenure determinable at the pleasure of Government, and whereas it has been brought to the notice of Government that many of the holders of these Estates have borrowed money on the security of their Estates, which, under the aforesaid tenure, is no good security; and whereas it is expedient to enable the Talookdars to disencumber themselves of their debts, which cannot be effected under

the Laws and Regulations in force for the liquidation of debt and process of the Civil Courts,

It is hereby enacted that, from and after the            day of  
186    the said Talookdaree Estates in the Zillah of Ahmedabad, Province of Guzerat, being those which are enumerated in the Schedule appended to this Act, shall not be liable, during a period of twenty years, to any of the processes of the Civil Courts which are in force under the Laws and Regulations of the Bombay Presidency for the satisfaction of debt.

And it is hereby enacted that from and after the            day of  
186    all suits arising out of claims on the land or landed revenue of the said Talookdars which may be pending before any of the Civil Courts established in the said Zillah or before the Court of Sudder Adawlut shall be transferred for settlement to such Officer or Officers as may be appointed by the Governor in Council to the duty hereinafter to be described.

And, it is further enacted that from and after the            day of  
186    the Government of Bombay do acknowledge and declare that the said Talookdars being hereditary incumbents of the Estates aforesaid have full proprietary rights over the said Estates as regards succession to and possession, management, and transfer of the same, subject to such land tax as the Governor in Council may be pleased to reserve and to the further provisions of this Act

Whenever it shall have been ascertained that the encumbrances on any one of the said Estates are equal to or exceed ten times the average profit derived by the Talookdar from the said Estate during the previous five years, the management of the said Estate shall become vested in an Officer or Officers who shall be specially appointed by the Governor in Council, and such Officer or Officers shall during the continuance of their management of the Estate, receive the whole of the profits, rents, and payments of every kind that would otherwise be payable to the Talookdar, and shall pay to the Talookdar such annual sum only as shall appear to the Governor in Council requisite for his decent support.

All arrangements and orders for the management of the revenue of such Estate which shall be devised and made by the Officer or Officers appointed as above described, shall be obeyed by all persons concerned, and the said Officer or Officers shall prepare a Schedule of all liabilities *bonâ fide* incurred by the Talookdar, and shall make arrangement for the settlement and liquidation of them in accordance with rules laid down by the Governor in Council to be called "Rules for the management of encumbered Talookdaree Estates," and it shall be lawful for the Governor in Council to add to and alter such rules from time to time as necessity may arise.

It shall be competent to the Officer or Officers aforesaid with the sanction of the Governor in Council to raise a fund to be applied to the liquidation of the debts of an encumbered Talookdaree Estate under their management by assigning a portion of such Estate to be held and enjoyed for a limited period by any fit person who may advance money on the security of the Estate or by the sale of such portion of the Estate as may appear expedient, but in either case the consent of the Talookdar and of his next heir, if the latter be of age, shall first be obtained.

The entire scheme for the disencumberment of each Talookdaree Estate shall, as soon as completed, be submitted to the Governor in Council for approval, and on such approval being obtained, shall then, and not till then, be carried into execution with the same effect as a decree of a Civil Court.

It is hereby declared that during the period when an Estate shall be under the control and management of an Officer or Officers appointed as above described, for the purpose of settling and liquidating the debts and encumbrances thereof, it shall not be competent to any Talookdar, being its proprietor, to incur any fresh liabilities on the security of the land or the revenues of such Estate or to alienate any portion of them, and a public Notification shall be made to this effect at the commencement of every settlement.

The PRESIDENT then adjourned the Meeting to Saturday, the 15th March, at 11 o'clock A.M.

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

LYTTLETON H. BAYLEY,

Deputy Secretary to Government.

*Bombay Castle, 8th March 1862.*

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## **PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.**

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

*Saturday, 15th March 1862.*

The Council of the Governor of Bombay for the purpose of making Laws and Regulations met according to adjournment.

*PRESENT:*

The Honorable Mr. FRÈRE,  
 The Honorable Mr. WESTROPP,  
 The Honorable Mr. TRISTRAM,  
 The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY,  
 The Honorable Mr. JUGONNATH SUNKERSETT,  
 The Honorable Mr. PREMABHAL HEMABHAI,  
 The Honorable Mr. SCOTT,  
 The Honorable Mr. ROBERTSON,  
 And the DEPUTY SECRETARY.

MR. FRÈRE being the only Ordinary Member of Council present, presided in the absence of the Governor.

MR. ARCHIBALD DAVID ROBERTSON having been appointed Acting Chief Secretary to Government, and having thus, on the resignation of Mr. B. H. Ellis, become an additional Member of the Council of the Governor of Bombay for the purpose of making Laws and Regulations, took the usual affirmation.

Mr A D Robertson appointed an additional Member on the resignation of Mr B H Ellis, affirmation taken

The PRESIDENT said that the first subject for the consideration of the Council was a " Bill for regulating the establishment of Markets and Fairs," the second reading of which was adjourned at the last meeting.

Bill for regulating the establishment of Markets and Fairs, Second Reading

The PRESIDENT asked if any Member had any objections to the Bill

No objections being urged, the President requested the Deputy Secretary to read the Bill.

*A Bill for Regulating the Establishment of Markets and Fairs.*

WHEREAS the establishment of new Markets or Fairs in the neighbourhood of places where Markets or Fairs have been previously established leads to disputes between the owners of the lands on which such new and previously established Markets or Fairs are held, and such disputes not unfrequently occasion breaches of the peace, and serious inconvenience to the frequenters of such Markets or Fairs; It is enacted as follows :—

I. After the passing of this Act, no person shall establish a new Market or Fair, without permission, in writing, from the Magistrate of the District. If any person shall attempt to establish a new Market or Fair without such license, he shall, on conviction by the Magistrate, be subject to a fine not exceeding two hundred Rupees, or in default of payment, to simple imprisonment for any period not exceeding two Calendar months.

No new Market or Fair to be established without permission of Magistrate of the District.

II. When any person desires to establish a new Market or Fair, he shall make application in writing to the Magistrate of the District. The application shall specify the name of the place at which it is proposed to establish such new Market or Fair, the days on which it is to be held; the name of the place, where the nearest existing Market or Fair is held, and the days on which it is held; the distance, in English miles, between the two places, and the reasons of the applicant for desiring to establish the new Market or Fair.

III. On receipt of the application the Magistrate shall issue a Proclamation, stating the desire of the applicant to establish a Market or Fair at the place named by him, and the days on which it is proposed to be held, and calling upon any person who may have any objection to the establishment of the Market or Fair to state his objection in writing within six weeks from the date of the Proclamation. The Proclamation shall be affixed in a conspicuous place in the Village or Town in or near to which it is proposed that the new Market or Fair shall be held, and a copy of the same shall be affixed at the Police Station within the jurisdiction of which the Village or Town is situate, and in the Court of the Magistrate. If it shall appear that any existing Market or Fair is held within a distance of four miles from the place where it is proposed that the new Market or Fair shall be established, the Magistrate shall cause a Notice to the effect of the Proclamation to be served upon the owner of the land where such existing Market is held. The Proclamation and Notice (if any) shall be issued and served at the expense of the applicant.

IV. If, within the time specified in the Proclamation and Notice (if any) no objection is preferred to the establishment of the proposed Market or Fair, the Magistrate of the District shall pass an order permitting it to be established. If, within the time specified, any objection is preferred, the Magistrate of the District shall inquire into the objection, and pass such order as may appear proper under the circumstance of the case.

V. If, within six months from the passing of this Act, any objection shall be preferred to the Magistrate in respect of any Market or Fair which has been newly established within a period of two years before the passing of this Act, the Magistrate shall inquire into the objection; and if it shall appear that such new Market or Fair has been established within a distance of four miles from any previously existing Market or Fair, and that the establishment of the new Market or Fair has been the cause of disturbances or other inconvenience to the people of the neighbourhood, the Magistrate of the District may, if he think necessary, change the days upon

which such new Market or Fair is held, or, at his discretion, order that it be discontinued.

VI. Every order passed by a Magistrate under this Act shall within six weeks be open to appeal to the Commissioner of Police, and the order of the Commissioner shall be final.

VII. Every person who shall contravene, disobey, or oppose any order duly made under this Act, shall be liable to a fine not exceeding two hundred Rupees, or, in default of payment, to imprisonment of either kind for any period not exceeding two Calendar months

VIII this Act shall not extend to the Islands of Bombay and Colaba

IX Nothing in this Act shall be held to apply to assemblages of people collected at or concerned in the inauguration of sacred edifices, or collected at or concerned in any other religious festivals or ceremonies not forming a part of a Fair or Market

X. Nothing in this Act shall be held to restrict the general powers of Government to control the orders of the Magistrate or Commissioner of Police in regard to Markets or Fairs

XI. The word "Magistrate" when used alone without the addition of the words "of the District" includes every officer authorised to exercise the full powers of the Magistrate.

The Bill was read a second time and passed

The PRESIDENT said the next subject for consideration was the further report of the Select Committee on a "Bill for the Preservation of the Bhagdaree and Nurwadaree Tenures."

The DEPUTY SECRETARY read the Report of the Select Committee.

"Further Report of the Select Committee appointed to consider and "report on a Bill for the Preservation of the Bhagdaree and Nurwadaree Tenures."

The Committee determine to recommend that this Bill, as further amended by them as follows, be adopted —

*A Bill for the Preservation of the Bhagdaree and Nurwadaree Tenures*

WHEREAS it has been found that the permanence of the tenures, known as the Bhagdaree and Nurwadaree tenures, which have existed from time immemorial in certain parts of the Presidency of Bombay, is endangered by the increasing practice of attachment

Read a second time and passed

Further Report of the Select Committee on a Bill for the Preservation of the Bhagdaree and Nurwadaree Tenures, Read

Preamble.

and sale by civil process of the homesteads and building sites (Gubhan) appertaining or appendant to the constituted Bhags or the recognised sub-divisions of such Bhags or Shares in Bhagdaree or Nurwadaree Villages.

And whereas it is desirable to prevent the alienation, assignment, mortgaging, charging or incumbering of any portion of any Bhag or Share in any Bhagdaree or Nurwadaree Village other than a recognised sub-division of such Bhag or Share, or the alienation, assignment, mortgaging, charging, or incumbering of any homestead, building site (Gubhan), or premises appurtenant or appendant, to any such Bhag or Share or recognised sub-division separately or apart from such Bhag or Share or recognised sub-division; It is therefore enacted as follows :—

**I. No portion of a Bhag or Share in any Bhagdaree or Nurwadaree**

No portion of a Bhag or Share in any Bhagdaree or Nurwadaree Village to be liable to seizure, sequestration, attachment, or sale, by the process of any Civil Court

Village other than a recognised sub-division of such Bhag or Share shall, from and after the passing of this Act, be liable to seizure, sequestration, attachment, or sale by the process of any Civil Court, and no process of such Court shall be enforced so as to cause the dismemberment from any such Bhag or Share or recognised sub-division thereof of any homestead, building site (Gubhan), or premises, appurtenant or appendant to such Bhag or Share or recognised sub-division thereof.

**II. Whenever any process has issued out of any Civil Court for the seizure, sequestration, attachment, or sale of any portion**

Whenever any such process has issued, it shall be lawful for the Collector of the District to move that such process be set aside or quashed

of a Bhag or Share in any Bhagdaree or Nurwadaree Village other than a recognised sub-division of such Bhag or Share, or for the seizure, sequestration, attachment, or sale of any homestead, building site (Gubhan), or premises, appurtenant or appendant to such Bhag or Share or recognised sub-division thereof, it shall be lawful for the Collector or other Chief Revenue Officer of the District in which any such Bhagdaree or Nurwadaree Village is situated, although not a litigating party, to move in such Civil Court that such process shall be set aside or quashed,

and that the provisions of this Act be put in force; and if such Court be of opinion, on the evidence adduced by the Collector or other Chief Revenue Officer of the District on such motion, that the case is one falling within this Act, it shall set aside or quash such process, and cause the provisions of this Act to be put in force; and it is hereby further enacted that any order which the said Court may make on such motion shall be appealable in the same manner as a decree of the Court in which it is made.

And the Court shall set aside or quash such process if it be of opinion that the case is one falling within this Act



III. It shall not be lawful to alienate, assign, mortgage, or otherwise

It shall not be lawful to alienate, assign, mortgage, or otherwise charge or incumber any portion of any Bhag or Share in any Bhagdaree or Nurwadaree Village other than a recognised sub-division of such Bhag or Share.

charge or incumber any portion of any Bhag or Share in any Bhagdaree or Nurwadaree Village other than a recognised sub-division of such Bhag or Share, or to alienate, assign, mortgage, or otherwise charge or incumber any homestead, building site (Gubhan), or premises, appurtenant or appendant to any such Bhag or Share or recognised sub-division as assigned or ap-

purtenant thereto, apart or separately from any such Bhag or Share or recognised sub-division thereof. Any alienation, assignment, mortgage, charge or incumbrance contrary to the provisions of this Section shall be null and void

It shall be lawful for the Collector or Chief Revenue Officer of the District summarily to remove any person or persons who may be in possession of any portion of any Bhag or Share as aforesaid

And it shall be lawful for the Collector or other Chief Revenue Officer of the District, whenever he shall upon due inquiry, find that any person or persons is or are in possession of any portion of any Bhag or Share in any Bhagdaree or Nurwadaree Village other than a recognised sub-division of such Bhag or Share in violation of any of the provisions of this Section, summarily to

remove him or them from such possession, and to restore the possession to the person or persons whom the Collector shall deem to be entitled thereto, and any suit brought to try the validity of any order or orders which the Collector may make in such matter must be brought within three Calendar months after the execution of such order or orders

IV. And it is hereby further declared that nothing in this Act contained

Act not to prohibit the issue and execution of any process in other respects authorised by law

shall be construed as prohibiting the issue and execution of any such process as aforesaid against any Bhag or Share, or recognised sub-division of any Bhag or Share in any such village as aforesaid, conjointly

and in the gross with its homestead, building site (Gubhan), and other proper appurtenances, if the issue and execution of such process be in other respects authorised by law

V. And it is hereby further declared that nothing in this Act contained

Act not to prohibit the alienation, assignment, mortgaging, charging or incumbering any Bhag or Share as aforesaid if in other respects warranted by law,

shall be construed as prohibiting the alienation, assignment, mortgaging, charging or incumbering any Bhag or Share, or recognised sub-division of any Bhag or Share in any such village as aforesaid conjointly and in the gross with its homestead, building site (Gubhan) and other proper appurtenances, if such alienation,

assignment, mortgage, charge or incumbrance be in other respects warranted by law, the objects and intention of this Act being to prevent the dismemberment of Bhags or Shares, or recognised sub-divisions thereof, in Bhagdaree

or Nurwadaree Villages, and also to prevent the severance of homesteads, building sites (Gubhan), or other premises, appurtenant or appendant to Bhags or Shares or recognised sub-division of Bhags or Shares from the same or any of them.

Verbal amend-  
ments in Clauses  
3 and 5 agreed to

\* Mr. WESTROPP proposed some verbal amendments in the 3rd and 5th clauses

*Agreed to.*

Mr. PREMABHAI HEMABHAI asked if it was intended that the Act should be retrospective.

Mr. WESTROPP said that the Act was silent on the subject, and therefore a Court would be bound to construe the Act prospectively.

Mr. JUGONNATH SUNKERSETT asked for the meaning of some of the provisions of the Act

Mr. WESTROPP explained the Act, and stated that the Act did very little more than enact what the Sudder Adawlut had already declared to be the existing law. It gave the Collector, however, though he might not be a party to the suit, power to prevent the severance of a Bhag.

The PRESIDENT in answer to Mr. PREMABHAI HEMABHAI, said that the whole Bhag could be sold and also any recognised sub-division of it; but a sub-division not recognised could not be sold.

The PRESIDENT moved that the Bill as amended by the Select Committee, and further amended by the Council, be read a second time and passed.

Bill as amended  
read a second time  
and passed

The Bill was read by the Deputy Secretary a second time, and passed.

Report of the  
Select Committee  
on a Bill for the  
Restoration of the  
Grassias in the  
Ahmedabad Col-  
lectorate, and for  
their relief from  
Debt

The PRESIDENT said the next subject before the Council was to consider the report of the Select Committee on a "Bill for the Restoration of the Grassias in the Ahmedabad Collectorate, and for their relief from debt."

Mr. WESTROPP said that the Committee had not met, owing to Mr. Ellis' appointment as Revenue Commissioner, N. D., and consequent inability to attend the Select Committee, as an official member. The subject of the Bill was one of considerable difficulty; and, as the Committee had been directed to report progress to-day, and no progress had been made, he requested that further time might be allowed for the preparation of the Report.

Time for mak-  
ing the Report ex-  
tended to next  
meeting

The PRESIDENT proposed that Mr. Robertson be added to the Committee, and that the time for making the report be extended to next meeting.

*Agreed to.*

The PRESIDENT then informed the Council that the Rules for regulating the conduct of the business of the Council which they had suggested at a former meeting for His Excellency the President's consideration, had been assented to by His Excellency the Governor, and that therefore they were the Rules which His Excellency now intended to be observed in future meetings.

Assent of His Excellency the Governor to the Rules for regulating the conduct of the business of the Council

The PRESIDENT then adjourned the Meeting to Saturday, the 22nd March, at 11 o'clock A.M.

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

LYTTLETON H BAYLEY,

Deputy Secretary to Government

*Bombay Castle, 15th March 1862*

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

*Saturday, 22nd March 1862*

The Council of the Governor of Bombay for the purpose of making Laws and Regulations met according to adjournment.

### PRESENT

The Honorable Mr. FRERE,

The Honorable Mr. TRISTRAM,

The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHAY

The Honorable Mr. JUGONNATH SUNKERSETT,

The Honorable Mr. PREMABHAI HEMABHAI,

The Honorable Mr. SCOTT,

The Honorable Mr. ROBERTSON,

And the DEPUTY SECRETARY.

Mr. FRERE, being the only Ordinary Member of Council present, presided in the absence of the Governor.

The PRESIDENT said that the first subject for consideration was the Report of the Select Committee on a "Bill for the Restoration of the Grassias in the Ahmedabad Collectorate, and for their relief from debt."

Report of the Select Committee on a "Bill for the Restoration of the Grassias in the Ahmedabad Collectorate, and for their relief from Debt."

Report Read.

The DEPUTY SECRETARY read the following Report :—

REPORT OF THE SELECT COMMITTEE appointed to consider and report on a  
 “ Bill for the Restoration of the Grassias in the Ahmedabad Collec-  
 torate, and for their relief from Debt.”

The Committee determine to recommend that this Bill, as amended by  
 them as follows, be adopted —

### A B I L L

*For the Amelioration of the Condition of Talookdars in the Ahmedabad  
 Collectorate, and for their relief from Debt.*

WHEREAS the lands held in the Zillah of Ahmedabad, in the Province  
 of Guzerat, under the title of Talookdaree Estates  
 Preamble are now only held on leasehold tenure determinable  
 at the pleasure of Government ; and whereas it has been brought to the  
 notice of Government that many of the Talookdars are in embarrassed  
 circumstances, and have borrowed money on the security of their Landed  
 Estates , and whereas such of the said Landed Estates as are of the  
 Talookdaree tenure aforesaid could not and cannot be lawfully charged,  
 incumbered, or alienated ; and whereas it is expedient to enable the said  
 Talookdars to effect a settlement of their debts and liabilities, it is hereby  
 enacted as follows —

I. Whenever it shall appear to the Governor in Council that any  
 Talookdar in the Zillah aforesaid is subject either  
 personally or in respect of his Landed Estates of any  
 description of tenure to debts or liabilities equal to or  
 exceeding five times the average annual profit derived  
 by the Talookdar from his Estates aforesaid during the  
 previous five years, it shall be lawful for the Governor  
 in Council to make a declaration vesting the management of the said Estates  
 in an Officer or Officers, who shall then be appointed by the Governor in  
 Council in that behalf, and the said declaration shall be published in the  
*Bombay Government Gazette.*

II. From and after the making of such declaration as aforesaid, all  
 suits or judicial proceedings, for or in respect of debts  
 or liabilities in the first Section above mentioned,  
 other than debts due or liabilities incurred to the Crown  
 or Government, pending before or under appeal from  
 any of the Civil Courts in the said Presidency, shall  
 be and are hereby declared to be permanently stayed,  
 and no further prosecution thereof shall be permitted, and all writs, processes,  
 executions, or attachments for or in respect of such debts and liabilities shall  
 forthwith cease and be raised.

III. From and after the making of such declaration, the said Officer or Officers shall have power, without resorting to any Civil Court, to remove from possession of the Landed Estates of the Talookdar or any part thereof any mortgager or encumbrancer who may be in possession of the same without prejudice to such mortgager or encumbrancer bringing his claim under Section VIII. and IX. before the Officer or Officers appointed for the management of the said Estates

After such declaration the Talookdar not to be liable to arrest in respect of such debts or liabilities other than debts due to the Crown or Government

IV. From and after the publication of such declaration as aforesaid, the Talookdar, the subject of such declaration, shall not be liable to arrest under any process of the Civil Court of the Presidency of Bombay, for or in respect of any debts or liabilities existing at the time of such declaration, other than debts due or liabilities incurred to the Crown or government

V. From and after the making of such declaration as aforesaid, the Landed Estates of such Talookdar of any description of tenure, and the rents, profits, and income thereof shall, during the period of the management thereof by the said Officer or Officers, be wholly exempt from seizure, attachment, or sale under or by virtue of any process, decree, judgment, or execution of any Civil Court of the Presidency of Bombay, for or in respect of the debts and liabilities aforesaid other than debts due or liabilities incurred to the Crown or Government

VI. It shall be lawful for the Governor in Council to make Rules for the purpose of carrying this Act into effect, and from time to time to alter, vary, or amend such Rules as necessity may arise.

Governor in Council to make Rules for carrying this Act into effect.

VII. The said Officer or Officers shall, during the continuance of his or their management of the said Estates, receive the whole of the rents, profits, and income thereof, and shall pay to the Talookdar such annual sum only as shall appear to the Governor in Council requisite for the decent support of the Talookdar and his family; and any balance remaining after such payment as aforesaid, shall be applied in discharge of the expenses of such management as aforesaid, and in liquidation or settlement of the debts and liabilities to which at the time of making the said declaration the Talookdar is subject, either personally or in respect of his Landed Estates of any description of tenure in accordance with the Rules alluded to in the last preceding Section.

The Officer or Officers to receive the rents, profits and income of the said Estates

And pay annual sum for support of the Talookdar and his family

Expenses of management

And in liquidation of settlement of debts and liabilities.

In accordance with the Rules alluded to in last Section.

VIII. The said Officer or Officers shall publish in the *Bombay Government Gazette* a Notice in English and Guzeratee

Officer or Officers to publish Notice in *Gazette* calling upon persons having claims against the Talookdars to notify the same within three months

calling upon all persons having claims against the said Talookdars or their said Landed Estates in respect of any of the debts or liabilities aforesaid, to notify the same in writing to such Officer or Officers within three calendar months from the time of such notice in th

*Gazette*, and the said Officer or Officers shall before or contemporaneously

And cause copies of such Notice to be exhibited at the Cutcheries and other places

with such publication in the *Gazette*, cause copies of such Notice to be exhibited at the Mamlutdars' Cutcheries in the said Zilla, and in such place or places as to such Officer or Officers shall seem fit, and

as may be directed by the said Rules.

IX Any debt or liability of the Talookdar, other than as aforesaid to

Any debt or liability not duly notified to be barred.

which he is subject either personally or in respect of his said Landed Estates existing at the time of the said declaration by the Governor in Council, not duly notified to the said Officer or Officers within the time and in the manner in the

Upon proof given of inability of claimant to have complied with these provisions

last preceding Sections specified, shall and is hereby declared to be for ever barred. Provided always, that upon proof being given to the satisfaction of such Officer or Officers of the inability of the claimant to have

complied with the provisions of these and the last preceding Sections, it shall

Claims may be admitted within further period of nine months.

be lawful for the said Officer or Officers to entertain and admit such claim within the further period of nine calendar months from the expiration of the above-

mentioned period of three months.

X. The said Officer or Officers shall as early as possible prepare and

The Officer or Officers to prepare and submit a scheme for the disencumberment of each Talookdaree Estate for approval of the Governor in Council

submit to the Governor in Council a scheme for the disencumberment of each Talookdaree Estate, and such scheme, when approved by the Governor in Council, shall be carried into effect. The amount of any debt or liability, as fixed in such approved scheme, shall not be liable to increase. Any debt or liability disallowed

by such Officer or Officers shall, if such disallowance be approved by Government, be and it is hereby declared to be for ever barred

XI. It shall be lawful for the Governor in Council to empower the

Governor in Council may empower the Officer or Officers to raise a Fund for the liquidation of the debts of a Talookdaree Estate under management

Officer or Officers aforesaid to raise a fund to be applied to the liquidation of the debts of an encumbered Talookdaree Estate under his or their management by assigning the whole or a portion of such Estate to be held and enjoyed for a limited period or

periods by any fit person or persons who may advance money on the security thereof, or by the sale of such portion of the Estate as may appear expedient, but in either case the consent of the Talookdar and of his next heir, if the latter be of age, shall first be obtained.

XII. Any debt or liability, except as hereinbefore excepted which may be incurred by the Talookdar, either personally, or in respect to his said Landed Estates or any part thereof during the period of such management as aforesaid shall not be enforceable in any manner whatever either during or subsequently to such period of management against his said Landed Estates or any part thereof. And it shall not be competent for the Talookdar during the said period of management to charge, encumber, sell, or alienate his said Landed Estates or any part thereof, and such charges, encumbrance, sale, or alienation shall be null and void.

Any debt or liability, &c, incurred during such management not enforceable against the said Landed Estates

And Talookdar not competent during such period to charge, sell, or alienate his said Landed Estates

XIII It shall be lawful for every Officer or Officers appointed under this Act to demand and require the production of any writs, decrees, judgments, records, deeds, documents, exhibits, pleadings, books, accounts, letters, petitions, papers, or writings, filed in any of the suits mentioned in the 2nd Section of this Act, or relating to the debts or liabilities of any Talookdar, whose Landed Estates are brought under such management as aforesaid, in the custody or control of any Civil Court, or in the custody or control of any Judges, Judge, Assistant Judge, Officer, or Person connected with such Court, and upon notice being given in writing by such Officer or Officers to such Civil Court, or to any Judges, Judge, Assistant Judge, Officer, or Person connected therewith, such writs, decrees, judgments, records, deeds, documents, exhibits, pleadings, books, accounts, letters, petitions, papers, or writings in the said Notice mentioned, shall be immediately given up to the said Officer or Officers appointed under this Act in the manner directed by the said Notice, any act, usage, or custom to the contrary in any wise notwithstanding.

Civil Courts to give up writs, decrees, papers, &c, when required.

XIV It shall be lawful for any Officer or Officers appointed under this Act, to summon witnesses, and to take evidence upon oath or solemn affirmation, and to administer oaths or solemn affirmations to persons whom he or they may admit to give evidence, and any such witness wilfully giving false evidence, shall be subject to be proceeded against in like manner, and to suffer, if convicted, the same punishment as if he or she had committed wilful and corrupt perjury; and it shall also be lawful for the said Officer or Officers to compel the production of books, accounts, papers, deeds, or other docu-

Power to Officer, &c, to take evidence.

ments, and to inflict a fine not exceeding Rupees one hundred for disobedience to any Sunnud or order made under this Section.

XV. The Officer or Officers appointed for the management of the Landed Estates of any Talookdar under this Act, shall have, for the purpose of the realisation and recovery of the rents, profits, and income of such Landed Estates, the same powers as a Collector possesses under the Regulations or Acts now or hereafter in force for the realisation and recovery of Land Revenue due to Government.

The Officer or Officers to have, for the purpose of realising the rents and profits of such Estates, the powers of a Collector

XVI. The management of the Landed Estates of any Talookdar by such Officer or Officers as aforesaid shall not extend beyond the period of twenty years, to be calculated from the first publication of such declaration as aforesaid in the *Bombay Government Gazette*, and at the expiration of such management, whether before or at the end of such period of twenty years, all debts and liabilities (except as hereinbefore excepted) existing at the time of such declaration, and comprised in such approved scheme as aforesaid, shall be deemed to be for all intents and purposes whatsoever fully discharged and satisfied, and neither the Talookdar, nor his heir, nor his representatives, nor his, her, or their Estates, whether moveable or immoveable, or any part thereof, shall be subject in any manner whatsoever to such debts or liabilities (except as hereinbefore excepted) or any part thereof.

Management not to extend beyond twenty years, and at expiration of management all claims, &c, to be considered as settled

XVII. It shall be lawful for the Governor in Council from time to time to appoint new Officers to carry this Act into effect, and all such Officers shall have the same powers as the Officer or Officers first appointed.

Governor in Council may appoint new Officers.

XVIII. Officers appointed under this Act shall have the same powers for enforcing the payment of Fines imposed under this Act as are given to Magistrates by Act II. of 1839.

Officers to have powers for enforcing payment of Fines given to Magistrates by Act II of 1839.

XIX. Notwithstanding anything to the contrary in this Act, it shall be lawful for the Civil Courts to entertain and dispose of suits relating to the succession to or rights of coparcenary in or rights of persons claiming maintenance out of any Landed Estate brought under the operation of this Act. Provided, always, that neither the Crown nor Government, nor any Officer or Officers appointed under this Act, shall be liable to any suit for or in respect of any act or acts done in good faith by such Officer or Officers.

Civil Courts may entertain suits relating to succession rights of coparcenary or rights of persons claiming maintenance out of Landed Estates brought under the operation of this Act.

Crown, Government, or Officer or Officers, not liable to suit for acts done in good faith by such Officer or Officers



XX. From and after the expiration of the period of management of the Estate of any Talookdar, whether such period extend to or be less than twenty years, the Talookdar shall be the absolute Proprietor of his said Landed Estates as regards succession to, and possession, management, and transfer of the same, subject to such Land Tax as the Governor in Council may be pleased to reserve, and all usual remedies for the recovery thereof.

After expiration of period of management, Talookdar to be absolute Proprietor of his Landed Estates as to succession, possession, management, and transfer of the same, subject to Land Tax

XXI. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say) the term "Civil Court" shall mean and include every Court of Civil Judicature in the Presidency of Bombay whether established by Royal Charter or not.

Interpretation Clause.

Words importing the masculine gender shall include the feminine  
Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

The PRESIDENT asked what alterations had been made in Committee.

Mr ROBERTSON said that the Bill had been entirely recast, and explained several of its provisions

The DEPUTY SECRETARY called the attention of the Council to the 25th Rule, which provides that the Report of a Select Committee should be taken into consideration as soon as might be, but not until a week after it had been furnished to the members, and stated that that had been done on Wednesday last.

Mr PREMABHAI HEMABHAI moved that the 25th Rule be suspended by the President

Mr JUGONNATH SUNKERSETT opposed the motion, and said that no sufficient reason had been given

Mr. PREMABHAI HEMABHAI said he was anxious not to delay the Session of the Council longer than was absolutely necessary; and that the Bill should therefore be passed at once.

Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY spoke against the motion

The PRESIDENT said that as the Council were not unanimous, he would not suspend the Rule, and consequently that the Report could not be considered until the next meeting.

The PRESIDENT said the next subject for consideration was the Report of the Select Committee on a "Bill regarding Juvenile Reformatories"

Consideration deferred until the next Meeting

Report of the Select Committee on a Bill regarding Juvenile Reformatories

The DEPUTY SECRETARY read the following Report:—

REPORT OF THE COMMITTEE appointed to consider and report on a Bill regarding Juvenile Reformatories.

The Committee determine to report that in their opinion the following Bill, founded upon the provisions of the Imperial Acts noted in the margin, should be substituted for the Bill submitted to the Select Committee.

1 and 2 Vict. c. 82.  
17 and 18 Vict. c. 86.  
20 and 21 Vict. c. 55.  
21 and 22 Vict. c. 103.

*A Bill for the Establishment and Regulation of Reformatory Schools for Juvenile Offenders.*

WHEREAS it is expedient to provide for the Establishment and Regulation of Reformatory Schools, as contemplated in the Code of Criminal Procedure, in which Juvenile Offenders may be detained and corrected, and may receive such instruction and be subject to such discipline as shall appear most conducive to their reformation and to the suppression of crime; and whereas it is considered advisable to provide for the confinement in such Reformatories of Juvenile Offenders who may be sentenced by any of the Criminal Courts in the Presidency of Bombay,

I. It is enacted, that it shall and may be lawful for the Governor of Bombay in Council upon application made to him by the Directors or Managers of any such Institution, to direct the Inspector of Jails and Director of Public Instruction to examine and report to him upon its condition and regulation, and any such Institution as shall appear to the satisfaction of the said Governor of Bombay in Council to be useful and efficient for its purpose, shall be held to be a Reformatory School under the provisions of this Act, and a Certificate to that effect shall be given to the Directors or Managers of the Institution, under the signature of one of the Secretaries to Government. Provided, always, that it shall be lawful for the Inspector General of Prisons, or Director of Public Instruction, to visit from time to time any Reformatory School which shall have been so certified as aforesaid, and if upon the report of either or of both of them the said Governor of Bombay in Council shall think proper to withdraw the said Certificate, the withdrawal shall be notified in writing by one of the Secretaries to Government, to the Directors or Managers of the said Institution, and the same shall forthwith cease to be a Reformatory School within the meaning of this Act.

II. Whenever the said Governor of Bombay in Council shall at any time grant a Certificate under this Act to any Reformatory School, a notice thereof, specifying the names of the Directors or Managers thereof, shall, within One Calendar month, be published in the *Bombay Government*

*Gazette*, and such publication shall be a sufficient evidence of the fact of such Reformatory School having been certified, to justify the Judge or Magistrate, before whom any such Juvenile Offender shall have been convicted, to commit such Juvenile Offender thereto, subject to the provisions of this Act, and whenever the Governor of Bombay in Council shall withdraw the Certificate granted to any Reformatory School, notice of such withdrawal shall, within one Calendar month, be given in the said *Gazette*.

III. Whenever, after the passing of this Act, any person under the age of sixteen years shall be convicted of any offence punishable by law before any Police Magistrate, or any of the Criminal Courts subject to the Presidency of Bombay, then, and in every such case, it shall be lawful for any Court, Judge, or Police Magistrate, before or by whom such offender shall be so convicted, in addition to the sentence then and there passed as a punishment for his offence, to direct such offender to be sent, at the expiration of his sentence, to some one of the aforesaid Reformatory Schools to be named in such direction, the Directors or Managers of which shall be willing to receive him, and to be there detained for a period not less than two years, and not exceeding five years, and such offender shall be liable to be detained pursuant to such direction. Provided, always, that no offender shall be directed to be so sent and detained as aforesaid, unless the sentence passed as a punishment for his offence at the expiration of which he is directed to be so sent and detained, shall be one of imprisonment for fourteen days at the least, provided also, that the Court, Judge, or Police Magistrate, may, if it thinks right, direct such term of imprisonment to be carried out, as far as practicable, in the Civil Jail or in separation from the more heinous offenders, and provided also, that the Governor of Bombay in Council may at any time order any such offender to be discharged from any such school.

IV. If any offender who shall be ordered to be confined in any of the aforesaid Reformatory Schools shall, at any time during the term of such confinement, escape from the place of his confinement, or in his conveyance to such place of confinement, or from any lands belonging to the Reformatory, he shall be punished by an addition, not exceeding two years, to the term for which at the time of his escape he was subject to be confined, and if an offender so punished by such addition to the term of confinement shall afterwards be convicted of a second escape, he shall be liable to be imprisoned with rigorous imprisonment for a term not exceeding three years; and if any offender who shall be ordered to be confined in the said Reformatory shall at any time during the term of such confinement, attempt to escape from the place of his confinement, or shall forcibly break out of his cell, or shall make any breach therein with intent to escape, he so offending, being convicted thereof, shall be punished by imprisonment for a term not exceed-

ing twelve Calendar months, in addition to punishment to which he, at the time of committing any such offence, was subject.

V. Every person who shall rescue any offender who shall be ordered to be confined in any Reformatory, either during the time of his conveyance to the said Reformatory, or whilst such offender shall be in the custody of the person or persons under whose care and charge he shall be so confined, and also every person who shall aid in any such rescue, shall be liable, on conviction, to be imprisoned with rigorous imprisonment for a term not exceeding three years; and every person having the custody of any such offender, employed by the person having such custody as an Assistant or Guard, who shall knowingly allow such offender to escape, and also every person who shall, by supplying arms, tools, or instruments of disguise, to otherwise in any manner aid any such offender in any escape or in any attempt to make an escape though no escape be actually made; or who shall attempt to rescue any such offender or aid in such attempt, though no rescue be actually made, shall, on conviction, be liable to fine and to be imprisoned with rigorous imprisonment for a term not exceeding three years; and every person having such custody as aforesaid, who shall carelessly allow any such offender to escape shall, on being lawfully convicted of the same, be liable to fine or imprisonment not exceeding three months, or to both, at the discretion of the Court.

VI. In every case in which any Juvenile Offender shall be sentenced to be detained in a Reformatory School under this Act, the Court by which he shall be so sentenced shall in the Warrant direct that the parent of such offender shall, if of sufficient ability, be liable to contribute to his support and maintenance a sum not exceeding Rupees three per month; and upon the complaint of the Directors or Managers or any one of them named in the notice published in the *Government Gazette*, under Section II. of this Act, it shall be lawful for the Zillah Judge, or Magistrate of Police, to summon the parent, and on the hearing of such summons, whether the party summoned shall appear or not, to examine into his or her ability to contribute to such offender's support or maintenance, and to make an order upon him or her for such monthly payment, not exceeding Rupees three per month, as shall seem reasonable during the whole or any part of the detention of such Juvenile Offender in any such Reformatory School, such payment to be made at such times as by such order may be directed to the Director or Manager of the Institution, or to such person as may be appointed to receive the same, and by him to be accounted for and paid, as the Zillah Judge or Magistrate of Police may direct.

VII. In case default be made for the space of fourteen days in payment of any sum of money which may have become payable by such parent under

any such order, such sum of money shall in every such case be levied upon the goods and chattels of the Defendant by distress and sale thereof; and if it shall appear, on confession of the Defendant or otherwise, or if it shall be returned to the Warrant of Distress in any such case that no sufficient goods of the party against whom such Warrant shall have been issued can be found, it shall be lawful to the Magistrate or Judge to whom such return is made, to commit the Defendant to prison, for any term not exceeding ten days, unless the sum to be paid, and all costs and charges of the distress, and of the commitment and conveying of the Defendant to prison (the amount thereof being ascertained and stated in the Warrant or Commitment shall be sooner paid.

VIII. It shall be lawful for the Governor of Bombay in Council, upon the application of the Directors or Managers of any Reformatory School for youthful offenders, already established in whole or in part by voluntary contributions, or of the Promoters of a Reformatory School intended to be so established, to make an order for the payment of money in aid of such Reformatory School or of the Establishment thereof, subject to such conditions as may be agreed upon between the Governor of Bombay in Council and the said Directors, Managers, or Promoters, Provided also, that in the case of any Reformatory established in the Island of Bombay, payment in aid may be made out of the Municipal Fund as to a "public work," under Section XXVIII., Act XXV. of 1858.

IX. It shall be lawful for the Governor of Bombay in Council, if he shall think fit to do so, to remove any such youthful offender from any Jail to any Reformatory School under this Act; provided always, that such removal shall not increase the period for which such offender was sentenced to remain in the Jail.

X. Section 433 of Act XXV. of 1861 shall be applicable to all Officers exercising magisterial authority in Military Cantonments.

The PRESIDENT said that as a week had not elapsed since the Report had been circulated, the consideration of it could not take place until the next meeting.

Consideration  
deferred until the  
next Meeting

The PRESIDENT gave notice that at the next meeting he should propose the following amendments:—

Notice of a-  
mendments to be  
proposed by the  
President at the  
next meeting

That instead of the words "such Institution" in the 4th and 5th lines of Section I. of the Bill, the following be substituted:—

"School in which Industrial training is provided, and in which children are clothed, lodged, and fed, as well as taught."

That the word "he" be substituted for "it" in the 26th line of Section III. of the Bill.

That the words "be liable to" in the 6th line of Section VI. of the Bill be omitted; and that the following Section be added as Section XI.:

"XI. The word Parent in this Act shall include any person legally liable to maintain a child."

The PRESIDENT then adjourned the meeting to Wednesday, the 26th instant, at 11 o'clock.

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

LYTTLETON H. BAYLEY,

Deputy Secretary to Government

*Bombay Castle; 22nd March 1862.*

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament 24 and 25 Victoria, Chapter 67

*Wednesday, 26th March 1862.*

The Council of the Governor of Bombay for the purpose of making Laws and Regulations met according to adjournment.

### PRESENT:

The Honorable Mr. FRERE,

The Honorable Mr. INVERARITY,

The Honorable Mr. WESTROPP,

The Honorable Mr. TRISTRAM,

The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHAY,

The Honorable Mr. JUGONNATH SUNKERSETT,

The Honorable Mr. PREMABHAI HEMABHAI,

The Honorable Mr. SCOTT,

The Honorable Mr. ROBERTSON,

And the DEPUTY SECRETARY.

Mr. FRERE, being the Senior Ordinary Member of Council present, presided in the absence of the Governor.

The PRESIDENT said that the first subject before the Council was the Report of the Select Committee on "a Bill for the Restoration of the Grassias in the Ahmedabad Collectorate and for their relief from debt," the consideration of which had been postponed at the last Meeting.

Report of the Select Committee on a "Bill for the Restoration of the Grassias in the Ahmedabad Collectorate, and for their relief from debt," considered.

Mr. WESTROPP said it would be found that the Committee had considerably enlarged the Bill, but substantially it was based on the original one prepared by Mr. Reeves. He thought it desirable to have the average annual profit mentioned in the 1st Section more clearly defined.

Mr. ROBERTSON said that 70 per cent was now taken by the Government, leaving only 30 per cent. to the Talookdar.

Mr. WESTROPP proposed the following amendments in the 1st Section:—

Amendments

That the words "annual profit" in the 9th line be omitted, and the words "rents, profits, and other annual income" be inserted in lieu thereof, and that after the word "years" in the 11th line the following words be inserted: "after deducting thereout the Land Tax and other dues of Government."

*Carried unanimously.*

Mr. PREMABHAI HEMABHAI moved as an amendment that the word "ten" be substituted for the word "five" in the 8th line.

The amendment was negatived by 6 to 3.

Mr. WESTROPP proposed that the word "publication" be substituted for the word "making" in the first lines of the 2nd, 3rd, and 5th Section.

*Carried.*

Mr. PREMABHAI HEMABHAI wished to know whether the words "Landed Estates" in the 7th line of the 3rd Section included Wanta.

Mr. WESTROPP said they certainly did.

Mr. WESTROPP proposed that after the word "Talookdar" in the 7th line of the 3rd Section, the following be inserted: "of any description of tenure."

*Carried.*

Mr. WESTROPP proposed that the word "mortgager" in the 8th line of the 3rd Section be changed to "mortgagee," and that after the word "or" in the same line the word "other" be inserted.

*Carried.*

Mr. WESTROPP proposed that after the word "arrest" in the 5th and 6th lines of the 4th Section, the following be inserted: "nor shall his personal Estate of any description whatsoever be liable to seizure, attachment, or sale."

*Carried.*

Mr. WESTROPP proposed that between the words "process" and "of" in the 6th line, the following be inserted: "decree, judgment, or execution."

*Carried.*

Mr. WESTROPP proposed that the word "publication" be substituted for the word "making" in the 18th line of the 7th Section.

*Carried.*

Mr. PREMABHAI HEMABHAI proposed that the word "six" be substituted for the word "three" in the 11th line of the 8th Section.

Mr. WESTROPP objected to the proposed amendment, and said that the Committee were of opinion that three months were quite enough.

Mr. JUGONNATH SUNKERSETT was in favour of six months because a man might not be at the place, or he might have gone on a pilgrimage.

Mr. ROBERTSON said those cases were provided for by the 9th Section, and that six months would protract the officer's labours very considerably.

Mr. JUGONNATH SUNKERSETT withdrew his objection.

The amendment was put and negatived by 8 to 1.

Mr. WESTROPP proposed to omit the words "disencumberment of each Talookdaree Estate" in the 5th and 6th lines of the 10th Section, and to substitute "settlement of the Talookdar's debts and liabilities."

*Carried*

Mr. PREMABHAI HEMABHAI proposed to add the words "nor decrease" after the word "increase" in the 11th line of the Section.

The amendment was put and negatived by 8 to 1.

Mr. WESTROPP said that the 11th Section was adopted on the suggestion of the gentleman who had made such an able report on these matters (Mr. Peile), and he (Mr. Westropp) was certainly in favour of the Section being retained, though in an altered form. He therefore proposed to substitute for the 11th Section the following one.—

" XI. It shall be lawful for the Governor in Council to empower the Officer or Officers aforesaid to raise a Fund to be applied to the settlement of the debts and liabilities of the Talookdar, by assigning the whole or a portion of his landed Estates of any description of tenure to be held and enjoyed for a period or periods not exceeding 20 years from the publication of the declaration aforesaid by any fit person or persons who may advance money on the security thereof, or by the sale of such outlying portion or portions of the said Estates as may appear expedient, but in case of such sale the consent of the Talookdar and of his next heir, if the latter be of age, shall first be obtained.

*Carried.*

Sections 12, 13, 14, 15, 16, and 17 were then agreed to.



Mr. WESTROPP proposed to omit the words "Magistrates by Act II of 1839" in Section 18, and substitute the following: "Courts by Section 61, Act XXV. of 1861."

*Carried.*

Sections 19, 20, and 21 were then agreed to.

Mr. WESTROPP proposed to insert after the word "shall" in the 6th line of the 7th Section the following words: "defray thereout the land tax and other debts due or liabilities incurred or hereafter respectively to grow due or be incurred to the Crown or Government and"

*Carried*

The PRESIDENT said that under the 29th Rule the motion for the second reading could not be made.

Mr. WESTROPP proposed, as the Bill had been fully discussed and was now agreed to, that the President should suspend the 29th Rule.

The PRESIDENT suspended the 29th Rule.

Rule 29th suspended

Mr. TRISTRAM moved that the Bill as amended be read a second time

The Bill as amended was then read a second time by the Deputy Secretary and passed.

Bill as amended, read a second time and passed

The PRESIDENT said the next subject for consideration was the Report of the Select Committee on a Bill regarding Juvenile Reformatories.

Report of the Select Committee on a Bill regarding Juvenile Reformatories, considered

The PRESIDENT moved the following amendments of which he had given notice at the last meeting:—

Amendments proposed by Mr. W E Frere and agreed to.

"That instead of the words 'such Institution' in the 4th and 5th lines of Section I of the Bill, the following be substituted 'School in which Industrial training is provided, and in which children are clothed, lodged, and fed, as well as taught.'"

*Agreed to*

"That the word 'he' be substituted for 'it' in the 26th line of Section III. of the Bill"

*Agreed to.*

"That the word 'be liable to' in the 6th line of Section VI of the Bill be omitted, and that the following Section be added as Section XI."

*Agreed to*

XI "The word Parent in this Act shall include any person legally liable to maintain a child."

*Agreed to.*

Amendments proposed by Mr. Premabhai Hemabhai proposed and negatived.

Mr. PREMABHAI HEMABHAI considered the provisions of the Bill to be too rigorous, and proposed the following amendments —

“ That the following words be inserted between the words ‘ direct’ and ‘ such’ in the 11th line of Section III. . ‘ If such Court, Judge, or Police Magistrate shall think fit.’ ”

*Negatived.*

“ That word ‘ one’ be substituted for ‘ two’ in the 16th line of the 3rd Section, and the word ‘ four’ for ‘ five’ in the 17th line of the same Section.

*Negatived*

“ That the word ‘ six months’ be substituted for ‘ three years’ in the 15th line of the 4th Section.”

*Negatived.*

“ That the words ‘ if able’ be inserted between the words ‘ and’ and ‘ to’ in the 17th line of the 6th Section.”

*Negatived*

Bill read a second time and passed

The Bill was then read a second time by the Deputy Secretary and passed

Question as to the intentions of Govt regarding the proposed Bill to suppress Cotton frauds put by Mr Scott

Mr SCOTT asked the President whether the Government intended to bring in the Bill alluded to in the Proceedings of the Council of the 28th January 1862, with the view of securing, if possible, the important object of suppressing the production in the market of Cotton in an unclean state, and checking the practice of packing Cotton falsely

The PRESIDENT said that Government having made inquiries into the object of Cotton frauds, found that Act III. of 1829 had for the last ten years, when strictly enforced, been found efficient not only to punish all frauds committed at Surat and Broach, but to deter men from attempting to commit them. It therefore appeared unnecessary to legislate further on the subject but Government directed the Police Commissioners to take care that the act was enforced in all cases that came before their subordinates, and the respectable dealers had every assistance from them in bringing offenders to justice

It is not the intention of Government to introduce any new Legislative measure on the subject, as the merchants have the remedy in their own hands, for if they will only unite to bring the offenders forward, Government will take care that the law is enforced.

The PRESIDENT then addressed the Council in the following words.—

“ I am now directed by His Excellency the Governor to close this the first Session of his Council for making Laws and Regulations

Address of the President in closing the first Session of the Legislative Council

“ Eight Bills have been laid before you for consideration Of these seven have been passed, and one for altering the jurisdiction of the subordinate Civil Courts has been withdrawn for further consideration, which it will receive before being again introduced

“ Of the Bills which have been passed, three are on subjects of much importance The Bill for extending the powers of Municipal Commissioners, by allowing them to assign a certain portion of their Funds to Local Dispensaries and Schools will extend their means of doing good But its working must be closely watched by the Government in order to prevent any abuse of the discretion now permitted

“ The Bills for the preservation of the Bhagdaree tenure and the restoration of the Talookdars, though of application only in a small portion of the territory subject to Bombay, will, it is hoped, have the effect of re-establishing in Guzerat a body of men holding their property on a tenure more independent of Government than that on which the Ryots generally hold

“ The duties of the Council having been new to all of us, we have of course experienced their minor difficulties, which henceforth will disappear. However, I hope we have worked satisfactorily and in the cause of good order

“ His Excellency the Governor desired to alter the Rules under which we first met, so as to adapt them to what we find our proceedings require, and the time therefore which we have spent this Session in preparing those Rules for his approval, will, I hope, next Session be spared for Laws of more general application should any such be called for.

“ In conclusion, His Excellency the Governor desires me to express to you his satisfaction and approval of your proceedings, and his thanks for your attention to your duties, the fruits of which he trusts will be secured for future generations

“ The Session is adjourned to Tuesday the 15th July 1862.

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

L. H. BAYLEY,  
Deputy Secretary to Government.

*Bombay Castle, 26th March 1862.*

Adjournment of the Session to the 15th July 1862

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

The Council met at Poona on Tuesday, the 15th July 1862.

### PRESENT:

HIS EXCELLENCY SIR H. B. E. FRERE, K.C.B., Governor of Bombay, presiding.

HIS EXCELLENCY SIR W. R. MANSFIELD, K.C.B.

THE HONORABLE MR. FRERE.

THE HONORABLE MR. INVERARITY.

THE HONORABLE THE ADVOCATE GENERAL

THE HONORABLE MR. TRISTRAM.

THE HONORABLE MR. RUSTONJEE J. JEJEEBOY.

THE HONORABLE MR. MADHOWROW VITTUL VINCHOORKUR.

THE HONORABLE MR. JUGONNATH SUNKERSETT.

THE HONORABLE MR. ROBERTSON.

THE HONORABLE MR. SCOTT.

THE SECRETARY, AND THE DEPUTY SECRETARY.

Additional Member

MR. ARTHUR JAMES LEWIS, the Advocate General, having been nominated an additional Member of the Council of the Governor of Bombay, for the purpose of making Laws and Regulations, the resignation of Mr. M. R. Westropp, Acting Advocate General, of the Office of additional Member having been previously accepted by the Honorable Sir H. B. E. Frere as Governor of the Presidency, took the necessary Affirmation of Office and Declaration of allegiance.

The President's Address

His EXCELLENCY addressed the Council as follows —

“ GENTLEMEN,

“ I have called you together this day, in accordance with the first of the rules for the conduct of business by this Council, and in pursuance of the adjournment from your last sitting on the 26th of last March.

“ There is a considerable amount of important business, which will be laid before you in the course of the Sessions, for although but three Bills have hitherto been published, there are several in so forward a state as to admit of publication within the next few days. Some of them provide for important additions to the general law, such are an Act for the Relief of Insolvent Debtors in the Mofussil,—a very important Bill for consolidating and amending the law under which the Mofussil Police acts—one for the amendment of

Prison Discipline,—and a Bill to provide for the care of Minors' property, to which I trust the attention of our Native Colleagues will be particularly directed with a view to make it as complete and useful a measure as possible.

“ There are also two Bills for extending the jurisdiction of the Small Cause Courts in Bombay and Kurrachee, and I observe, with special pleasure, that the Bombay Bill has been taken in hand by one of the additional Members of the Council, whose thorough knowledge of the subject is an excellent guarantee for the production of a useful and practical measure. There is also a Bill for bringing Sattara and Canara and other districts under the same laws which apply to the Bombay Presidency.

“ There are three Bills of a Municipal character—

1. To give to the Revenue Commissioners powers now vested in Government;
2. For the better regulation of the Vehar Water Works in Bombay, and,
3. To legalize a cess for local Public Works and Education in Sind.

“ There is also a measure similar to that which has been lately enacted in Bengal, to promote the formation of Roads and Railway Feeders.

“ There are two Bills of considerable interest to internal commerce,—one relating to Port Dues in Canara, another to the Registry of River Boats and levy of Pilot Fees on the Indus.

“ There is also a very important Bill relating to the Bank of Bombay, but our proceeding with it must depend upon the instructions we receive from Her Majesty's Secretary of State and the Government of India

“ One of the most important Bills which will be submitted, is that, to give legal effect to the settlement of Enam Lands which occupied so much of the attention of the late Governor, and which will, I believe, have a most beneficial effect in defining and securing rights in lands held free or partially free of Land Tax.

“ I also hope to bring in a Bill to carry out in this Presidency the Resolution of the Governor General in Council dated 17th October last, relative to the Sale of Waste Lands, and to the Redemption of Land Tax.

“ Under Section 43 of the Indian Councils' Act of 1861, this measure must be submitted for the previous sanction of the Governor General, but I trust such sanction may be received in time to admit of the Bill being introduced this Session.

“ It would not have needed any reference to this Resolution, one of the latest, in my humble opinion, one of the most useful of Lord Canning's measures, to remind us of the great loss we have sustained in the death of the late Viceroy.

“ I do not now speak of the great national loss, which will be most deeply felt by those who had the honour of being associated with him in the work of administration during his tenure of office in this country.

“ We have a special loss of our own, and we could not meet together here this day as the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations, without feeling acutely the loss of him who restored to this Presidency the power of making its own local Laws and Regulations, and gave to us, the trained servants of Government, the inestimable advantage of publicly deliberating on all matters of legislation with men chosen from among the best and wisest of the non-official subjects of Her Majesty.

“ The time has not yet come when full justice can be done to Lord Canning’s measures in this matter, partly because we have yet to realize the greatness of the change which he effected.

“ These Councils, of which ours is one, are yet on their trial.

“ I cannot do better than recall to your memory what was so well said by my predecessor in this Government when he first opened this Council, and beg you to bear in mind what was then stated by one so able, and so experienced, and so sincerely anxious for the best interests of India, as Sir George Clerk.

“ It is only by a patient and conscientious discharge of our duty continued throughout a long series of years, that we can hope to win general confidence, and establish our character as an important and useful branch of the administration of this vast Empire

“ We must be equally on our guard against neglecting any portion of the wide range of duty entrusted to us, and against the still more dangerous temptation of over-legislation or of overstepping the limits of our powers which have been marked out for us by the Imperial Parliament, or by the Governor General or Secretary of State

“ I, for one, have no misgiving as to the result. Even in the most restricted sense, the local affairs of so many millions of our fellow-subjects are matters of real and imperial interest even in so vast an Empire as that of England, and when we consider how much wealth, intelligence, and energy are to be found in the population of this Presidency, what vast forces, material as well as moral and intellectual, are at work in it either for good or evil, to the future of England as well as of India, I cannot but think that the duty of legislating for such a country to the extent entrusted to us is one weighty enough to satisfy the most ardent aspirant who ever hoped to mould the future destinies of his race.

“ Such is the importance of the duty, that I trust we shall never fail to obtain the aid of those best qualified to assist us, among the community which is not otherwise directly connected with the Government of the country.

“ But whatever the result, whether we succeed or not in establishing our character as a useful and indispensable portion of the machinery of Indian administration, History will tell that to Lord Canning belongs the honour of securing for the experiment the great elements, without which, I believe, success would be impossible.

“ While still engaged in extinguishing the last embers of the fiery ordeal through which India had passed in 1857-58, he had recognized the great defects of the former legislative machinery. Its excessive centralization, its exclusive composition, comprising as it did none but official servants of Government, and the absence of those who could speak personally as to the wants and wishes of the native community. He had proposed a measure in which all those defects were supplied, and in all the discussions which followed he never swerved from the great principles he then laid down, and, if we rise to the occasion before us, it is to him that we owe the opportunity, for it was he who secured to us the power for localized legislation on all subjects of local interest, the admission to the legislative body of non-official members, and among them of those who can best advise us as to the opinions and wants of our native fellow-subjects, above all, to him we owe that publicity of all our proceedings, without which I believe all our other advantages would have been thrown away

“ I will only further express a hope that our deliberations may be directed to a result equal to the opportunities we have at our disposal for promoting the happiness and welfare of this Presidency and the honour of Her Majesty's Government in India.”

The Members of Council having then taken their seats, the PRESIDENT said that the first subject for the consideration of the Council was a “ Bill to amend Section 45, Clause 1, of Regulation XIII of 1827 ”

Bill to amend  
Section 45, Clause  
1, of Regulation  
XIII of 1827

Mr W E FRERE explained that the Judges of the Sudder Adawlut had brought to the notice of Government that, under the existing Law, European British subjects sentenced to hard labour, if confined in the Mofussil Criminal Jails, were obliged to be fettered, but that European prisoners were not put in irons in the House of Correction in Bombay nor in England, except when sentenced to death or in cases of urgent and absolute necessity, of which due notice must be given to one of the visiting Justices. They therefore suggested that Europeans should be exempted from fetters in this country as they are in England. Government, however, being of opinion that sentence of imprisonment with hard labour, or rigorous imprisonment as it is now called, should not of itself include the indignity of subjecting any man to be fettered, had determined to ask the Council to amend the Law, and the Bill which he asked permission to introduce would provide that it be permissive and not imperative to fetter prisoners sentenced to rigorous imprisonment. Mr. FRERE moved that the Bill be read a first time, which question was put and carried Mr FRERE then moved that the Bill be referred to a Select Committee consisting of

Read a first time  
and referred to a  
Select Committee

MR. RUSTOMJEE J JEJERBHOY,  
MR. MADHOWROW VITTUL VINCHOORKUR,  
and HIMSELF,

to report at next meeting of Council, which question was put and carried

Mr JUGONNATH SUNKERSETT said he was not prepared to bring in the Bill for making better provision for the care of the persons and property of Minors in the Presidency of Bombay, and proposed to defer doing so till the next meeting of Council.

First reading of  
Bill for making  
better provision  
for the care of the  
persons and prop-  
erty of Minors in  
the Presidency of  
Bombay, deferred  
till next Meeting.

The PRESIDENT put the question whether the consideration of the Bill should be deferred till the next Meeting, and the same was carried.

The PRESIDENT then adjourned the Council to Wednesday the 23rd instant.

*By order of His Excellency the Governor in Council*

M. J. SHAW STEWART,

Acting Secretary to Government.

*Bombay, 15th July 1862.*

### PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

The Council met at Poona, on Wednesday, the 23rd July 1862.

#### PRESENT.

HIS EXCELLENCY SIR H. B. E. FRERE, K.C.B., the Governor of Bombay, presiding

HIS EXCELLENCY SIR W. R. MANSFIELD, K.C.B.

THE HONORABLE MR. FRERE.

THE HONORABLE MR. INVERARITY.

THE HONORABLE THE ADVOCATE GENERAL.

THE HONORABLE MR. TRISTRAM.

THE HONORABLE MR. MADHOWROW VITTUL VINCHOORKUR.

THE HONORABLE MR. JUGONNATH SUNKERSETT.

THE HONORABLE MR. ROBERTSON.

THE HONORABLE MR. SCOTT, and

THE DEPUTY SECRETARY.

Report of the Select Committee on a Bill to amend Section 45 of Clause 1 of Regulation XIII of 1827, presented

The Honorable Mr. FRERE presented the Report of the Select Committee on a "Bill to amend Section 45 of Clause 1 of Regulation XIII of 1827."

His Excellency Sir W. R. MANSFIELD said he had an amendment to propose, but would defer it to the next meeting, when the Report of the Select Committee would be considered

The ADVOCATE GENERAL remarked that he also wished to propose an amendment, and would send notice of it to the Secretary, in accordance with the Rules.

Bill for making better provision for the care of the Persons and Property of Minors in the Presidency of Bombay, first Reading

MR JUGONNATH SUNKERSETT, in proposing the first reading of a "Bill for making better provision for the care of the Persons and Property of Minors in the Presidency of Bombay," said —

"The Bill which I am going to bring forward in Council to-day is, a Bill for making better provision for the care of the Persons and Property of Minors in the Presidency of Bombay." It has been prepared by the Judges of the Sudder Adawlut, at the request of Government, and is intended to remedy the



present defect in the law of this Presidency touching the care of the persons and property of Minors. I am glad it has fallen to my lot to bring forward this Bill. As the law now stands, there is nothing to prevent the natural guardians of Minors from making away with the Minors' estates. A want of provision to remedy this defect in the law has been much felt; and this Bill is intended to supply the want.

“Section 15 enacts, that the proceedings of the Collector in charge of the estate should be subject to the control of the superior Revenue Authority. It is difficult to see why he should not be subject to the jurisdiction and control of the Civil Court, as well as any other manager of the Minors' estates.

“In Section 18, where it runs, ‘But no such person shall have power to sell or mortgage, &c,’ I would add the words, or ‘otherwise alienate or dispose of’ immediately after the word ‘mortgage,’ and this can be done in Committee. I think this addition necessary, because though the estate may not be sold or mortgaged, it may be disposed of in gift, as the law contains no prohibition against this,—the addition suggested therefore will, in my humble opinion, prevent the estate being so given away, and I think it should be considered whether the same restriction should not be extended to the moveable property of the Minor,—or to some extent

“I also wish to make another addition, viz. in regard to the marriage of Minors. It is well known in India that females ripen earlier than in a cold climate. Before the age of 18 years girls are known to have become mothers of children. I think, therefore, that a provision should be made in this Bill to enable a Minor, a female Minor especially, to get married some time before she arrives at maturity—for, according to Oriental ideas and customs, girls cannot be allowed to remain unmarried till they attain the age of 18. I am myself, I confess, averse to very early marriages, and have made it a rule in my own family, not to celebrate them—and I only hope that my fellow-countrymen who are fond of early marriages will think of the evil consequences arising from such proceedings and desist from such course.

“With these additions, which suggest themselves to me at present, I beg to introduce the Bill, which I trust may be discussed in the Committee, and outside these walls, and I would recommend that a fair time be allowed to the public to come forward, and state their reasons and objections if they have any such in regard to this enactment. I therefore move that this Bill be read a first time.”

The PRESIDENT put the question that the Bill be read a first time, which was carried. Read a first time

The ADVOCATE GENERAL said he did not know whether it had been considered that the same person might be appointed guardian of the person and property: The Act seemed drawn up from the Calcutta Act. The words “Houses, Gardens, or the like” in the 9th Section seemed not to include moveable property. Then he did not see any reason for compelling the guardian of the person to give security. He did not think the words of Section 13

sufficiently large. The Court should have a general discretion as to costs in case any proceedings were improperly taken. He fully concurred in the observation of the Honorable Member opposite (Mr Jugonnath Sunkersett) in the propriety of restricting the right of alienation or mortgage.

Then as to Section 29 he should think it doubtful whether 18 years was the proper age.

As to the last Section, he should like to know why the Supreme Court was to be excluded? He did not see why that Court should not have cognizance of matters respecting Minors residing within the Presidency Town.

The PRESIDENT said no doubt these observations would be very valuable when the details of the measure came to be considered; but as the first reading of the Bill had been carried, he would suggest that they should be reserved till the matter came before the Committee.

Mr. JUGONNATH SUNKERSETT said the Bill was so important that he thought that the Report ought not to be made till ample time had been given for the discussion of its provisions—he was inclined to propose three months.

His Excellency SIR W. R. MANSFIELD said that it was probable the Bill would be much altered in Committee; he therefore thought the views of the Honorable Mr. Jugonnath Sunkersett would be better carried out if a reasonable time, say a month, were given to the Committee. The public would have a better opportunity of forming an opinion on the measure when the Report of the Select Committee was published, which would probably embody some of the alterations which the Honorable Mover and the Advocate General seemed inclined to propose.

Referred to a  
Select Committee

Mr JUGONNATH SUNKERSETT proposed that the following members be appointed a Committee.—

The Honorable W. E. FRERE,

The Honorable A. J. LEWIS (Advocate General),

The Honorable RUSTOMJEE J. JEJEEBHAY,

The Honorable MADHOWROW VITTUL VINCHOORKUR,

And the MOVER,

with instructions to make their report within one month from this date.

*Carried.*

Leave given to  
bring in a "Bill to  
abate the Nuisance  
arising from the  
Smoke of Furnaces  
in the Islands of  
Bombay and Cola-  
ba"

Mr. TRISTRAM said that in pursuance of the notice he had given, he moved for leave to bring in a "Bill to abate the Nuisance arising from the Smoke of Furnaces in the Islands of Bombay and Colaba." A similar Bill had been introduced in Calcutta. The increase of smoke from furnaces now used in the different mills and manufactories, as well as in numerous public and private buildings where machinery worked by steam had been introduced, is very apparent. These establishments are on the increase in the Fort and Colaba, as well as the outskirts of the Native Town, as any person may readily satisfy himself.

The comparatively limited space comprised within the limits of the Island and the dense masses of people residing thereon, seem to render it very desirable that means should be taken as early as practicable to abate the nuisance and to prevent its increase.

Mr TRISTRAM then moved for leave to introduce the Bill.

The PRESIDENT put the question, which was carried.

The PRESIDENT then adjourned the Meeting to Wednesday, the 30th July, at 11 o'clock.

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

L. H. BAYLEY,

Deputy Secretary to Government.

Poona, 23rd July 1862.

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

The Council met at Poona, on Wednesday, the 30th July 1862.

### PRESENT\*

HIS EXCELLENCY SIR H. B. E. FRERE, K.C.B., Governor of Bombay, presiding

HIS EXCELLENCY SIR W. R. MANSFIELD, K.C.B.

THE HONORABLE MR. FRERE.

THE HONORABLE MR. INVERARITY.

THE HONORABLE THE ADVOCATE GENERAL.

THE HONORABLE MR. TRISTRAM.

THE HONORABLE MR. RUSTOMJEE J. JEJEEBHOY.

THE HONORABLE MR. MADHOWROW VITTUL VINCHOORKUR,

THE HONORABLE MR. JUGONNATH SUNKERSETT.

THE HONORABLE MR. ROBERTSON.

THE HONORABLE MR. SCOTT, and

THE DEPUTY SECRETARY.

His Excellency the PRESIDENT said the first subject for consideration was the Report of the Select Committee on a Bill to amend Section 45, Clause 1, of Regulation XIII. of 1827.

Mr. FRERE said the Report had been for some time before the Council, and he moved the Bill as amended by the Select Committee be read a second time.

Report of the Select Committee on a "Bill to amend Section 45, Clause 1, of Regulation XIII of 1827" considered.

Sir W. MANSFIELD, in moving the amendment of which he had given notice, said he had been led to consider the report of the Select Committee, and he thought there had been an omission in the Draft.

In this country, when a British subject was guilty of an offence, he could not be tried except by English law, and should not therefore be subject to penalties by local legislation which may be contrary to that law. He called attention to the reasons given by the Sudder Judges, and he thought the Act defective as being wanting in injunction or warning, and as being permissive only when it should be imperative. Whatever might be the precautions taken under the Regulations for the securing of Native prisoners, that does not affect the immunities of the British-born convict as by law secured to him in his own country.

He believed that no discretion ought to be given to executive officers. His own experience was against it. In behalf of the unfortunate class of subjects, who looked to him for protection, he moved the insertion of the Clause of which he had given notice:—

II. "Provided always that British-born subjects sentenced to hard labour or to rigorous imprisonment or to penal servitude shall not be secured with fetters, excepting when it may be urgently necessary so to secure them for the discipline of the Jail or the prevention of violent or dangerous behaviour."

Mr. JUGONNATH SUNKERSETT said that he thought that the Bill should not be confined to British-born subjects, and he proposed by way of amendment that the word "Prisoners" should be inserted instead of "British-born subjects."

Mr. ROBERTSON said he thought much depended on the way in which prison labour was carried on. He would rather see the amendment as it originally stood.

Mr. RUSTOMJEE J. JEJEEBHOY said he was in favour of Mr. Jugonnath Sunkersett's amendment.

Mr. FRERE remarked that he differed from His Excellency the Commander in Chief. It was very desirable that Englishmen should retain the liberty they possess in England, in all parts of the world in which circumstances would permit it, but we must bear in mind that the Jails in this country are very different from those in England, where, with closed doors and windows, men may be left in security, but were the doors and windows so closed in this country, the English prisoners would be stifled. Some further security is therefore required in the open Jails in this country, and hence the necessity that all prisoners convicted of serious offences, European as well as Native, should be confined in fetters.

His Excellency Sir W. Mansfield's amendment would meet the case suggested by the Honorable Mr. Robertson, as it allows of Europeans being fettered when urgently necessary, and the necessity would be most urgent when prisoners were working in a dense jungle. But he (Mr. Frere) could not see that the amendment proposed gave any security against the abuse of the discretion with

Amendment proposed by Mr. Jugonnath Sunkersett.

which the Session Judge is invested in this country in the control and management of the Jail. The Judge here has control of the Jail, and acts the part of visiting Justice in England. There you have a visiting Justice within call, and the Jailor's powers are circumscribed, here you have no visiting Justice but the Judge, who is further responsible for the prisoners' safe custody, and we must trust to his discretion in the management of the Jail as we would were he the visiting Justice in England. The Draft drawn out by the Judges of the Sudder Foujdaree Adawlut was confined to Europeans, but the Select Committee to whom it was referred thought that all persons should be exempted from fetters at the discretion of the Session Judge, and he would not limit the exercise of that discretion in the case of Europeans any further than in the case of other Prisoners. He therefore opposed the amendment

The **ADVOCATE GENERAL** was in favour of the Bill as it originally stood without the amendment. It appeared to him much better that the Judge should have general discretion. He thought it would be an invidious distinction to single out the British-born subjects as contradistinguished from the other subjects of Her Majesty.

His Excellency **SIR W. MANSFIELD** in reply said we were not justified in inflicting on English subjects in India punishments from which they were exempt in England.

The point which had been noticed by Mr Jugonnath Sunkersett had occurred perhaps quite as strongly to himself when considering his proposed amendment

The **PRESIDENT** put the question whether Mr. Jugonnath Sunkersett's amendment should stand part of the Bill

The amendment was negatived.

The **PRESIDENT** then put the question whether the Clause proposed by **SIR W. Mansfield** should stand part of the Bill.

The Council then divided.

<i>Ayes</i>	<i>Noes.</i>
The Honorable Mr. SCOTT.	The Honorable Mr. JUGONNATH SUNKERSETT.
The Honorable Mr. TRISTRAM	The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY.
The Honorable Mr. INVERARITY,	The Honorable Mr FRERE.
His Excellency Sir W. R. MANSFIELD	The Honorable the <b>ADVOCATE GENERAL</b> .
The Honorable Mr. ROBERTSON.	

The amendment was accordingly carried.

The **ADVOCATE GENERAL** moved that the following Clause be added to the Bill:—

III. "When any prisoner shall be sentenced to hard labour or rigorous imprisonment, the Court shall, at the time of passing such sentence, declare whether such prisoner shall or shall not be secured with fetters."

Mr Jugonnath Sunkersett's amendment negatived

Sir W R Mansfield's amendment carried.

Amendment proposed by the Advocate General.

Mr. SCOTT was in favour of the amendment; if it would still be competent for the Court or the Jailor to put on fetters after sentence in case of necessity arising from violent conduct, &c.

Mr. TRISTRAM would vote for this amendment.

Mr. INVERARITY and Mr. JUGONNATH SUNKERSETT were in favour of it.

Sir W. MANSFIELD would like before he voted to have further information on the subject of the present practice with regard to fettering prisoners in Jail.

Mr. FRERE explained that as the law now stood, when a Session Judge passed sentence of imprisonment with hard labour, the Convict, as a matter of course, had fetters put upon him when he was received into Jail—it was a part of the sentence—imprisonment with hard labour being imprisonment in irons. This, however, did not prevent the Session Judge, on the recommendation of the Civil Surgeon, or if he saw a man as he thought too heavily ironed, from ordering him lighter fetters, or to be released from fetters altogether.

The Bill, as proposed by the Select Committee, left it discretionary with the Session Judge to place the Convict in irons. The amendment just carried restricted the use of fetters to cases of Prison discipline. The amendment now proposed would make it imperative on the Session Judge to declare when passing sentence whether the Convict should be fettered or not;—that is, it would give the Judge a power of enhancing the punishment in any case he liked—the sentence would be of imprisonment with hard labour, with or without fetters, and the fetters would become an enhancement of punishment, not instruments of Prison discipline, to which the amendment last carried evidently intended to restrict their use in Europeans, and he could not see why there should not be the same restriction in all cases; he would therefore oppose the amendment of the Advocate General.

Mr. VINCHOORKUR was in favour of the existing law and practice by which the Judge had a discretion.

The ADVOCATE GENERAL disclaimed any intention of neutralizing by a side-wind the amendment of the Commander in Chief.

Amendment proposed by Mr Scott.

Mr. SCOTT proposed that the following words be added to the Advocate General's amendment.—“ Provided that it shall be lawful to put on fetters in all cases when, after sentence, it may be found urgently necessary so to secure Prisoners for the discipline of the Jail or the prevention of violent or dangerous behaviour.”

Amendment proposed by the Advocate General and Mr Scott carried Bill recommitted

The ADVOCATE GENERAL said he had no objection to the addition.

The Clause as thus amended was put and carried.

Mr. FRERE moved that the Bill be recommitted to a Select Committee consisting of—

Sir WILLIAM MANSFIELD,  
The ADVOCATE GENERAL,  
Mr. SCOTT,  
Mr. JUGONNATH SUNKERSETT, and  
The MOVER,

with instructions to report at the next sitting.

*Carried.*

Mr. TRISTRAM said he had been instructed to bring forward a Bill for the levy of Port-dues in the Ports of the North Canara District. He thought that one or two of the Clauses might with advantage be amended; for instance, he wished to know whether a steamer putting in at Sadasheoghur to coal would be liable to the Port-dues contemplated by the Act. He moved that the Bill be read a first time.

"Bill for the levy of Port-dues in the Ports of the North Canara District" First Reading

Mr. ROBERTSON said he believed any steamers touching at Sadasheoghur to coal have to pay the Port-dues.

The PRESIDENT put the question whether the Bill be read a first time, which was carried.

Read a first time and referred to a Select Committee.

Mr. TRISTRAM moved that the Bill be referred to a Select Committee consisting of—

The Honorable Mr. ROBERTSON,  
The Honorable Mr. SCOTT,  
The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY, and  
The MOVER,

with instructions to report this day for night

*Carried*

Mr. INVERARITY said the duty had been cast upon him of introducing a Bill for amending the law relating to the Small Cause Court at Kurrachee.

"Bill for amending the law relating to the Small Cause Court at Kurrachee" First Reading.

He described the extent of the jurisdiction of the Court, and pointed out the reasons which had led Government to bring forward the present Bill, and explained its provisions. He thought it might be worthy of consideration whether the proposed increase of jurisdiction with reference to the Court at Kurrachee might not be extended to other Small Cause Courts. He moved that the Bill be read a first time.

*Carried*

Mr. INVERARITY then moved that the Bill be referred to a Select Committee consisting of—

Read a first time, and referred to a Select Committee.

The ADVOCATE GENERAL,  
Mr. ROBERTSON, and  
The MOVER,

with instructions to report at next meeting of Council

*Carried.*

The PRESIDENT adjourned the meeting till Wednesday next, the 6th August, at 11 o'clock.

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

L. H. BAYLEY,

Deputy Secretary to Government.

Poona, 30th July 1862.

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

The Council met at Poona, on Wednesday, the 6th August 1862.

### PRESENT.

HIS EXCELLENCY SIR H. B. E. FRERE, K.C.B., Governor of Bombay, presiding.

HIS EXCELLENCY SIR W. R. MANSFIELD, K.C.B.,

THE HONORABLE MR. FRERE,

THE HONORABLE MR. INVERARITY,

THE HONORABLE MR. TRISTRAM,

THE HONORABLE MR. MADHOWROW VITTUL VINCHOORKUR,

THE HONORABLE MR. JUGONNATH SUNKERSETT,

THE HONORABLE MR. ROBERTSON,

THE HONORABLE MR. SCOTT, and

THE DEPUTY SECRETARY.

Consideration of the further Report of Select Committee on a "Bill to amend Section 45, Clause 1, of Regulation XIII of 1827" postponed till next Council.

The further Report of the Select Committee on "A Bill to amend Section 45, Clause 1, Regulation XIII. of 1827," was read by the Deputy Secretary.

Mr FRERE said that as the Honorable the Advocate General, who is a Member of the Select Committee, was unable to attend the Meeting of the Committee, he proposed that the consideration of the Report be postponed until next Council.

*Agreed to.*

Consideration of the Report of the Select Committee on a Bill for amending the Law relating to the Small Cause Court at Kurrachee referred till next Council.

"Bill to abate the Nuisance arising from the Smoke of Furnaces in the Islands of Bombay and Colaba."

Mr INVERARITY presented the Report of the Select Committee on "A Bill for amending the Law relating to the Small Cause Court at Kurrachee."

The consideration of the Report was deferred till next Council.

Mr. TRISTRAM, in moving that "A Bill to abate the Nuisance arising from the Smoke of Furnaces in the Islands of Bombay and Colaba" be read a first time, said considerable discussion on the subject took place in England some years ago, and the opinions of the most eminent chemists of the day were taken. An Imperial Act was passed in 1853 (16 and 17 Vict, chap. 128), and a Bill founded on that Act was recently introduced into the Legislative Council of Bengal. He had little more to add to what he stated when he asked leave to introduce the Bill, and he concluded by moving that the Bill be read a first time.

The motion was carried.



Mr. TRISTRAM then moved that the following gentlemen be appointed a Select Committee to consider and report on the Bill —

Read a first time and referred to a Select Committee

Mr. INVERARITY,  
Mr. SCOTT,  
Mr. ROBERTSON,  
Mr. RUSTOMJEE JAMSETJEE JEJEEBHAY, and  
THE MOVER,

with instructions to report within a fortnight

*Agreed to.*

Mr. TRISTRAM presented the Report of the Select Committee on "A Bill for the levy of Port Dues in the Ports of the North Canara Districts"

Consideration of the Report of the Select Committee on a Bill for the levy of Port-dues in the Ports of the North Canara District deferred till next Council.

The consideration of the Report was deferred till next Council

The PRESIDENT then adjourned the meeting to, Wednesday, the 13th August 1862.

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

L H BAYLEY,  
Deputy Secretary to Government.

*Poona, 6th August 1862.*

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament 24 and 25, Victoria, Chapter 67.

The Council met at Poona on Wednesday, the 13th August 1862

### PRESENT:

THE HONORABLE W. E. FRERE, presiding  
HIS EXCELLENCY SIR W. MANSFIELD, K C B,  
THE HONORABLE MR. INVERARITY,  
THE HONORABLE MR. TRISTRAM,  
THE HONORABLE MR. RUSTOMJEE JAMSETJEE JEJEEBHAY,  
THE HONORABLE MR. MADHOWROW VITTUL VINCHOORKUR,  
THE HONORABLE MR. JUGONNATH SUNKERSETT,  
THE HONORABLE MR. ROBERTSON,  
THE HONORABLE MR. SCOTT, and  
THE DEPUTY SECRETARY.

The PRESIDENT said the first subject was the "Further Report of the Select Committee on a Bill to amend Section 45, Clause 1, of, Regulation XIII. of 1827."

"Further Report of the Select Committee on a Bill to amend Section 45 Clause 1 of Regulation XIII of 1827" considered

He had received a letter from the Advocate General, in which he thanked the Council for having adjourned the consideration of the Bill at the last meeting in consequence of his absence, and stated that he would be unable to attend this meeting, but that he had no objection to the Report of the Select Committee being adopted, if the Council approved of it.

Mr. FRERE then moved that the Bill, as amended by the Select Committee, be read a second time

Amendment proposed by Mr Inverarity

Mr. INVERARITY proposed the amendment of which he had given notice, viz that the following Section be substituted for Section I. of the Bill :—

1 “ Prisoners sentenced to hard labour, transportation, penal servitude, or death, may, when necessary, be secured, at the discretion of the Session Judge or other Officer in charge, with fetters, handcuffs, or stocks, which means of restraint may also, when necessary, be used to secure other prisoners ”

Mr. SCOTT preferred the Bill as it stood

Mr. TRISTRAM and Mr. JUGONNATH SUNKERSETT were in favour of the amendment

SIR W R MANSFIELD thought it not certain that a Zillah Judge would clearly understand the real meaning of the proposed amendment, and might feel bound to take the irons off the hundreds of prisoners under his charge, because he could not accuse them individually of violence or dangerous intentions, thus giving great opportunity to the escape of the prisoners. He alluded to the state of the Tanna Jail which he had personally inspected. He moved that the Bill be referred to a Select Committee to consider the very important points respecting Prison discipline raised by the amendment.

The PRESIDENT said that he hoped to bring in a Bill for the regulation of Jails at the next Session, when the whole subject of Jail discipline would be brought under discussion, and he thought it very desirable that the Bill, as amended by the Select Committee, should be passed.

Carried

Mr. INVERARITY's amendment was then put and carried.

Bill and Amendment referred to a Select Committee

SIR W. R. MANSFIELD moved that the whole Bill and the amendment be referred to a Select Committee, consisting of—

The Honorable Mr INVERARITY,  
The Honorable Mr. SCOTT,  
The Honorable Mr JUGONNATH SUNKERSETT,  
The Honorable Mr. ROBERTSON, and  
The MOVER,

with instructions to report at the next meeting.

*Carried.*

“ Bill for amending the law relating to the Small Cause Court at Kurrachee,” agreed to stand over *sine die*

The PRESIDENT said the next subject was the Report on “ A Bill for amending the Law relating to the Small Cause Court at Kurrachee.”

Agreed to stand over *sine die*, as a reference respecting the Bill had been made to the First Judge of the Bombay Court of Small Causes, to which no answer had as yet been received.

The PRESIDENT said the next subject was the Report of the Select Committee on "A Bill for the levy of Port-dues in the Ports of the North Canara District."

"Bill for the levy of Port-dues in the Ports of the North Canara District"

Mr. TRISTRAM moved that the Bill, as amended by the Select Committee, be read a second time.

*Carried.*

The Bill was then read a second time and passed

Read a second time and passed  
"Bill for further amending Act XXVI of 1850"  
First Reading

The PRESIDENT said the next subject was "A Bill for further amending Act XXVI. of 1850."

Mr. INVERARITY introduced the Bill, which was to give power to Government to depute certain powers to the Police Commissioners, who were confidential servants of Government.

He moved that the Bill be read a first time.

*Carried.*

The Bill was read a first time.

Read a first time, and referred to a Select Committee.

Mr. INVERARITY then moved that the Bill be referred to a Select Committee, consisting of—

- The Honorable Mr. TRISTRAM,
- The Honorable Mr. ROBERTSON,
- The Honorable Mr. JUGONNATH SUNKERSETT, and
- The MOVER,

with instructions to report at the next meeting.

*Carried.*

The PRESIDENT said the next subject was "A Bill to extend the Jurisdiction of the Bombay Court of Small Causes, and to provide for the appointment of additional Judges of that Court."

"Bill to extend the Jurisdiction of the Bombay Court of Small Causes, and to provide for the appointment of additional Judges of that Court"  
First Reading

Mr. SCOTT, in introducing the Bill, said:

"The Bill which I now beg to bring before the Council is one to extend the jurisdiction of the Bombay Court of Small Causes, and to provide for the appointment of additional Judges of that Court.

"The object of the Bill is to extend the usefulness of the Court, and we have sought to effect this—

- 1st.—By extending its jurisdiction to all suits when the amount at issue does not exceed Rupees 1,000.
- 2nd.—By enabling it to take cognizance of suits involving any amount, provided that the parties thereto agree to submit to its decision.
- 3rd.—By increasing the number of Judges.
- 4th.—By enabling Legatees or next of kin, in cases when the assets of an Estate do not exceed Rupees 5,000, to recover by its comparatively inexpensive process their legacies or distributive shares against executors or administrators.

"It will be seen that the Bill, to a certain extent, is precisely similar to that introduced on 22nd March last into the Bengal Legislative Council; it is, however, a much more comprehensive measure.

"Sections I., III., and V. contain the provisions whereby the jurisdiction of the Court is extended to suits involving an amount of Rupees 1,000.

"Section I. is precisely the same as the corresponding one in the Bengal Bill, and it does not seem to call for any remark.

"Section III. provides that when by a set-off of any debt or demand, the amount involved in any suit is reduced to Rupees 1,000 or less, the Court shall have jurisdiction. This appears to me to be a very important and useful provision, though it has not been inserted in the Bill brought forward in Bengal. A precisely similar provision has been made in the English County Courts Amendment Act of 1856.

"Section V. extends the jurisdiction given to the Court by Section XCI. of Act IX of 1850, to cases when the rent due in respect of any house, land, or tenement, does not exceed Rupees 1,000, and further provides that for the word 'owner' in Sections XCI., XCII., XCIII., and XCVI., of the said Act, the words 'owner, landlord or other person having right to the immediate possession of the premises' shall be substituted. The first Clause of this Section requires no remark; the necessity of the second was recently pointed out in Court by the present able Judge of the Small Cause Court.

"I may state that, since this Bill was drafted, I have ascertained that the Mercantile community of Bombay are in favour of an even greater extension of the compulsory jurisdiction of the Court than that for which we have provided. They believe that the limit might, with advantage, be extended to Rupees 2,000, and in this I personally most cordially concur: this point is one which will doubtless receive most careful consideration in Committee.

"Section II. provides for the second means by which it is sought to increase the usefulness of the Court.

"A similar provision is made in the 2nd Section of the Bengal Bill, but the wording of the latter seems to have been taken from Section 17 of Clause 61 of the original English County Courts Act of 1850, repealed by the amended Act of 1856. We have adopted what appears to be the improved phraseology of Section 23 of the latter Act.

"I can speak from personal experience of the boon which the passing of this Section will confer on the Mercantile community.

"Sections X. and XI. provide for the appointment of additional Judges. Even as the Court is at present constituted, I believe that the work is far too great for the present Judges to overtake, and it seems therefore absolutely necessary to provide assistants. It may also be considered desirable—it certainly seems to me necessary—to increase very considerably the emoluments of the Judges. The fees of the Court already amount to a large sum; they will be

greatly increased under the extended jurisdiction, and will, I conceive, amply suffice for all necessary increase of salaries. This point I would urge upon the careful consideration of the Committee to which the Bill may be referred

“Sections XII., XIII., and XIV. provide that all suits involving a greater amount than Rupees 500 shall be tried before a Barrister Judge, and that in any case in which jurisdiction is given by this Act, appeal shall, under certain provisions, lie to the High Court. These provisions are based on the recommendations of the present Judges of the Supreme Court. The Sections themselves have been adopted from the English County Courts Act.

“Section XV., also adopted from the same Act, provides that the right of appeal may, by mutual consent of both parties to a suit, be abandoned.

“Sections XVII. to XXII. have been framed on the recommendation of the Judges of the Supreme Court, but a somewhat more extended jurisdiction has been given than that which was proposed by them. These Sections have been adopted from the Irish Act 14 and 15 Vict., Chapter 57.

“Since this Bill was framed, an elaborate report has, I believe, been received from the present Chief Judge of the Small Cause Court, and I have no doubt it will contain many very valuable suggestions for consideration in Committee.

“I now beg to move that this Bill be read a first time.”

Sir W. MANSFIELD said he should like to make some observations on Sections 10 and 11. He did not see why an invidious distinction should be made in regard to a distinguished Service by prescribing that the Chief Judge of the Small Cause Court should necessarily be a Barrister Judge, or forbidding the Civil Service Small Cause Court Judges from trying the cases of a value exceeding 500 Rupees. He thought that, now that the High Court was thrown open to Civil Servants, who were in this respect put on a par with the Barrister Judges, except the Chief Justice, and considering that Zillah Judges had always been chosen from that body, no such distinction should have been made. He paid a high tribute to the services of those Officers (the Zillah Judges), and said he believed that substantial justice had been generally administered by them, to which ample testimony had been borne by a late learned and distinguished Chief Judge of the Common Pleas. A distinction which was intelligible in the case of the Chief Justice, was quite the reverse in the sphere of a Small Cause Court, in which the business was confined to unimportant cases of an insignificant value, as compared with those disposed of in the Zillah Courts. The proposed measure called to his recollection a saying of a very learned person, who, while admitting that substantial justice had been rendered by the Civil Servants, remarked that their innings had lasted 100 years, and others would have their turn now. He would not oppose the first reading of the Bill, but begged to call the attention of the Honorable Member, Mr. Scott, to the point.

Mr. Scott said that, looking to the provisions with regard to right of appeal, he would gladly adopt His Excellency the Commander-in-Chief's suggestions.

Read a first time,  
and referred to a  
Select Committee

The motion for the first reading was then carried.

The Bill was then read a first time.

Mr. Scott proposed that the Bill be referred to a Select Committee, consisting of—

His Excellency Sir W. R. MANSFIELD,

The Honorable Mr. FRERE,

The Honorable Mr. LEWIS,

The Honorable Mr. TRISTRAM,

The Honorable Mr. JUGONNATH SUNKERSETT, and

The MOVER,

with power to consider the report of the Chief Judge of the Small Cause Court, and such other reports, &c., as may come before them, and to call for such information as they may consider desirable, to report within a fortnight.

*Carried.*

Amendment of  
the Rules propos-  
ed by His Excel-  
lency Sir W. R.  
Mansfield.

His Excellency Sir W. R. MANSFIELD said it had been brought to the notice of Government that considerable delay in the business of the Council had been caused by the existing rules; what with the necessity for translation into the various Native languages, and the length of time required to elapse after Reports, &c., had been furnished to Honorable Members, the Council had hitherto been doing little more than "marking time."

It appeared unnecessary that a Bill relating to Sudasheoghur should be translated into Mahratta, or that one relating to the Small Cause Court at Kurrachee should be translated into Canarese. But in all cases of general importance, or involving any general principle, the Bills would be translated into all the languages.

He explained the various alterations he proposed, and mentioned that as he was finishing the Draft of his proposed amendments, His Excellency the Governor chanced to honour him with a visit, when His Excellency was pleased to approve of them. There were two clerical alterations in Rules 14 and 27 which he begged to make, and moved that the Rules, as amended, be adopted by the Council.

*Carried,*

*Carried.*

The PRESIDENT then adjourned the Council to Wednesday next, at such hour as the Governor should direct.

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

L. H. BAYLEY,

Deputy Secretary to Government.

Poona, 13th August 1862.

**PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.**

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 Act of Parliament, 24 and 25 Victoria, Chapter 67.

•The Council met at Poona, on Wednesday, the 20th August 1862.

**PRESENT :**

HIS EXCELLENCY SIR H. B. E. FRERE, K.C.B., Governor and  
President in Council, presiding,  
HIS EXCELLENCY SIR W. R. MANSFIELD, K.C.B.  
THE HONORABLE MR. FRERE,  
THE HONORABLE MR. INVERARITY,  
THE HONORABLE MR. TRISTRAM,  
THE HONORABLE MR. RUSTOMJEE J. JEJEEBHOY,  
THE HONORABLE MR. MADHOWROW VITTUL VINCHOORKUR,  
THE HONORABLE MR. JUGONNATH SUNKERSETT,  
THE HONORABLE MR. ROBERTSON,  
THE HONORABLE MR. SCOTT, and  
THE DEPUTY SECRETARY.

The "Further Report of the Select Committee on a Bill to amend Section XLV Clause 1 of Regulation XIII. of 1827," was read by the Deputy Secretary.

"Further Report of the Select Committee on a Bill to amend Section 45 Clause 1 of Regulation XIII. of 1827," considered.

On Section II. being put, the ADVOCATE GENERAL said he thought the Section was completely useless, as the 1st Section of the Bill had been altered. He thought there was no distinction between the two Sections.

SIR W. R. MANSFIELD considered there was a very great difference. The 1st Section had been very carefully worded, and he had more than once pointed out since this discussion arose the distinction between the two classes of Prisoners—Natives and British-born subjects. He differed entirely from the Honorable the Advocate General, and he trusted that the 2nd Section would be allowed to stand.

Mr. W. E. FRERE observed there was a very marked distinction between the two Clauses.

The ADVOCATE GENERAL said he would not press his objection

The 2nd and other Sections, as amended by the Select Committee, were then agreed to, and the Bill, as amended and reported on by the Select Committee, was read a second time and passed.

Agreed to  
Bill read a second time and passed.

The Report of the Select Committee on a "Bill for amending the law relating to the Small Cause Court at Kurrachee" was considered.

Report of the Select Committee on a "Bill for amending the law relating to the Small Cause Court

On Section 1st the PRESIDENT put the following amendment, of which Mr. Frere had given notice:—

at Kurrachee" considered Amendment proposed by Mr. Frere.

"That the first Section stand in the form in which it originally stood, and that the following Section be added to the Bill:—

"Section VI. Words in the singular number, and words in the masculine gender, shall be understood to include several persons as well as one person and females as well as males, unless there be something in the context repugnant to such construction."

Mr. FRERE said his object was to prevent useless verbiage.

The ADVOCATE GENERAL said that the proposed amendment would introduce about three times the number of words into the Bill. He thought the amendment was a little hypercritical.

The Council then divided on the question that the amendment stand part of the Bill :

*Ayes—4*

His Excellency Sir W. R. MANSFIELD,  
K.C B.

The Honorable Mr. FRERE.

The Honorable Mr. RUSTOMJEE JAM-  
SETJEE JEJEEBHOY.

The Honorable Mr. MADHOWROW VIT-  
TUL VINCHOORKUR.

*Noes—6*

The Honorable Mr. INVERARITY.

The Honorable the ADVOCATE GENE-  
RAL.

The Honorable Mr. TRISTRAM.

The Honorable Mr. JUGONNATH SUN-  
KERSETT.

The Honorable Mr. ROBERTSON.

The Honorable Mr. SCOTT

Negatived

The amendment was accordingly negatived.

Section I, as amended, II, III and IV passed

The question whether Section 1., as amended, stand part of the Bill was then put and carried.

Sections II., III., and IV. were passed.

Amendment proposed by Mr Inverarity

The following amendment, of which Mr. INVERARITY had given notice, was then put:—

"That the following Section be inserted in the Bill, as amended by the Select Committee, and that the 4th and 5th Sections of the said amended Bill stand respectively the 5th and 6th Sections thereof.—

"There may be appointed one or more Deputies to the Clerk of the said Court as occasion may require; and such Deputy Clerks may perform all or any of the duties of the Clerk of the Court as the Court may direct."

Deputy Clerks may be appointed

Mr. INVERARITY said, since the Bill was before the Council, a proposition had been forwarded to Government, and favourably entertained by them, of extending the Small Cause Court throughout the Zillah of Kurrachee. A subsequent Act No. XII. of 1861, "an Act to amend Act XLII. of 1860," provided for the appointment of a Clerk of the Court, and by the 5th Section his duties were defined. It becomes therefore necessary to introduce a Section having reference to Deputy Clerks.



SIR W. R. MANSFIELD said he did not see that there was any Clause authorising the Small Cause Court Judges to go on circuit. He thought it open to question whether, under the provisions of Act XLII. of 1860, such power was given

The ADVOCATE GENERAL supported the Clause proposed to be inserted by the amendment, and stated his opinion that the Government had the power, under Section VII. and VIII. of that Act, to direct the Small Cause Court Judges to go on circuit.

Mr. INVERARITY said he thought that those Sections were amply sufficient to enable the Government to increase the jurisdiction in the manner proposed.

SIR W. R. MANSFIELD said he only wished to guard against the possibility of there being any doubt on the subject, and that if the Council was of opinion that there was no foundation for the objection, he would withdraw it.

The PRESIDENT then put the question whether the Section proposed in the amendment of Mr. Inverarity stand part of the Bill as Section V., which was carried.

Carried.

Section V in the Bill amended by the Select Committee was passed to stand part of the Bill as Section VI

The second reading of the Bill was then postponed to the next meeting of the Council.

Second Reading postponed to the next meeting

On the Report of the Select Committee on a "Bill to abate the Nuisance arising from the Smoke of Furnaces in the Islands of Bombay and Colaba," being presented, Mr. TRISTRAM said the Report had not been circulated in sufficient time to enable it to be considered this meeting. He had discovered since the Bill was prepared that it might cause inconvenience if it were to take effect from the 1st August 1863, and therefore proposed to postpone the commencement of the Act till the 1st January 1864.

Report of the Select Committee on a "Bill to abate the Nuisance arising from the Smoke of Furnaces in the Islands of Bombay and Colaba" presented

Mr. W. E. FRERE thought the Committee should state in their report what amendments they had made to avoid the trouble of having to go through a long Act, and compare the Sections word by word, for the purpose of discovering what alterations had been made

The PRESIDENT said that in future amendments as they were to stand in the text should be printed in italics, and all omissions and alterations as they stood in the original Bill should be printed in the margin opposite in small type

Amendments in Bills, how to be printed

The consideration of the "Report of the Select Committee on a Bill for further amending Act XXVI. of 1850" was deferred till the next meeting of the Council

Consideration of the Report of the Select Committee on a "Bill for further amending Act XXVI of 1850," deferred

Mr. JUGONNATH SUNKERSETT said the Report of the Select Committee on a "Bill for making better provision for the care of the Persons and Property of Minors in the Presidency of Bombay" was nearly ready, and he asked the Council to extend the time for receiving the Report until the next meeting.

Report of the Select Committee on a "Bill for making better provision for the care of the Persons and

Property of Minors  
in the Presidency  
of Bombay”

Mr. W. E. FRERE said the Report would be printed, and in the hands of Honorable Members by Saturday next, and it could therefore be considered at the next meeting.

Period of recep-  
tion of the Report  
extended

The PRESIDENT put the question, whether the period of reception of the Report be extended to the 27th instant.

*Carried.*

“ Bill to promote  
the Construction  
of Lines of Com-  
munications Feed-  
ers to Railways,  
High Roads, Navi-  
gable Rivers, and  
Canals ”  
First Reading

Mr. SCOTT, in introducing a “ Bill to promote the Construction of Lines of Communication as Feeders to Railways, Highroads, Navigable Rivers, and Canals,” said—

“ The objects and reasons of the Act have already been laid before the Council and the public, and it does not seem necessary that I should say anything in support of them. They speak for themselves. If the provisions of the Act be taken advantage of, as I trust they may, we shall ere long see a marvellous change in the means of transport to the Coast of the bulky and valuable produce of the interior—a change which will greatly cheapen that produce to the consumer, and lead, though indirectly I believe, to its great increase. One of the great cries of late years has been for improved means of communication in India, and those who have been so loud in uttering these, will, I trust, not be backward in coming forward to supply them, now that Government provides such facilities for their doing so—facilities calculated not only to benefit the public, but to give profit to themselves.

“ I will shortly sketch the purport of the Bill. It is provided therein that any person desirous of constructing any work, such as those to which the Act applies, may, on satisfying Government as to the public utility of his scheme, its *bonâ fide* nature, and his means of carrying it out, obtain, under certain needful restrictions, the land necessary for the construction of the works. This land will be taken by Government under the provisions of Act VI. of 1857, but it shall only be so taken after every facility for objection has been given to parties whose interest may be affected by the proposed works, and after due provision has been made for the satisfaction by the promoters of their just claims for compensation.

“ Sundry provisions follow, inserted with a view chiefly to the protection of the interests of the public, and in great measure such as, I believe, will meet with the unanimous approval of the Council. One or two Clauses, the 15th for instance, will, I think, require careful revision, but this can perhaps be better considered in Committee.

“ I beg to move that the Bill be read a first time.”

Read a first time.

The Bill was then read a first time.

Mr. Scott proposed that the Bill be referred to a Select Committee, Referred to  
Select Committ  
consisting of—

The Honorable Mr. INVERARITY,  
The Honorable Mr. ROBERTSON,  
The Honorable Mr. TRISTRAM,  
The Honorable Mr. JUGONNATH SUNKERSETT, and  
The MOVER.

with instructions to report within a week

Carried.

The PRESIDENT adjourned the meeting till Wednesday next the 27th August, at 3 o' clock P.M.

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

L. H. BAYLEY,  
Deputy Secretary to Government.

Poona, 20th August 1862.

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

The Council met at Poona on Wednesday, the 27th August 1862

### PRESENT

HIS EXCELLENCY SIR H. B. E. FRERE, K.C.B., Governor of  
Bombay, presiding.

HIS EXCELLENCY SIR W. R. MANSFIELD, K.C.B.

THE HONORABLE MR. FRERE:

THE HONORABLE MR. INVERARITY.

THE HONORABLE MR. TRISTRAM.

THE HONORABLE MR. RUSTOMJEE J. JEJEEBHAY.

THE HONORABLE MR. MADHOWROW VITUL VINCHOORKUR

THE HONORABLE MR. JUGONNATH SUNKERSETT

THE HONORABLE MR. ROBERTSON.

THE HONORABLE MR. SCOTT.

AND THE DEPUTY SECRETARY

The DEPUTY SECRETARY said he had received a Petition signed by 874 persons in Dharwar, praying that a Bill for the abolition of Hindoo and Mahomedan Law Officers in the District Courts be not proceeded with. The Petition was ordered to be transferred for consideration to the Judicial Department.

Petition

Bill for amending the Law relating to the Small Cause Court at Kurrachee, read a second time and passed.

Report of the Select Committee on a "Bill to abate the Nuisance arising from the smoke of Furnaces, &c" considered

Amendment proposed by Mr W E Frere

Mr. INVERARITY moved the second reading of the "Bill for amending the Law relating to the Small Cause Court at Kurrachee," which was carried, and the Bill passed.

The Report of the Select Committee on "a Bill to abate the Nuisance arising from the Smoke of Furnaces in the Islands of Bombay and Colaba" was considered.

On the question whether Section I. stand part of the Bill, Mr. W. E. FRERE said he thought it very desirable to leave out the enumeration of the various Manufactories, and he moved by way of amendment that those words be omitted.

The PRESIDENT put the question that the words be omitted.

The Council then divided :

*Ayes*—3.

The Honorable Mr FRERE.  
The Honorable Mr. MADHOWROW  
VITTUL VINCHOORKUR.  
The Honorable Mr. ROBERTSON.

*Noes*—6.

His Excellency Sir W. R. MANSFIELD.  
The Honorable Mr. INVERARITY.  
The Honorable Mr. TRISTRAM.  
The Honorable Mr. RUSTOMJEE JAM-  
SETJEE JEJEEBHOY.  
The Honorable Mr. JUGONNATH  
SUNKERSETT.  
The Honorable Mr. SCOTT.

Negatived  
Sec. 1 amended

The amendment was therefore not carried.

At the motion of Mr. TRISTRAM, "January 1864" was substituted for "August 1863" in the first line of Section I. of the Bill, and in the 25th line of the same Section.

On the question whether Section III. stand part of the Bill, Mr. FRERE said he thought there was a material deficiency in the wording of the Section. He could not understand what the Section meant, The former part contradicted the latter part of the Section.

The PRESIDENT said he could not see any difficulty in the Section. He thought it sufficient

On the motion of Mr. FRERE the President put the question whether the consideration of Section III. be deferred.

The Council divided :

*Ayes*—3.

His Excellency Sir W. R. MANSFIELD.  
The Honorable Mr. FRERE.  
The Honorable Mr. JUGONNATH SUN-  
KERSETT.

*Noes*—6.

The Honorable Mr. INVERARITY.  
The Honorable Mr. TRISTRAM.  
The Honorable Mr. RUSTOMJEE JAM-  
SETJEE JEJEEBHOY.  
The Honorable Mr. MADHOWROW  
VITTUL VINCHOORKUR.  
The Honorable Mr. ROBERTSON.  
The Honorable Mr. SCOTT.

Mr W Frere's  
motion that the  
consideration of  
Section III. be  
deferred  
Negatived

Mr FRERE then moved that the further consideration of the Bill be adjourned till next meeting.

Consideration of the Bill adjourned

The question was put and carried

The report of the Select Committee on "a Bill for further amending Act XXVI. of 1850" was then considered.

Report of the Select Committee on a "Bill for further amending Act XXVI of 1850," considered

Mr. INVERARITY said that before Section II. was considered he wished to call attention to two letters he had received a few hours ago. They were from the Revenue Commissioner Northern Division, and suggested an additional Section to the Bill, providing for the appointment of certain Government Officers as *ex-officio* Members of Municipal Commissions established under Act XXVI. of 1850. Mr. INVERARITY moved that the following Section be added as Section II. of the Bill.—

2. II. All Collectors, Sub-Collectors, Assistant and Deputy Collectors, Mamlutdars and Mahalkurries shall be *ex-officio* Commissioners of every Municipality within the limits of their local jurisdiction, and the following officers shall be *ex-officio* Commissioners when resident in any City, Town, or Suburb, in which a Municipal Commission is or shall be established, *viz.*—

Additional Section proposed by Mr Inverarity

The Executive Engineer of the District.

The Civil Surgeon.

The Superintendent of Police.

The Assistant Superintendent of Police.

The Deputy Collector at the Sudder Station.

The City or Town Foujdar "

The PRESIDENT said as no notice had been given of the amendment, he thought it would be better to postpone the consideration of the Bill until the next meeting, which was carried.

Consideration of the Bill postponed.

The Report of the Select Committee on a "Bill for making better provision for the care of the Persons and Property of Minors in the Presidency of Bombay" was then considered.

Report of the Select Committee on a "Bill for making better provision for the care of the Persons and Property of Minors, &c" Consideration thereof postponed

Mr JUGONNATH SUNKERSETT said that as the report had not appeared in the public prints, the second reading of the Bill should be deferred to some future period. He therefore moved that the report of the Select Committee with the Bill as amended by them be republished in the *Government Gazette*, and stand for consideration at the first meeting of the Council after the 23rd September next.

*Carried*

The Report of the Select Committee on "a Bill to promote the Construction of Lines of Communication as Feeders to Railways, High Roads, Navigable Rivers and Canals" was then considered

Report of the Select Committee on a "Bill to promote the Construction of Lines of Communication as Feeders to Railways, &c" considered Sundry amendments carried

On the question whether Section IV. stand part of the Bill, Mr FRERE proposed that the word "language" be substituted for the word "direct" in the 16th line, which was carried.

On Section VIII. Mr. FRERE suggested that the words "Public Railway Company" in the 6th line be omitted, and the following be inserted.—"Companies being owners of the Railway," which was carried.

On Section XIII. Mr. FRERE said he would prefer the omission of the word "private" in the last line but one of the Clause, which was carried.

On Section XVI. being put, Mr. W. E. FRERE thought that there ought to be a penalty provided in cases where the orders of the Government were not obeyed, and on his motion the consideration of Section XVI. was postponed to allow of a Clause being prepared.

On the question whether Section XXI. stand part of the Bill being put, Mr. W. E. FRERE suggested that the word "quarries" between the words "local" and "or" in the second line of the section, and the word "quarry" after the word "mine" in the 10th and 18th lines of the same Section be inserted, which was carried, and the remaining Clauses passed.

Mr. SCOTT said the Committee had not been able to prepare their report on "a Bill to extend the Jurisdiction of the Bombay Court of Small Causes," and he asked that a further week be given, which was carried.

REMAINING  
Clauses passed.

Report of the  
Select Committee  
on a "Bill to extend  
the Jurisdiction of  
the Bombay Court  
of Small Causes."  
Further time to  
prepare it, given

"Bill to facilitate the adjustment of unsettled Claims to exemption from the payment of Government Land Revenue, &c" First Reading

\* Mr. ROBERTSON, in introducing the "Bill to facilitate the adjustment of unsettled claims to exemption from the payment of Government Land Revenue, and to regulate the succession to, and transfer of, lands wholly or partially exempt from the payment of such Revenue in those parts of the Bombay Presidency which are subject to the operation of Act XI. of 1852 of the Legislative Council of India," said—

"The subject of the Bill which I have the honour to-day to bring before the Council, has been prominently before the public for a considerable period and its object, as explained in the 'Statement of Objects and Reasons,' published with the Draft, is to legalize a Summary Settlement which has been effected during the past year with those holders of land exempt from the payment of Land Revenue whose lands are not held on political tenure, or subject to conditions of service in those districts to which Act XI. of 1852 is applicable, and whose titles to such exemption remained still to be adjudicated under the provisions of that Act.

"The payment of Land Revenue may be stated to be the normal condition on which land is held in this country; and the right to challenge all exemption from such payments is a right which, not only Native rule has always been held to be inherent in the Government, but which this Government, in enacting Laws and Regulations, has from the first reserved to itself under certain forms and conditions. In the General Code of 1827, drawn up under the Government of the Honorable Mounstuart Elphinstone, this right was clearly laid down, and if Honorable Members will refer to that Code, they will there find it stated, in Chapter IX. of Regulation XVII., what constituted good and sufficient titles to exemption from the payment of Land

Revenue. And I would here desire to remark, that it is important for a right understanding of the present question, to distinctly bear in mind that the inquiries which have been conducted into titles to alienated holdings did not in the least affect the rights of occupancy, but were simply intended to ascertain whether or not the claim to exemption from the payment of the State dues or to receive those dues from the occupants of the land was good and valid

“But to return, if Honorable Members will refer to Regulation XVII of 1827, Chapters IX. and X., they will there find stated—

“*1stly*—On what grounds titles to the exemption from Land Revenue might be considered admissible; and

“*2ndly*.—The Rules under which claims to such exemptions are to be examined and decided upon. •

“Not only will it be perceived from this, that it is competent for the Collector of a District to call upon the occupant of land, wholly or partially exempt from the payment of revenue, to prove his title to the exemption, but that the *onus* of establishing his title was thrown upon the holder or claimant, and that ever since the acquisition of the country by the British Government, inquiry and the right to challenge their claims have hung over all holders of rent-free lands who had not obtained the formal adjudication on, and recognition of, their claims, provided for in Section XLV. of Regulation XVII. of 1827. The inquiries which it will thus clearly be seen it was intended should be made into each claim to exemption from Land Revenue demands, were conducted at first, and for a long period, in a desultory manner—cases being taken up from time to time only as the other onerous and numerous pressing duties of the Collectors would permit.

“As an apology for the neglect of inquiry in the earlier years of our administration, I may perhaps be permitted to state, that the collection of the revenue was then a most laborious duty, requiring such personal attention on the part of the Collectors and their Assistants in the supervision of all its details, both to protect the ryots on the one hand from extortion, and the Government on the other from corrupt influences; and that in addition to the Land Revenue the Collectors had to supervise the collection of the transit and town duties, as also of the Mohturfa and other taxes.

“Consequent on this state of things, a special agency was, in 1843, appointed to conduct the necessary inquiries in the Southern Maratha Country. This was a step in the right direction, as it not only tended to subject to the payment of revenue all lands unauthorisedly held exempt, but as calculated to offer a speedy removal of doubts and uncertainties with regard to their titles on the part of all whose claims to exemption were good and sufficient

“The special agency on commencing its duties found that the first thing to be done was to systematically arrange and classify the voluminous State Registers and Accounts of the late Government, which contained a complete record of all the alienations of the public revenues, and furnished the most ample means of testing and verifying the authenticity of all recognised claims—but which records had fallen into much confusion. Owing to the necessity

of arranging these records, and in consequence also of the tedious scrutiny which had to be made in each case, to test not only the authenticity of the documentary evidence produced before the Commission, but to obtain evidence if possible also on behalf of those claimants who had no documentary evidence in their possession, or to discover connecting links in the chain of evidence which many were unable to produce, the progress made by the Commission (the extension of whose inquiries throughout the Presidency was approved by the Supreme Government in 1850) was so slow, that, in a general review of the progress, and of the probable future duration of the inquiry which was made at the close of 1856 by this Government, in compliance with a call made upon it by the Supreme Government, this Government came to the conclusion that to bring the inquiry into Inams to a close within a reasonable period, one of two courses only was open to them—viz. either to adopt a plan which had originated with Major Wingate, and to assess the whole of the Inams indiscriminately at 25 per cent of the Survey Assessment, or to prosecute vigorously and completely the investigations which had for some years been in progress in the six Collectorates of the Deccan, and to do the same in Guzerat and the Concan, foregoing inquiry into those of the lowest value and most numerous class, and contenting themselves with scrutinizing the titles of those which were higher in value and fewer in number.

“Honorable Members will here see the first germs of a Summary Settlement. In consequence, however, of the disturbances which supervened shortly after the submission of these proposals to the Government of India, the question received no further consideration until 1859, when the Bombay Government, anxious to bring the protracted inquiries of the Inam Commission to a close, and to reduce if possible the expense of this costly agency, submitted to the Supreme Government details of a scheme which finally found shape in the Bill which was laid before the Legislative Council of the Government of India some fifteen months ago, and which was read a second time on the 6th July of last year, at which stage of the proceedings it was referred to a Select Committee for consideration. But before the Committee had made their report, the Act for constituting Local Councils became law, and the question being considered one of a purely local character, the Bill was returned in order that it might be considered by this Council.

“In the meantime, however, the Bombay Government, desirous to lose no unnecessary time in carrying out the measure, wherever it could be carried out in anticipation of the passing of the Bill then before the Government of India, directed the Revenue Commissioner of the Southern Division to make an offer of the Summary Settlement on the terms which had been approved by the Government of India, and sanctioned by Her Majesty’s Secretary of State, to the holders of lands exempt from the payment of revenue in the six Collectorates of his Division, in which the state of the law was considered to be such as to render it unnecessary to wait for legislation in the matter.

“And this leads me to explain that the claims to exemption from the payment of land revenue in this Presidency may be broadly divided into two



classes, according to the laws wherewith they may be adjudicated. I have already adverted to the Code of 1827, and shown how it reserved to Government the right to investigate all claims to exemption, and laid down the rules and forms of procedure under which the inquiries were to be conducted. By this law, which is the law in force to the present day with respect to all such claims in Guzerat and the Concan, the adjudication of the claims is vested in the Courts of Civil Justice, the original jurisdiction resting with the Collectors, — but in Khandeish, the Deccan, and the Southern Mahratta Country, which, from the period of their acquisition until 1826, were administered by a separate Commissioner (the first Commissioner being the Honorable Mountstuart Elphinstone), it was specially provided in bringing these Districts under the Regulations of 1827—by Regulation XXIX of 1827 and Regulation VII of 1830—that the cognizance of the Civil Courts was not to extend to claims against Government on account of Inams.

“When the working, therefore, of the Inam Commission was fully established, it was found necessary to enact for its guidance a Code of Procedure, whereby the Officers of the Commission might regulate their decisions on the cases which might come before them for trial. This led to the enactment of Act XI. of 1852, which is the law at present applicable to the trial and adjudication of claims to exemption from the payment of Land Revenue in the Districts I have just enumerated, and in all Districts which may have been more recently annexed to this Presidency.

“This law, although it has been much decried, will be found by those who will attentively consider its provisions without bias, to be framed in a spirit of great liberality, which throws upon Government the entire *onus* of disproving the title of holders or occupants of rent-free lands.

“As, however, this law will, I trust, shortly be almost a dead letter, I should be uselessly taking up the time of this Council were I to allude further to it in this place than is sufficient to enable Honorable Members to understand in what respect the law for the adjudication of claims to exemption in the older Provinces differs from that in force in the Southern Districts, and which differences the Government considered to be such as to allow of their proceeding in the latter Districts with the settlement without delay, and why, in consequence of the action thereupon, it is now necessary to introduce a separate Bill, for the Districts of the Presidency which are subject to the operation of Act XI. of 1852, leaving the question of the application of a similar measure to the holders of alienated lands in Guzerat and the Concan for separate disposal. The object of the present Bill is simply to give legal effect to the agreements which have on the one part been entered into by the Inamdars, and by Government on the other. It has been explained in the printed ‘Statement of Objects and Reasons,’ which accompany the Draft Bill, that out of 40,878 holders of land, on whom notices were served, the settlements had, up to the 30th April last, the date of the latest return sent in to the Government, been completed in the case of 38,764 holdings, a result which will, I trust, leave little doubt on the minds of this Council, that the

settlement has proved, generally, I may say universally, acceptable to those interested ; and in saying this, I beg it may be borne in mind that the option of demanding a formal inquiry, and of obtaining, on establishing a good title, entire exemption from the payments which the compromise imposes, was open to every one. —

“ The necessity which lay upon the Government to devise some such settlement as that provided by this Bill, in justice to holders of alienated revenue, who have been for a long time kept in a state of uncertainty as to their position owing to the slow progress made in the inquiries into their titles, will be apparent, when I explain that, with a Commission costing in round figures a lac of Rupees per annum, the largest number of cases disposed of in any one year in the Southern Division was 1,298, so that at this rate it would have taken thirty years to dispose of the claims of the 38,764 with whom the settlement as above explained has been already completed. To increase the Commission so as to pursue the investigations into rent-free holdings throughout the Presidency, that the inquiries might be completed within a reasonable period, would have required a pressure which would have produced an amount of excitement which it was undesirable to bring about— and financially such an increase to the establishment was out of the question. The only course therefore left open to the adoption of Government was to effect a summary settlement which should take the form of a compromise of the right of the State to make inquiry into the title of Alienees for a moderate payment.

“ It seems hardly necessary to enter into any great detail in respect to the provisions of the Act, as the settlement for which it provides has been almost entirely completed, but there are one or two points on which I will briefly touch. But before doing so, I would observe that the present Bill is substantially the same as the Bill introduced into the Calcutta Council, the alterations now made in the latter consisting merely in the omission of one or two Sections or Clauses which are unnecessary in a settlement, which is, it may be said, already in effect, and Clauses which, although applicable to Guzerat and the Concans, are uncalled for in a Bill intended for the Districts subject only to Act XI. of 1852. To proceed then, taking the first Section, I would notice that the settlement has been confined to unadjudicated cases. I am aware that out of doors it has been strongly advocated that the settlement should have been extended to cases which have already been adjudicated unfavourably to the holders ; I cannot, however, see the justice of this, for these claims have been proved to be bad, and it would be unjust towards the general public to burden the State Revenues with charges upon them to the receipt of which the claimants have no good title ; and I may add that Her Majesty's Secretary of State has distinctly refused to allow the admission of these claims. But I may state that the Government have under consideration a proposal whereby it is intended to admit to the benefits of a more permanent title those cases in which the enjoyment of Alienated Revenue has been guaranteed for one or more generations only, =

“ Section II. provides, by the payment of a Nuzzerana, for the conversion of the holdings into hereditary and transferable property. This is a very valuable concession, for under all Native grants succession to Inams and such like holdings are generally restricted to the heirs male of the grantee, or some individual or individuals mentioned in the deed of grant. By the provisions in question, however, the inheritance to alienated lands will be extended to collateral heirs, and holders will be able to will away or otherwise dispose of their lands as they may think fit. It may be my duty hereafter to propose an amendment on the Nuzzerana Sections of the Bill, but I reserve for the present further allusion to this point.

“ The right to demand a trial and adjudication of their titles is reserved to all holders by Section VI. Opinions have varied as to whether this option should have been given, but this option has been considered in conjunction with the alteration to which I shall in the next place advert, made by desire of the Government of India and the Secretary of State in Act XI. of 1852, the law applicable to the Districts to which this Bill applies. I confess I myself would have preferred to see no option left, because the object of the measure is summarily to get rid of the necessity of proceeding further with the investigation of claims to exemption from payment of Land Revenue.

“ In Section X. an important change in the law above referred to, with respect to the adjudication of claims in the Districts to which this Bill applies, has been made. By Act XI. of 1852, as I have already explained, the *onus* of disproving the titles of the holders or occupants of rent-free lands was thrown on the Government; but here a return to the provisions of the Code of 1827 has been made, by throwing the burden of proof, in cases in which the parties may demand inquiry, upon the claimants themselves.

“ In conclusion, I may state that in dealing practically with this question, the Government have on all doubtful points leaned to the side of liberality—admitting to the settlement all claims in which appeals against decisions adverse to the claimants lay undisposed of before Government, and extending the terms of it to land found to be in the occupation of Inamdars in excess of their recorded holdings, which excess might fairly and without hardship have been at once subjected to the payment of full assessment.

“ Begging the Council to pardon me for having occupied so much of their time, I beg to move the first reading of the Bill, viz. ‘ A Bill to facilitate the adjustment of unsettled claims to exemption from the payment of Government Land Revenue, and to regulate the succession to, and transfer of, lands wholly or partially exempt from the payment of such Revenue in those parts of the Bombay Presidency which are subject to the operation of Act XI. of 1852 of the Legislative Council of India.

The Bill was then read a first time. \*

Read a first time.

Mr. JUGONNATH SUNKERSETT said that considerable time for discussion should be given, and that if a translation of the ‘Honorable Mover’s speech were given, it would be of great service.

Referred to a  
Select Committee

On the motion of Mr. ROBERTSON, the Bill was referred to a Select Committee, consisting of—

The Honorable Mr. INVERARITY,  
The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR,  
The Honorable Mr. TRISTRAM,  
The Honorable Mr. JUGONNATH SUNKERSETT, and  
The MOVER,

with instructions to report at the first meeting after 23rd September 1862, the Report of the Select Committee, together with the speech of the Honorable Mover, being translated into Mabrathi and Canarese.

Sir W. R. MANSFIELD said that after what had dropped from Mr. JUGONNATH SUNKERSETT, the public might suppose that a novelty was being introduced, whereas, in point of fact, the Bill was merely a Bill of indemnity to legalize what had been already carried out during the last eighteen months.

Bombay Bank  
Charter Act In-  
quiry respecting  
the intentions of  
Government.

Mr. SCOTT asked whether Government intended to proceed this Session with the Bank Charter Act, or, if not, when Government intended to proceed with the matter.

The PRESIDENT stated that no further step could be taken, pending the receipt of instructions from the Secretary of State, to whom the matter had been referred, and under whose consideration it still was.

The PRESIDENT then adjourned the meeting to Wednesday next, the 3rd September 1862, at 3 P. M.

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

L. H. BAYLEY,

Poona, 27th August 1862

Deputy Secretary to Government.

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament 24 and 25 Victoria, Chapter 67

The Council met at Poona, on Wednesday, the 3rd September 1862

### PRESENT.

HIS EXCELLENCY SIR H. B. E. FRERE, K.C.B., Governor of  
Bombay, presiding  
HIS EXCELLENCY SIR W. R. MANSFIELD, K.C.B.  
THE HONORABLE MR. FRERE,  
THE HONORABLE MR. INVERARITY,  
THE HONORABLE THE ADVOCATE GENERAL,  
THE HONORABLE MR. TRISTRAM,  
THE HONORABLE MR. MADHOWROW VITTUL VINCHOORKUR,  
THE HONORABLE MR. RUSTOMJEE JAMSETJEE JEJEEBHAY,  
THE HONORABLE MR. JUGONNATH SUNKERSETT,  
THE HONORABLE MR. ROBERTSON,  
THE HONORABLE MR. SCOTT, and  
THE DEPUTY SECRETARY.

The consideration of the "Report of the Select Committee on a Bill to abate the nuisance arising from the smoke of Furnaces in the Islands of Bombay and Colaba" was resumed

The following amendment, of which Mr Frere had given notice, was put.—

"That the following Section be substituted for Section III of the Bill as amended by the Select Committee —

III "It shall, for the purposes of this Act, be competent for a Magistrate, or the Municipal Commissioners of Bombay, to appoint a person or persons, who shall be thereby authorised to enter any premises to which the provisions of this Act shall apply, and inspect any Furnaces therein, and if the owner or occupier of the premises, or if the Agent, Foreman, or other person employed by such owner or occupier shall refuse to allow their premises to be inspected by the person so authorised, it shall be lawful for any Police Officer or Constable authorised by the order in writing of a Magistrate, with or without any assistance, to enter into and upon any building or premises in the Town and Suburbs of Bombay, in which any furnace may be, or in which any noxious trade or business may be carried on, and to examine into the construction of such furnace, and into the manner of carrying on such trade or business, and any person obstructing any such Police Officer or Constable in the execution of any such order shall, upon a summary conviction for such offence before a Magistrate forfeit and pay any sum not exceeding 500 Rupees"

MR. FRERE said that as the following clause of the Bill rendered the authority of a Magistrate or the Municipal Commissioners necessary before any proceedings were taken under the Act, he thought it desirable that Magistrates or the Municipal Commissioners should have power to appoint the person to enter premises and inspect furnaces

SIR W R MANSFIELD said he thought that the expression "a Magistrate" was not sufficiently definite

The ADVOCATE GENERAL thought there was a miscarriage in the 3rd Section. He considered that perhaps the best plan would be to adopt the amendment

MR ROBERTSON said that he thought the power of authorising persons to enter premises should be limited to either the Municipal Commissioners or to the Chief Magistrate, but that he would suggest it should be conferred on the former

The question was put whether the words "a Magistrate or" be omitted from the second line of the Section proposed to be substituted for Section III

*Carried.*

The question was then put whether the amendment of Mr Frere with the words "a Magistrate or" omitted stand part of the Bill

*Carried.*

Consideration of the Report of the Select Committee on "a Bill to abate the nuisance arising from the smoke of Furnaces, &c" resumed

Amendment proposed by Mr W E Frere

Proposed Clause amended

Mr. Frere's amendment carried.

Sections 4, 5, 6, and 7, as amended by the Select Committee, passed.

Sections 4, 5, 6, and 7, as amended by the Select Committee, were passed.

Mr. TRISTRAM said that as it was desirable that the Bill should pass, and the amendment made was clerical, he would ask the President to suspend the Standing Orders.

The PRESIDENT said he thought the amendment made was more than merely clerical, and that he would prefer not to suspend the Standing Orders

Second Reading postponed  
Consideration of the Report of the Select Committee on a "Bill for further amending Act XXXVI of 1850," resumed

The second reading of the Bill was accordingly postponed to next meeting.

The consideration of the "Report of the Select Committee on a Bill for further amending Act XXVI. of 1850" was resumed.

Section I, as amended by the Select Committee, was agreed to

Amendment proposed by Mr Inverarity.

The following amendment, of which Mr. Inverarity had given notice, was put —

"That the following Section be inserted as Section II. of the Bill as amended by the Select Committee, and that Section II. in the amended Bill stand in the Bill as Section III.

"II All Collectors, Sub-Collectors, Assistant and Deputy Collectors, Mamludars, and Mahalkurries, shall be *ex-officio* Commissioners of every Municipality within the limits of their local jurisdiction, and the following Officers shall be *ex-officio* Commissioners when resident in any City, Town, or Suburb in which a Municipal Commission is or shall be established, viz —

- "The Executive Engineer of the District.
- "The Civil Surgeon.
- "The Superintendent of Police
- "The Assistant Superintendent of Police.
- "The Deputy Collector at the Sudder Station
- "The City or Town Foujdar"

Mr INVERARITY explained the objects of the Bill and amendment.

Sir W R. MANSFIELD would like to inquire whether the proposed Clause would not give too great a number of Government officers, and therefore cause the Municipality to assume the appearance of Government machinery for taxation. It must be remembered that the influence would be one of patronage and superior education as well as of number. He thought it doubtful whether the Clause would not deprive the Town's people of the power of expressing their opinion.

Mr. JUGONNATH SUNKERSETT thought the proposed increase of Government influence too great.

Mr. ROBERTSON suggested that the difficulty might be met by limiting the number of *ex-officio* members in each Municipal Commission to one-third of the whole number of Commissioners.

The PRESIDENT said his own inclination was in favour of having *ex-officio* members, but not in such a proportion to the non-official members as to override them. He quite agreed that some limitation should be placed on the number.

The question was then put whether the following Proviso be added at the end of the Section proposed in the amendment of Mr. Inverarity —

Proviso added to the amendment

“ Provided that the *ex-officio* Commissioners shall not at any time exceed the proportion of one-third in number of the non-official Commissioners of any Municipality.”

Mr. INVERARITY'S amendment with the above mentioned *Proviso* was then put and carried

Amendment carried

Section III. was then passed

Section 3 passed  
Preamble

On the question whether the Preamble should stand (the Preamble of the Bill), Mr. Frere said it would require alteration in consequence of a new Section being added to the Bill.

The following words were then added to the Preamble after the words “ Act XXVI of 1850”—

Amended.

“ And to make provision for certain Officers to be *ex-officio* Members of Municipal Commissions.”

The consideration of the “ Report of Select Committee on a Bill to promote the construction of Lines of Communication as Feeders to Railways, High Roads, Navigable Rivers, and Canals, so far as relates to Section XVI. of the Bill, was resumed

Consideration of the Report of Select Committee on a “Bill to promote the construction of Lines of Communication as Feeders to Railways, &c” resumed

“ The following amendment, of which Mr. Frere had given notice was put —

Amendment proposed by Mr W E Frere

“ That the word ‘ order’ be substituted for ‘ direct’ in the 12th line of Section XVI. of the Bill, and that the following be added at the end of the 16th line, within a certain time to be specified in that order in case of wilful failure on the part of the Company to comply with that order, they shall be liable to a fine not exceeding Rupees Five hundred for every day that they fail so to do,”

and carried.

Carried

On the amendments of which Mr. Inverarity had given notice being put—

Amendments proposed by Mr Inverarity

Mr. INVERARITY said that since the Bill was printed, he had been in communication with one of the most experienced and eminent authorities on all subjects connected with Railways on this side of India, and the valuable suggestions of this authority had been embodied in the amendments which he begged to propose

Sir W. R. MANSFIELD had some doubts whether on a point of order, now that the report of the Select Committee on the Bill had been agreed to, the Council could admit the amendments till the second reading of the Bill was moved.

Consideration thereof postponed

On the question whether the amendments of the Honorable Mr. Inverarity be now considered, the Council divided :

*Ayes—4*

The Honorable Mr. INVERARITY,  
The Honorable Mr. TRISTRAM,  
The Honorable Mr. JUGGONATH SUN-  
KERSETT.  
The Honorable Mr. SCOTT.

*Noes—6*

His Excellency Sir W. R. MANSFIELD,  
K. C. B.  
The Honorable Mr. FREERE.  
The Honorable Mr. LEWIS.  
The Honorable Mr. RUSTOMJEE JAM-  
SETJEE JEJEEBHOY.  
The Honorable Mr. MADHOWROW  
VITTUL VINCHOORKUR.  
The Honorable Mr. ROBERTSON.

Bill referred to the former Select Committee to consider the amendments proposed by Mr. Inverarity

The question whether the Bill be again referred to the Select Committee who had reported on the Bill, to consider the amendments proposed by Mr. Inverarity, was then put and carried

Report of Select Committee on a "Bill to extend the jurisdiction of the Bombay Small Cause Court"

On the next order of the day, viz. the Report of the Select Committee on a "Bill to extend the jurisdiction of the Bombay Court of Small Causes, and to provide for the appointment of additional Judges of that Court" being read—

The ADVOCATE GENERAL said the Bill had been almost recast in Committee. His avocations elsewhere having prevented his considering the report, he moved that the period for receiving the report be extended to the next meeting of the Council

Period for the reception thereof extended

The PRESIDENT put the question whether the period for the reception of the Report be extended to the 10th instant

*Carried.*

"Bill to enable Magistrates to depute to subordinate Magistrates power to try certain offences punishable under the Penal Code," &c

Mr. FREERE said he was not prepared at present to introduce the "Bill to enable Magistrates to depute to subordinate Magistrates power to try certain offences punishable under the Penal Code, and to enable district Police Officers to try certain minor offences specified in Chapter 14 of the Indian Penal Code."

He would do so at the next meeting, when he also intended to introduce two Police Bills

First Reading postponed

The first reading of the Bill was then postponed to the next meeting

"Bill for the Registry of Vessels and levy of Pilotage fees on the River Indus"

Mr. INVERARITY, in introducing the "Bill for the Registry of Vessels and levy of Pilotage fees on the River Indus," spoke to the following effect.—

First Reading

"The navigation of the Indus has long been declared free to all nations, but it still remains to secure that navigation from all undue risk. The obstacles which the River Indus offers to navigation are twofold. These are the difficulties presented by the main stream and the difficulties met with at the entrance and in the branches of the Delta.

"Among the first is the difficulty of controlling the stream. During the inundation, the waters of the Indus in some places spread over a surface of 15 miles in breadth, and during their subsidence it is never a matter of certainty which bank the current of the stream will most affect. Any thing imaginable



in the shape of irregularity scarcely comes up to the truth in regard to the eccentricities and caprice of the Indus. Three times within the memory of existing man has Kusmore in Upper Sind been washed away. Twice have Gobla and Bustanee shared the same fate. When the Rookun road was first lined out some ten years ago, it was miles from the river, two embankments put up to protect the country from the encroachments of the river have since been carried away; and at the present day a stone might be thrown from the deck of a passing steamer into the staging bungalow built on the side of that road. Lower down the river, between Tatta and the sea, there are standing in the centre of the stream some rocks which not many years ago were some distance inland. Besides this difficulty of control, there are difficulties of clearance. Frequent shoals, uncertain situation of channels, and foulness of the river bed, all present obstacles to safe navigation. The mere grounding of a boat is sufficient to raise a shoal, to divert the current from its course, and create a new channel. During the inundation many trees are carried down and deposited, and during the low season many trees topple with the banks on which they stand in the stream, and there in a short time become firmly inbedded. These sunken trees are obstacles from which danger is most to be apprehended, because no attention of the navigator can effectually guard against them. It will be within the recollection of some at this Board that, but a few years ago, a young and accomplished Officer of Engineers lost his life by his boat coming in contact with a sunken tree some miles above Hyderabad. It will not be forgotten that the ill-fated "Meteor" lies at the bottom of the river irrecoverably lost, and more recently the Steamers "Lawrence" and "Chenab" were both snagged, but by great exertions were both happily saved. Thus it came to pass that a consideration of risks and of the large and increasing development of trade on the river induced the Government to initiate a system of conservancy, and the Steamer "Assyria" has, during the past low season, been successfully employed in clearing and improving the navigable channel by removing sunken obstructions. To provide something towards the expenses of this conservancy, a Registry fee on boats plying on the Indus has been imposed, to the satisfaction of all concerned.

"But besides these difficulties which affect the main stream, there are the difficulties met with at the entrance and in the branches of the Delta. Here are seen the combined effects of the inundation and the South West Monsoon, in low, shelving mud banks intersected with continually shifting channels. A system of Pilotage has here been organised, and while the navigable channels are marked out with posts, beacons are exhibited on prominent points to give the general direction and bearings. Towards the maintenance of an Establishment for Pilotage and Beaconage purposes, small pilotage fees, originally fixed as regards native craft by the traders interested, are levied to the satisfaction of all concerned.

"Opinions have been invited from Sind, and to-day I have seen a letter from the Commissioner, who reports that the Kurrachee Chamber of Commerce give the Bill as now presented its cordial support, and that the Registry and

Pilot Fees give general satisfaction. With these few remarks, I beg to move the first reading of the "Bill for the Registry of Vessels and levy of Pilotage Fees on the River Indus."

Read a first time,  
and referred to a  
Select Committee.

The Bill was then read a first time.

Mr. INVERARITY moved that the Bill should be referred to a Select Committee consisting of—

The Honorable Mr. ROBERTSON,

The Honorable Mr. TRISTRAM,

The Honorable Mr. SCOTT,

The Honorable Mr. JUGONNATH SUNKERSETT,

The Honorable Mr. RUSTOMJEE JAMSETJEE JEJERBHOY, and

The MOVER,

with instructions to report at next sitting of the Council.

*Carried.*

"Bill for the better suppression of Frauds in the Cotton Trade in the Presidency of Bombay"

Motion for leave to bring in the same.

Mr. SCOTT, in moving for leave to bring in a "Bill for the better suppression of Frauds in the Cotton Trade in the Presidency of Bombay," said.—

"I make the motion, of which I have given notice, with some little diffidence, because Government withdrew the measure on the same subject, which they had intended to bring forward at the last Session of the Council, and because I am aware that the opinion is held in high quarters that any legislation such as that which I propose is unnecessary. In this I cannot agree. On the contrary, I am convinced that some interference by Government is absolutely necessary, and my conviction in this respect is, I believe, shared by the whole mercantile community of Bombay. I do not speak of the European mercantile community only, but of the better class of the native merchants, who, equally with their European brethren, are sufferers by the universal system of fraud which appears to pervade our cotton trade.

"Rule 13 provides that a member moving for leave to bring in a Bill shall be at liberty to state *concisely* his reasons for so doing. I shall endeavour to abide by the strict reading of this rule, but I crave the forbearance of the Council if my remarks should appear a little too lengthy. I know, as I have said, that objections are entertained to any legislation on this subject, and I should be glad if a short statement of the case, as it appears to me, should so far disarm these, that the permission I now ask for may be accorded, and an opportunity afforded hereafter for the full discussion of the whole subject in Council

"The subject of Indian Cotton has attracted much attention of late, and much more information with regard to the trade is probably now in the possession of *outsiders* than has ever been the case before. I question, however, whether it is generally known, or at any rate generally believed, that at no time within the last ten years has the adulteration of Indian cotton been carried to so great an extent as during the past twelve months. I am careful to speak of ten years only, because for that period I can speak from personal knowledge. At no period has the improvement of the quality of Indian cotton been of such

vital importance as of late, at no period has the trade itself been of such vital importance both to this country and to Europe, and at no period within my recollection has the adulteration of the staple been so great and so universal.

“Adulteration is effected in many ways. Compta cotton used to enjoy the unenviable notoriety of being full of seed, while Broach and Dhollera bales used to be weighted with stones and dirt. In the past year all have retained their own failings, and have besides appropriated those of their neighbours: Compta has been as seedy as ever, and as dirty as Broach and Dhollera often used to be; Broach and Dhollera have been dirtier than for many years past, and the former especially, as seedy as Compta almost ever was. So far I have spoken of one kind of adulteration; another, and perhaps the more serious, is adulteration by the mixture of one kind of cotton with another,—the inferior with the superior,—and the sending them to market in such packages as have hitherto been distinctive of the superior quality. The Oomrawuttee name and the Oomrawuttee docra have been usurped by the somewhat similar, but short stapled and dirty cotton of the neighbouring province of Kandeish. Verawul and Mangrole have deserted their old docras, and come to market in bales fashioned to represent those of Dhollera and Bhownuggur, and sometimes bearing these names in native characters upon them. The New Orleans seed cotton of the Southern Mahratta Country, commonly known as “Dharwar Saw-ginned,” and from which so much was expected in the way of raising the character of Indian cotton, has latterly been of the most wretched description: much of it is the common indigenous cotton, but much of it has never seen the Dharwar Districts at all, but has come from Kandeish

“While on this subject, I may mention a singular circumstance which is within my own knowledge. The firm to which I belong had some years ago large cotton ginning establishments in Kandeish. These we have not been working lately, but the machinery is still standing and I last season permitted an old agent of ours to use it in ginning cotton for the neighbouring sowcars. A considerable quantity of Kandeish cotton,—very poor cotton too,—as reported to me at the time, was thus ginned, and yet, strange to say, not a docra of Kandeish ginned cotton ever appeared in Bombay: it left Dhurrungaum for Bombay, but never appeared there for sale under its own name. I have found it, I believe, in Dharwar docras over and over again, but no Kandeish ginned cotton was to be bought as such in the market. I mentioned the matter to our agent, and on his taking the sowcars to task, they laughingly admitted that they knew their cotton was used to adulterate, or to represent the superior Dharwar growth.

“I trust I have now shown that the evil exists, and that it is so great as to demand a remedy. As to this remedy, I have been told—*1st*, that it is supplied by the present law, and *2ndly*, that the merchants of Bombay can supply it themselves. As regards the first point, it might almost be enough to say that there must be something singularly insufficient in laws which not only do not check the evils which they were intended to prevent, but permit their great increase. These laws, as far as I have been able to discover, consist of Regula-

tion III. of 1829, and Act XV of 1851. The first of these was, I believe, a dead letter for upwards of 20-years. It was then, in 1850, on the urgent representations of the Chamber of Commerce, and with good effect, put in force at Broach by the late Mr. J. M. Davies. It has not, as far as I know, been since acted on, except in a case where I believe, owing to its non-application to certain districts, the executive officer was held by Government to have exceeded his powers in attempting to put its provisions in force. The Regulation contains two great defects:—1st, there is a doubt as to whether it is applicable to any part of the Presidency except Guzerat, to which, according to the preamble, it is specially intended to apply, 2nd, it only permits of the confiscation and destruction of adulterated cotton when the loss “*can be made to fall upon the person or persons who have been convicted of having committed the fraud.*” This, I believe, renders the Regulation practically useless, and in this opinion I believe the executive officers of Government will agree.

“Then as to Act XV. of 1851; this only refers to the Islands of Bombay and Colaba. Its provisions are good in so far as they go, but there have been great difficulties in the way of putting them in force. In the first place it has been felt by all that they fail to reach the guilty parties. They may punish a Bombay cotton dealer, but in so doing they may inflict a grievous wrong upon him, for they do not go beyond him, or enable him to reach the up-country dealer by whom he has probably himself been victimized. This consideration has, I believe, prevented in great measure any attempts to put the law in force. I only know of one attempt to do so on the part of an influential European firm, and it was met by a combination among the dealers not to sell any cotton whatever to the parties in question. Such a course was not, under the circumstances, extraordinary or altogether inexcusable, but it was productive of very serious inconvenience and loss to the firm of whom I have spoken, and who only endeavoured to avail themselves of the laws provided for their protection,

“So far regarding the existing laws, which have certainly failed to provide the required remedy. They have been almost useless, but their very existence affords an argument for the further legislation which I advocate. If any law be necessary, let us have one which has some pretension to being effectual. If none be necessary, then expunge from the statute book those which now uselessly encumber it. Now, as regards the assertion that the merchants of Bombay can themselves supply the remedy, they are told that they can do so in two ways.—

1st.—By refusing to buy adulterated cotton.

2nd.—By going themselves into the producing districts, and there buying the cuppas or the cotton direct from the ryots.

“As regards the first point, I fear I could not, without going greatly into detail, explain fully the almost powerlessness of the exporting merchant. Take, however, an ordinary case. An English house commissions a Bombay firm to purchase on their account 1,000 bales, say of Broach cotton. The Bombay firm contracts for this quantity often necessarily months in advance of delivery. When the cotton comes to Bombay, and is tendered to the purchasers, it is found to be adulterated. What then are they to do?—decline to receive it, and endea-

your to buy in the open market on account of the seller? This advice is easy to give, but difficult to follow. In the first place, if good cotton be procurable, there remains a long lingering law-suit against the original seller, in which success hinges on the proof, often most difficult, of adulteration, and in which, if successful, the plaintiff must often feel that he is dealing somewhat harshly with the defendant. In the second place, if, as in the past season, there has really hardly been any good cotton to be had, there remains the lawsuit as before and other very serious complications. The English house claims its cotton, which the Bombay firm, trusting to the Bombay dealer, has undertaken to supply, and if the cotton be not forthcoming, serious claims for damages may arise. In practice, then, it has been found to be almost absolutely impossible to carry on the trade, except by making all bargains, with English houses on the one hand, and with Bombay dealers on the other, for cotton of a certain growth, and of a fair average quality of a certain season's crop. When adulteration is the rule, and the exceptions are rare, where then is the remedy at all?

“As regards the second point, the establishment by European firms of agencies in the up-country producing districts for the purpose of dealing direct with the ryots, here I freely admit lies the remedy for many of the evils of which I complain, and for many more than I have referred to. No one can consider the establishment of such agencies more desirable than I do myself, no one can anticipate from them greater benefit than I do. Without them I do not think that we shall ever get to the root of the evil, or effect any material improvement in the quality of Indian cotton. Believing all this, and admitting this, I must still emphatically declare that no prudent European merchant dare, in the existing state of the law, establish such agencies on a large scale without some system of easy registrations of contracts, and without some summary law for the enforcement of contracts, criminal or otherwise I don't much care, he would be going to certain loss. This opens a large question, on which I must not enter, but the subject is one upon which I claim to speak from experience.

“The firm to which I belong is the only one on this side of India which has attempted such operations on a large scale, and in my own earlier career in India I had a great deal to do with their management up-country. A history of our doings is on the records of Government, and I need not enter upon it here. Suffice it to say that after fighting against all difficulties for ten years, after expending large sums in machinery, and in the importation of foreign cotton seed, &c., we were obliged to withdraw our agencies, and abandon altogether a large sum in outstanding advances. What caused our failure? The want of a system of registration of contracts, and the want of some means of summarily enforcing these. Give us these, and we will commence again, and so will many others. Without them we can do nothing.

“In order to enforce my argument on this point, I may be permitted to state one case, taken also from our own experience. On the 6th May 1852, we contracted with a person in the Dharwar districts for the delivery of a certain quantity of cotton, and, according to custom, paid half purchase money in advance. He failed to deliver, and we sued upon the contract. We obtained

a decree in the Sudder Ameen's Court on 23rd November 1853, and on appeal in the Judge's Court on 27th November 1854. The defendant then appealed to the Sudder, and his appeal was dismissed with costs on 30th January 1857. His property was then attached, and almost simultaneously he died. Claimants then rose up against the attachment. We again obtained decrees in our favour, and an appeal was again made in August 1861—ten years fighting for a paltry sum, which would have been abandoned long ago, save that we objected to being *done*. This is an extreme case, but it has occurred, and might occur again; I have endeavoured to show, then, that the evil exists, that the law does not provide a remedy, and that we cannot find a remedy for ourselves. I therefore ask leave to endeavour to provide one by further legislation.

“The Act which I purpose to bring before the Council will be very similar to one which was, on the 16th January 1858, introduced in the Legislative Council of India by the late Mr. LeGeyt, and which was subsequently withdrawn. It cannot be brought forward this Session, but I think the delay will be of advantage rather than otherwise, for the subject is a very difficult one, and I hope that, as attention has now been drawn to it, we may receive from competent authorities many useful hints.

“I now beg to move for leave to bring in ‘A Bill for the better Suppression of Frauds in the Cotton Trade in the Presidency of Bombay.’”

Mr. FRERE said he should be most happy to support any Bill which was introduced for the purpose of putting an end to these frauds, but he was not sanguine of success, though he would give the Honorable Mover all the assistance in his power.

Sir W. R. MANSFIELD said that in England a Select Committee or a Commission would issue for the purpose of obtaining evidence in such a difficult matter. Thus while most anxious to forward the Honorable Member's views, if it should be in his power to frame such a measure as might meet the approval of the Council, he would throw out, for the consideration of the Honorable Mover, whether it might not be desirable to appoint a Select Committee to take evidence on the whole subject during the recess.

Mr. SCOTT said he would be in a position to state what course he would pursue next meeting.

Leave was then given to Mr. SCOTT to introduce the Bill.

The PRESIDENT said that at the last meeting he stated that he hoped to be in a position this meeting to inform the Council how long the present Sessions would be further protracted and he proposed at the next meeting either to adjourn the Sessions, or to state on what date it would be adjourned.

The PRESIDENT then adjourned the Council to Wednesday next, the 10th September, at 3 P.M.

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

L. H. BAYLEY,

Deputy Secretary to Government.

Poona, 3rd September 1862.

Granted.  
Proposed adjournment of the Sessions.

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament 24 and 25 Victoria, Chapter 67.

The Council met at Poona, on Wednesday, the 10th September 1862.

### PRESENT:

HIS EXCELLENCY SIR H. B. E. FRERE, K.C.B., Governor of Bombay, presiding,  
 HIS EXCELLENCY SIR W. R. MANSFIELD, K.C.B.,  
 THE HONORABLE MR. W. E. FRERE,  
 THE HONORABLE MR. J. D. INVERARITY,  
 THE HONORABLE MR. W. B. TRISTRAM,  
 THE HONORABLE MR. RUSTOMJEE JAMSETJEE JEJEEBHOY,  
 THE HONORABLE MR. JUGONNATH SUNKERSETT.  
 THE HONORABLE MR. A. D. ROBERTSON,  
 THE HONORABLE MR. M. H. SCOTT, and  
 THE DEPUTY SECRETARY.

Mr. TRISTRAM moved the second reading of the "Bill to abate the nuisance arising from the Smoke of Furnaces in the Town and Suburbs of Bombay;" and in doing so, called attention to the wording of Clause 3, and suggested the insertion of the words "For the town" between the words "Commissioners" and "of Bombay" in the 3rd line of that Section.

Bill to abate the nuisance arising from the smoke of Furnaces in the Town and Suburbs of Bombay

### Agreed to.

The Bill was read a second time and passed.

Mr. INVERARITY moved the second reading of the Bill for further amending Act XXVI. of 1850.

Mr. FRERE proposed the following amendment in the Preamble, viz the insertion of the words "whereas it is desirable" between the words "and" and "to" in the 6th line of the Preamble.

Read a Second time and passed Bill for further amending Act XXVI of 1850. Amendments carried

### Carried.

The President intimated that in a communication received from the Secretary to the Government of India, in reply to the letter forwarding the Bill to the Government of India, objection was taken to the authority which it was proposed to confer on the Executive Government to delegate to *any person* all the powers confided to Government by Act XXVI. of 1850.

The question the words "or others" be omitted from the 4th line of the Preamble to admit of the insertion of the words "and the Commissioner in Sind," was put, and also whether the words "and to" be inserted before the word "the" in the 5th line of Section I., and the words "or to any person or persons" omitted from the 5th and 6th lines of the same Section.

### Carried.

Read a second time and passed

Further report of the Select Committee on a "Bill to promote the construction of lines of Communication as Feeders to Railways, &c" Read. Order to be printed and circulated

Report of the Select Committee on a "Bill to extend the Jurisdiction of the Bombay Court of Small Causes," &c considered

The Bill was then read a second time and passed.

The further Report of the Select Committee on a "Bill to promote the construction of lines of Communication as Feeders to Railways, Highroads, Navigable Rivers, and Canals" was read by the Deputy Secretary.

The Report was ordered to be printed and circulated to the Members.

The Report of the Select Committee on a "Bill to extend the Jurisdiction of the Bombay Court of Small Causes, and to provide for the appointment of additional Judges of that Court" was then considered.

Sections 1, 2, 3, 4, and 5 of the Bill, as amended by the Select Committee, were passed.

On the question whether Section 6 stand part of the Bill, the PRESIDENT said that a communication had been received from the Government of India respecting the Kurrachee Small Cause Court Bill, and it would be better that the Deputy Secretary should read the remarks of the Secretary to the Government of India on the subject.

The DEPUTY SECRETARY read the following note of the Secretary to the Government of India :—

"The first Clause of this Bill is meant to meet a real evil of considerable magnitude, viz. that a good many corporations and persons who carry on trade or other operations, or who own property within the jurisdiction of the Court, are, nevertheless, non-resident, and so no action will lie either against them, or their agents, in the Court.

"It appears to follow the model of the Bengal Act II. of 1862, to which, however, it has been with reason objected that it is somewhat too widely worded.

"It was intended to give the Courts jurisdiction over principals, having Agents residing within the Court's limits only in respect of matters done in connection with such agency.

"The wording of the Clause, however, does not express this restriction, and hence, if the Act passed as drafted, the principal might be sued at Kurrachee for an act done in Bombay or Poona, or for a debt, such as servants' wages, due at the latter places.

"Some such wording as that of the Clause in the margin, which is proposed by the Recorder of Penang (Sir Benson Maxwell) to meet a similar difficulty arising out of the present form of the letters Patent constituting his Court, would probably be preferable to the Clause as it now stands in the proposed Bill."

"And all actions, suits, and other proceedings, the cause or causes of which shall have arisen wholly or in some material particular within the said Settlement where the person or corporate bodies proceeded against though not themselves being resident or established in the said Settlement shall carry on business there by an Agent or partner, or have property there under the management or control of an Agent or partner Provided always, that where the cause of action, suit, or other proceeding is against two or more persons jointly responsible, any one or more of them may be sued without the other or others, if the latter is or are not within the said Settlement at the time of the institution of the action, suit, or proceeding"

posed by the Recorder of Penang (Sir Benson Maxwell) to meet a similar difficulty arising out of the present form of the letters Patent constituting his Court, would probably be preferable to the Clause as it now stands in the proposed Bill."



The question was then put whether the following Proviso be added at the end of Section 6 — Section 6 amended

“ Provided always, that in any suit brought under this Section, the cause or causes of such suit shall have arisen wholly or in some material particular within the territorial limits of the said Bombay Court of Small Causes ”

Section 6, as thus amended, was passed.

Section 7 was passed.

On Section 8 being put, Mr. JUGONNATH SUNKERSETT moved the following amendment of which he had given notice —

Amendment proposed by Mr Jugonnath Sunkersett on Section 8

“ Provided that nothing in this Act shall be held to take away or diminish any rights or privileges of any person not being a Barrister or an Attorney, who, at the date when this Act comes into operation, may have been or may hereafter be admitted to practice as a Pleader in the said Court of Small Causes,” and said—

“ I beg to state that I am not satisfied, nor do I think the community in general will be satisfied, with the omission from the Bill of all mention of the class of Pleaders who were, in pursuance of the Government Resolution No 1349, dated 14th April 1860 (approved of by the Secretary of State for India), admitted to practice in the Court of Small Causes

“ I need not trouble the Council with the history of the Government Law Classes, and the admission of the most successful pupils to practice in the Small Cause Court. It is set forth at length in a printed collection, which, I understand, has been put into the hands of all my honorable colleagues, but I may say that I believe that Pleaders have done their work in a manner satisfactory to their clients, who are mostly of a class too poor to pay the fees claimable by Barristers and Attorneys, in addition to the expense of interpreters, who are in many cases required by European Lawyers.

“ These young men have successfully passed through a course of legal instruction in the Government Law Classes. Their knowledge has been tested by severe examinations held by Barristers of the late Supreme Court. Lately they have been permitted to recover a fee of Rupees 15 from their clients. Being apprehensive that their just claims to recognition as an existing class of Pleaders might be overlooked by the Council, they drew up and submitted a petition, which I do not think it necessary here to read

“ The majority of the Select Committee has resolved to return an answer, which I will read with the permission of the Council. —

“ The Select Committee have had before them a petition from the Law Students at present practising in the Bombay Court of Small Causes. The Petitioners state that they are surprised to find no recognition whatever in the Bill before the Council of the class to which they belong, and that they are strongly inclined to attribute such omission to the ignorance of the Honorable Mover concerned in framing the Bill, of their existence as practitioners in the said Court, and not to any wish to deprive them of the boon conferred on them by the Government Resolution of the 14th April 1860.

‘ They therefore pray that provision may be made for their fees and costs as well as those of Barristers and Attorneys. ’

‘ The Select Committee, who have learned from the Honorable Member referred to that the omission was not unintentional, have maturely considered the said petition of the Law Students, and do not esteem it necessary to recognise them. Their position is not affected by this Bill to extend the provisions of Act IX. of 1850, nor are they precluded by it from enjoying the advantages of the boon conceded to them as an encouragement to the study of Law in the University of Bombay by the abovementioned Resolution of Government, the Select Committee having every reason to believe that the measure was only intended to be a temporary one, and not by any means for the purpose of creating a permanent new class of Pleaders. ’

“ I do not think this reply should be made to the Petition. I am strongly of opinion that the rights of these meritorious young men should not be left to the caprice of the Judges of the Court, who (if the Legislature is silent) may consider that they are no longer bound to admit the Pleaders to practice before them, or to give them power to recover fees. I believe that it is always the practice in England to insert provisos in Acts of Parliament to protect vested rights, if there is any chance of their being affected by legislation. It is said that here there is no danger of the Pleaders being deprived of their privileges. I hope there is none; but I think it will be safer to insert a proviso to ensure that effect, and I have drawn one up which has already been circulated among the Honorable Members. It will remove all causes of alarm from the Petitioners, and it cannot be objected to for any of the reasons mentioned in the Committee’s intended reply to the Petition.

“ I may mention that Mr. Hore, the experienced First Judge of the Small Cause Court, whom I have consulted on this subject, and whose opinion ought, I think, to carry great weight, thinks that the rights or claims of the Pleaders (the passed Law Students) should be recognised in this Bill, and I am sure he will be very sorry if this is not done. I understand that the Director of Public Instruction, in a report called for by Government, has also expressed an opinion to the same effect. The general public will also be greatly disappointed at the omission of all mention in the Bill regarding the existing class of Pleaders, whose admission has been a decided boon to the poorer classes of the public.

“ The special object of the formation of the Government Law School has been, to use the words of Dr. Reid, as expressed in his opening address to the Students in 1855, ‘ to contribute towards the production of a better educated and more trustworthy class of Native Lawyers, as well as Advocates as Judges. ’ Dr. Reid said on that occasion that the correspondence between the Committee of the Perry Testimonial and Government, which he had seen at the Secretariat, clearly showed that the formation of a better class of professional Lawyers was the principal object in founding the School. Government has actually given effect to that intention by their Resolution of the 14th April

1860, and several of the Law Students, acting on the faith of that Resolution, have materially altered their condition in life.

“The practice of the Court of Small Causes at Calcutta is to confer the privilege of practising before it on any person of sound general education. I hold in my hand a list of Pleaders recognised by the Court of Small Causes at Calcutta. They are nearly 50 in number. This list is taken from the Calcutta Directory of 1861, page 7, part 7.

“One of the objections raised against recognising the position of the qualified Law Students in the proposed Bill is, that no mention is made of them in the Small Cause Court (Act IX of 1850). I may state that, if this objection be allowed to stand, it holds even against the Barristers and Attorneys, no mention being at all made of them in the said Act. It is only under Section 32 of the Rules framed by the Judges of the Small Cause Court, by power vested in them by Section 41 of Act IX of 1850, that the fees of Barristers and Attorneys are regulated. The fees of the Pleaders are also regulated by virtue of the Rules framed by the Judges of the Court of Small Causes, under the very same power. So far, therefore, as the question of fees is concerned, both these classes of Barristers and Attorneys on the one hand, and the Pleaders on the other, stand in the same category. Why should we therefore make any invidious and unjust distinction by recognising the fees of the one, and making no provision for those of the other in the New Bill?”

Mr. FRERE proposed that the words “or may hereafter be” in the amendment be omitted.

Mr. SCOTT said —

“I regret that, notwithstanding the able advocacy of my honorable friend opposite, I must oppose his amendment. The amendment is carefully worded, and, at first sight, there would not appear to be much in it to which one might reasonably object; but there can be no doubt about what my honorable friend has in view, viz. to cause the recognition, by the Legislature, of the somewhat anomalous class of Pleaders now practising in the Small Cause Court under the name of “Qualified Law Students.” In opposing the amendment, I believe I am consulting the best interests, not only of the public, but of the very class to which those Pleaders belong.

“Looking to the interests of the public, I oppose the amendment, because I cannot conceive it to be desirable that cases of such importance as may be tried under the new jurisdiction of the Court, should be conducted by lads, who, however well they may have passed a certain examination, cannot possess much more than the mere rudiments of legal knowledge, or that a permanent new class of Lawyers should be recognised, holding so anomalous a position, part Barrister, part Solicitor, part Solicitor’s Clerk, and not subject to that wholesome control which the Judges of the Supreme Court (the High Court now) exercise over, what I may call, the legitimate branches of the legal profession.

“ I am careful to speak of the matter only in so far as this Act is concerned. I do not enter upon any objections to the employment of the Pleaders even in the Court as now constituted. Government doubtless sanctioned their employment for some good reason, and may still continue to do so. With this I have nothing whatever to do, and, as will have been observed, the Select Committee express no opinion on the question.

“ So much for the public. Then as regards the Pleaders themselves, I think it would be far better for them to study really to fit themselves for the practice of law, and to seek to enter one of the two branches of the legal profession by the recognised door,—not to halt upon the threshold, as they are now doing. The entrance has, and, as I believe, for wise purposes, been somewhat strictly guarded; but I would throw it as wide open as is consistent with these purposes, and invite all who are duly qualified to enter. Some of the very best of the class to which these students belong are, as I gather from their own pamphlet, which has, I believe, been placed in the hands of every Member of the Council, seeking to do that which I recommend. This, I think, is to their great credit, and, in common justice to them, I would not admit the others to that position, for which, by years of study, they are seeking duly to qualify themselves.

I am sorry to observe in the pamphlet of which I have spoken, that the view which may be taken of the claims of these Pleaders is, so to speak, considered a test of whether we have at heart the education and welfare “ of the natives of India ” I think my honorable friend will give me credit for this, even though I feel compelled altogether to oppose his amendment ”

Mr. FRERE said he agreed with most of the remarks of the Honorable Member, Mr Scott, but he thought it right to recognise in this Bill those Pleaders who are now practising in the Court, as they had the authority of the Bombay and Home Governments

Mr. JUGONNATH SUNKERSETT said he really took up the case partly on behalf of the poor people of Bombay, to whom it was a great boon to be able to secure the services of the Pleaders at charges less than those paid to Barristers and Attorneys.

Sir W. MANSFIELD said he should like to know whether we are legislating for the poor classes of Bombay or for the Pleaders. He thought that the effect of recognising the Pleaders would be to provide cheap law, which he strongly deprecated

Mr. TRISTRAM said he entirely agreed with Mr. Scott. He should like to know the meaning of the word “ rights ” in the Proviso proposed by Mr. Jugonnath Sunkersett. The Pleaders had certain privileges, but he was at a loss to understand what their rights were. Their present anomalous position was a matter of favour.

Mr. JUGONNATH SUNKERSETT said that, considering the present feeling of the Council, he would not insist on the retention of the words “ rights or ” in his Proviso.

The words  
“ rights or ” in  
proposed amend-  
ment omitted.

The question was then put whether the words "or may hereafter be," be omitted from the Proviso proposed by Mr Jugonnath Sunkersett.

The Council divided :

*Ayes—6*

SIR W. R. MANSFIELD.  
MR. FRERE.  
MR. INVERARITY.  
MR TRISTRAM.  
MR. ROBERTSON.  
MR. SCOTT

*Noes—2.*

MR. RUSTOMJEE J. JEJEEBHOY.  
MR. JUGONNATH SUNKERSETT.

Question whether the words "or may hereafter be," in the proposed amendment be omitted  
Carried

The question was then put that the following amended Proviso be added to Section VIII. —

"Provided that nothing in this Act shall be held to take away or diminish any privileges of any person not being a Barrister or an Attorney, who, at the date when this Act comes into operation, may have been admitted to practice as a Pleader in the said Court of small Causes "

Question that amended Proviso be added to Section VIII

The Council divided

*Ayes—5*

SIR W. R. MANSFIELD.  
MR. FRERE.  
MR. INVERARITY  
MR. RUSTOMJEE J. JEJEEBHOY  
\* MR. JUGONNATH SUNKERSETT.

*Noes—3*

MR. TRISTRAM.  
MR. ROBERTSON  
MR. SCOTT.

Carried

The question was then put whether the Section as amended stand Section VIII. of the Bill, and carried.

Sections 9, 10, 11, 12, and 13 were passed.

On Section 14 being put, Mr TRISTRAM said —

"This Bill has received the patient consideration of the Select Committee during several protracted sittings; and, although I formed one of the Committee appointed to report upon the Bill, I do not wish altogether to give a tacit consent to, or silent vote on a matter so important to the commercial interests of Bombay.

Amendment proposed by Mr Tristram on Section XIV

"Several important alterations have been made to the original draft of the Bill, and the Committee has had the benefit of several suggestions and remarks communicated by the Law Society of Bombay, and by Mr Hore, the First Judge of the Court, which have been of value, as coming from quarters well able to state what are the requirements of the Court, and where deficiencies in its working have been experienced; but as the report of the Select Committee is before the Council, there is no occasion for me to notice particularly the different Sections in the Bill

"I wish, however, to take this opportunity to state my views with regard to the 14th Section of the Bill, which provides for the appointment of Judges

of the Small Cause Court, and more particularly, as on the first reading of the Bill, His Excellency the Commander in Chief protested against the restriction to professional men, that this will be invidious as regards the members of the Covenanted Civil Service. I feel now I am treading on rather delicate ground, when approaching the question of the appointment of Covenanted Civil Servants to Judgeships in this Court, but, Sir, in any observations I may consider it to be my duty to make, I hope I shall be absolved from any imputation of depreciating a Service among whose members I number relatives and friends, and whose brilliant services to the State in various departments of administration are universally admitted. His Excellency referred to administration of justice in the Mofussil, as constituting a certain claim to the appointments in the Small Cause Court; but without entering into the question, whether the administration of justice in this country has been so efficient and popular as His Excellency supposes, I submit such reasoning is hardly relevant to the point under discussion.

“It may be true that Covenanted Civil Servants are quite fitted for judicial appointments in the Mofussil, where points of technical English law are never in dispute—though, I believe, Government, both in England and India, has decided, that more legal knowledge is required than they have hitherto possessed, but the circumstances of a great commercial city like Bombay are entirely different from those of the Mofussil in this respect, and Judgeships should not be filled by what I may call amateurs or non-professional persons. Under the increased jurisdiction of the Small Cause Court, the new business which will be introduced into that Court, will be chiefly commercial actions by, and against, masters of vessels on charter parties, on bills of lading, on suits between merchants, on contracts for the delivery or acceptance of goods, suits against underwriters on marine policies, or on foreign bills of exchange, besides cases of bottomry, jettison, barratry, and the like.

‘Now, with every respect for the Civil Service, which I really and honestly feel, it is well known that, save in the very rare case of its members going home to be called to the bar, as one gentleman of the Bombay Civil Service has done, none of them have ever devoted any serious attention to questions of English law, not that the mere fact of a gentleman eating a certain number of dinners, keeping Terms, as it is called, at the Temple, or Lincoln’s Inn, and being called to the Bar, will in itself make him a Lawyer, though he may be a Barrister—still, without the special kind of knowledge, which makes a Lawyer, a gentleman selected from the Covenanted Branch of the Civil Service, and placed on the Bench of the Small Cause Court, would find himself in a very painful position when called upon to decide any such disputes.

“It is quite out of the question to suppose that the merchants of Bombay would be satisfied with the opinion of an unprofessional Judge on such subjects, even were he a judicial officer of many years’ standing in the Civil Service, whereas the fact certainly would be that a Small Cause Court Judgeship, from the smallness of the salary, and other reasons, would only be accepted by a comparatively junior and inexperienced Civil Servant.

“ If a Professional Lawyer is not employed, it would be infinitely better to put a merchant (if one of experience and ability could be induced to occupy such a post) on the Bench of the Court, solely to hear such cases, in preference to a judicial officer from the Mofussil ; but I do not suppose any merchant of position and character would find it worth his while to accept such an appointment.

“ For several years past, in mercantile cases of importance it has been the practice for litigant parties coming into the Small Cause Court to endeavour to bring their case before Mr Hore in preference to his colleagues, because he is a trained Lawyer, and they are therefore satisfied that, whatever his decision is, it may be relied on as *sound in law*. Now if this has been the case in the days of the low jurisdiction of Rs. 500, how much more will it be the case when the stake is increased ? I verily believe if a Covenanted Civil Servant appointed to the Bench of the Small Cause Court has any case involving mercantile law of any nicety brought before him, there will be an appeal from his decision ; and this being the case, what benefit will it be to the suitors to have their case tried in the first instance before a tribunal by whose decree neither party will abide if it be hostile to him ?

“ If the state of business now in the Court affords any criterion as to what it may be expected to be under the increased jurisdiction, the addition of professional Lawyers to the Bench will, to use the words of the First Judge, Mr. Hore, in his Report on this Bill, ‘ *be absolutely necessary*,’ for the mercantile litigants will be satisfied with no other, and an appeal from the decision of an unprofessional Judge will become a matter of course.

“ Under such circumstances, a Covenanted Civilian on the Bench will be a mere judicial stop-gap, and a cause of unnecessary expense to the suitors. Only a Barrister or Attorney ought, I consider, to be eligible for the *two senior Judgeships*—I say an Attorney, because a good Attorney of experience, sense, and integrity, will be far preferable to a third-rate briefless member of the Bar. The greatest amount of legal knowledge, coupled with general ability, should be sought for, and this, I humbly submit, except in extraordinary cases, cannot be looked for in the members of the Covenanted Civil Service. Wherefore I see nothing invidious in drawing a distinction between them and members of the legal profession. It is true Government are about to institute legal training as a preparation for the judicial branch. This will tend in some degree to supply what has long been an admitted deficiency, though I doubt if the single year, to which I believe such branch of training is to be restricted, will afford the required proficiency, but at any rate, it will be some years before a young man who has joined the service will have acquired the standing and experience necessary to gain the confidence of suitors in those mercantile cases to which I have referred, and which may be looked for henceforth, in greatly increased numbers, in the Bombay Court of Small Causes. I will go further and say that I think the judicial officers themselves would not care to be transferred from the Mofussil Bench, where, in the words of His Excellency the Commander in Chief, they administer “substantial

justice," to the Bombay Small Cause Court, filled with jealous Lawyers and discontented litigants.

"I must apologise for the length of these remarks into which I have been led in considering this portion of a very important Bill, and I thank the Council for the patience with which they have given me their attention. I would beg to move the suspension of the Standing Orders on this occasion, to enable the Council to confirm at once the amendment I wish made in Section 14, whereby the appointment of two professional Judges, who shall be the Senior Judges of the Small Cause Court, is vested in the Governor in Council."

Mr. TRISTRAM then proposed the following amendment.—

• That the words "who, together with the second of the" be submitted for "two of which" in the 5th line of Section XIV.

The PRESIDENT said, under the provisions of Rule 27, he declared that this amendment might be now considered.

Sir W. MANSFIELD said that amongst the various suggestions which had been received from Calcutta was one which had particular reference to this Section. The Honorable Gentleman's proposal still further augmented the objections stated by the Supreme Government to the principle involved. He thought it far better that Government should not be hampered in their appointments, and that the Section should be allowed to stand as it was. If the responsibility of making fitting appointments is trammelled by official requisites, the door is thrown open to the worst jobbery, for which there is absolutely no redress. He entirely disagreed with the Honorable Member's arguments, which he believed to rest on fallacious expectations. It was very doubtful whether the Bar of Bombay could possibly supply a sufficient number of Barrister Judges to meet the views of the Honorable Gentleman.

The question whether the words "two of which," be omitted in order to insert "who, together with the second of the" was then put.

The Council divided.—

Carried

*Ayes—6.*

Mr. INVERARITY  
Mr. TRISTRAM  
Mr. RUSTOMJEE J. JEJEEBHoy.  
Mr. JUGONNATH SUNKERSETT  
Mr. ROBERTSON.  
Mr. SCOTT.

*Noes—2.*

Sir W. MANSFIELD.  
Mr. FRERE.

The question was then put whether the Section as amended stand Section 14 of the Bill

*Carried.*

Section 15 and the remaining Sections were then passed.

Mr. SCOTT said that as the Bill has been a long time before the Public, and the Committee had very carefully considered it, he thought he was



justified in asking for the suspension of that Rule, in order to allow the Bill as amended being read a second time.

The PRESIDENT declared Rule 29 suspended

The Bill as amended was then read a second time and passed

MR FRERE then said—

“ There are four Bills connected with the Police of this Presidency which I wish to bring before the Council .—

“ One for the regulation of the District Police

“ Another for the regulation of the Village Police.

“ A third to enable Magistrates to depute Subordinate Magistrates of the 2nd Class to try offences; and the fourth, which has only just been printed, to entrust Landholders with the charge of the Police in their respective lands.

“ Act V of 1861 was introduced to the Legislative Council of India by His Excellency the Governor on the 29th September 1860, as a Bill for the regulation of Police within any parts of the British Territories of India to which it may please the Governor General in Council to extend its provisions, and was passed on the 22nd March 1861 as an Act for the regulation of Police. The penultimate Section of the Act providing that it should not take effect in any Presidency, unless extended to it by the Governor General in Council by an order to be published in the *Government Gazette*.

“ The second Section of the Act provides that the entire Police Establishment under a local Government shall, for the purposes of the Act, be deemed to be one Police Force, and shall be formally enrolled. An exception is made, however, in Section XXI. in the case of Hereditary or other Village Police Officers, who are not to be enrolled without their consent, but who, when enrolled, are to be considered always on duty, and may be employed in any part of a Police District. When, therefore, it was proposed to Sir George Clerk's Government that Act V. of 1861 should be extended to this Presidency, in which there were in almost every village Hereditary Officers of Police or Revenue who were bound to serve as Policemen if required, and received pay or enjoyed lands or hucks in consideration of their being liable to be called upon for that duty, Government saw that it would be impossible to introduce Act V. without either confiscating the Wuttuns held by the Village Hereditary Police or Revenue Officers, or incurring a further expense, which would equal, if not exceed, the amount of Revenue now alienated for purposes of Police. Government therefore reported that it was not necessary to introduce Act V. of last year into this Presidency, and now that the power of making laws has been conferred on the Local Government, we are called upon to make those reforms in our Police which we should have recommended to the Legislative Council of India to make for us, had the jurisdiction of that body still existed in matters of local Legislation over this Presidency.

“ The object of the third Section of the Bill now proposed is to repeal and re-enact, with amendments, Chapter VI. of Regulation XII. A.D. 1827, under

Bill as amended.  
read a second time  
and passed

1 Bill for the  
regulation of the  
District Police

2 Bill for the  
regulation of the  
Village Police

3 Bill to enable  
Magistrates to de-  
pute to subordinate  
Magistrates  
power to try cer-  
tain offences per-  
missible under the  
Indian Penal Code

4 Bill to entrust  
Landholders with  
the charge of the  
Police within their  
respective Lands  
First reading

which the Village Police is now governed, and to conjoin the Village Police with the General or District Police of the country in such a manner that, while the Hereditary Village Police is reformed, and made more efficient, it will be assisted or may be even, if necessary, superseded by the District Police.

“The Bill for regulating the District Police commences by rescinding those parts of Regulation XII. A.D. 1827 and other Police Regulations which have been left unrepealed by Act XVII. of 1862, and those Clauses which it is thought desirable to retain are re-enacted, so that instead of having to search in several Regulations and Acts, we shall find the Police Regulations included in two Acts

“I shall not have much trouble in explaining on what the different Sections of the first of these two Bills is founded, as I perceive the Bill has been printed with some of my marginal notes on it.

“The principal point in which it differs from Act V of 1861 is in the names of the Police authorities, and in giving to the Commissioner of Police and Magistrate of the District the fullest control over the force.

“The parts of Act V. of 1861 which are omitted are Sections VIII. and X., which provide that every Policeman shall receive a certificate of office, and not engage in any other duty, unless expressly permitted to do so. The former appears hardly necessary, and the latter is secured by the Proviso in Section XVI. that he shall not withdraw from his duties or absent himself without express leave.

“Section XIII., which provides for the supply of additional Police Force on the requisition of individuals, does not appear applicable to this part of the country. The Bill provides for military aid if the Police be unequal to quelling a Riot, for additional Police on any Railway Canal or public work where large bodies of people are collected together, and in Districts which are disturbed; and as the villagers are answerable for the peace of the country within their own limits, there appears no occasion for making a special provision that individuals may have a Police Force to defend themselves if they choose to pay for it.

“Instead of the provisions for special Police Officers in Section XVII., which requires application to be made to a Magistrate by a Police Officer not below the rank of Inspector, it is proposed in Section XXIII. to empower the Head of the Village Police even to call upon any person to assist in the preservation of the Peace,—provision very necessary in the large Zillahs of which this Presidency is formed.

“Section XXIV., which appears unnecessary, as every man has a right to inform and prosecute if he chooses.

“Sections XXXVIII, XXXIX., and XL., because, for reasons which I shall show hereafter, they are not required, and Sections XLIV. and XLV., because the power to call for returns or require Diaries to be kept appears to be included in the authority given to the Commissioners and Government of Bombay in Section II.

"I will now proceed to point out in detail the provisions of the District Police Bill.

"Sections IV, V., XV, XVI, XVII, XX., XXI, XXII, XXIV, XXVII, XXVIII, XXXI to XXXV. inclusive, and XXXVIII to the end are taken from Act V. of 1861.

"Section II. is taken from Act XXVIII of 1850, and from Sections XII, XLIV., and XLV. of Act V of 1861.

"Section III. from Section I Regulation XII. A.D 1827

"Section VI. is new, it gives the District Magistrate power over all other Magistrates in the District.

"Section VII is taken from Clause 4 Section X Regulation XII. A D 1827

"Section VIII. is a re-enactment of Section XXVIII, Regulation XII. A D 1827, a most useful and very necessary enactment as a matter of Police in this Presidency

"Section IX is much of the same nature, but is taken from Clause 2 Section XXVII, Regulation XII. A D 1827, which is still in force

"Section X. from Section XXXVII. of the same Regulation, a most excellent provision of Police if properly carried out, and still in force in most parts of the country.

"Section XI. from Section XIX. of Regulation XII A. D. 1827.

And Section XII. is a repetition of the provisions of Section 308 of the Criminal Code of Procedure.

"Sections XIII. and XXXIX. are re-enactments of Act II of 1839. which was rescinded by Act XVII. of the present

*Note.*—Section X, Act XXVI. of 1850 provides "the powers of Act II of 1839 for the recovery of fines shall be applied for the recovery of all arrears of taxes, &c."

year, but its re-enactment is rendered necessary, as it is referred to in Section X Act XXVI. of 1850 which has not been repealed, but which it is proposed now to repeal and re-enact in these Sections,

"Section XIV. is taken from Section XX. Regulation XII A D 1827

"Section XIX, from Clause 4 Section XXXI. Regulation XII of 1827.

"Clause 2, Section XXIV., from Section XXX. Regulation XII A.D. 1827.

"Section XXVI, from Clause VIII. Section XIX. Regulation XII A D. 1827.

"In Section XXXV. taken from Section 34 Act V. of 1861, I shall in Committee propose that "suburb and other places" be added, the Police Commissioner N. D, suggested the addition, as he also did that a second Clause should be added to Section XXXVI. for the removal of prickly pear and other vegetable nuisances from common grounds, and which I also intend to add in Committee.

"Section XXXVII. is a re-enactment of Clause 2 Section XVIII. Regulation XII. A.D. 1827—a most necessary Police arrangement in this part of the country.

“The conduct of domestic servants is a subject, I think, of Police, not matter to be legislated for by any but the Local Legislation. All reference to classes is omitted in the Penal Code, and rules for domestic servants and local nuisances are very properly left to the Local Legislature. In our Camps and Cantonments the Cantonment Magistrate has power (Clause 3, Section XXVI Regulation XXII. A.D. 1827), confirmed by Section 442 of the Criminal Procedure Code, to punish to the same extent as it is now proposed the Magistrate should have, and he can further flog,—a power which it is not proposed to give to the Magistrate

“Section XXIX. provides for the punishment of Police officers for bribery on conviction before a Magistrate or Subordinate Magistrate of the first class—an enactment which, as well as that for the removal of nuisances, it has been thought necessary to enable others than the Magistrates of the District to punish for these common and often trivial offences, as it may so happen that the misconduct of Police officers will not always bring them within the provisions of Sections 165 and 166 of the Penal Code, the only Sections which give Subordinate Magistrates power to punish. I may here remark that while, on the other side of India, districts I understand seldom exceed 1,500 square miles, on this side there is but one small one, Kaira, and that contains 1,375 square miles, others exceeding 2,000, 3, 4, 5, 6, 8 and 10,000 square miles, while one, Khandeish, exceeds 16,000 square miles in area. It is therefore very certain that a Police which would suit a district of 1,500 square miles would hardly be compatible with the wants of our districts. Arguments founded upon our wants arising from the size of our Zillahs have been met by the answer, “then reduce the size of them,” a course I have no doubt the Government of Bombay would be most happy to adopt, but unfortunately it could only be done by at least doubling our Civil expenses, and, unless the Government are prepared to say that the outlay is absolutely necessary, that it is impossible to get on without it, they would neither, I imagine, obtain the money nor consider themselves justified in making the application for it. Here, then, is an alternative. With these acts and our enormous Zillahs, we can manage the Police of this Presidency with little or no extra expense. If we are obliged to adopt Act V. of 1861 in its integrity, we shall be obliged to divide our 12 Zillahs, into some 60 districts, of an area of about 1,500 square miles each, and at least treble our expenditure.

“Government by making Broach and Surat into one Zillah, which reduced them from two districts, one of 1,400 and the other of 1,500 square miles, into one of 2,900, effected a saving of Rs. 39,000 per annum. To make our districts which have an area in the aggregate of upwards of 90,000 square miles (omitting Sind) into districts of 1,500 square miles each, we should require 60 districts; we have now 12 only. The expense of the 60 districts would certainly not be five times that of 12, but it could not be less than twice the present expense, or, if we take 20,000 out of the 39,000 saved in Broach and Surat as what will be required in each district if the whole

country is sub-divided, we should require more than  $9\frac{1}{2}$  lacs of Rupees per annum in addition to our present expenditure

“It may be well to point out, if we are obliged to adopt Act V of 1861, that though the Act specifies the Inspector General of Police, Deputy Inspector General, Assistant Inspector General, District Superintendent, Assistant District Superintendent, and Police Officers, it contemplates other ranks, for as noticed before in Section XVII. “Inspectors, &c,” are mentioned, and in Section XXV. they refer to Constables, though who and what these Constables and Inspectors are the Act does not say, except that they are Police Officers.

“I shall occupy less time in my remarks on the Village Police. The greater part of the proposed Act is a re-arrangement and re-enactment of Chapter VI. Regulation XII. A D 1827, which has as yet been left unrepealed, and as Section 442 of the Criminal Procedure Act provides that nothing in that Act shall be held to alter or affect the jurisdiction, duties, and procedure of the Village Police Officers in the Presidency of Bombay, it becomes necessary to adapt the provisions of Chapter VI Regulation XII. to the requirements of the Penal and new Procedure Codes.

“Sections III. and V. are new, the object of them and the necessity for them is obvious

“Section IX. is merely the enactment here of the power of punishment of the Police which the Collector and Magistrate had over their establishment generally under the old Regulations.

“Clause 3, Section XII is new, but very desirable, and so are the provisions of Section XVII. if any hopes are entertained of improving the sanitary state of our villages. Under the Code of Criminal Procedure nuisances are only triable before the District Magistrate or Subordinate of 1st Class, and it does not, I think, require any arguments, when I have shown you the size of our Districts, to prove that nuisances will either never be punished, or that the punishment, Rupees 200 fine, after the offender has travelled to the nearest Subordinate Magistrate of the 1st Class and been left there to find his way home again, something far heavier than the Penal Code could ever have contemplated; but I shall refer to this again

“The next Bill, No 6 on the list, to which I have to ask your attention, is the one of which notice was given before, but the Council were good enough, at my request on Wednesday last, to allow me to postpone it.

“Chapter XIII of the Penal Code is “of offences relating to weights and measures,” but a Subordinate Magistrate of the 1st Class or the Magistrate of the District himself are alone competent to inflict punishment under these sections, so Chapter XIV. treats of nuisances and the public health, safety, and convenience, but there also the Court of Session in one case, to be sure a serious one, and the Magistrate of the District in four cases, can alone punish, a Subordinate Magistrate of the 1st Class being competent to punish in the other 25, but I think I have already shown you that from our large Zillahs it will be

necessary to make all Subordinate Magistrates subordinates of the 1st Class, or else to extend the power of the subordinates of the 2nd Class to try certain offences

“The objection to making all Subordinate Magistrates subordinates of the 1st Class is that you invest them with more power than it is advisable to give them. You then enable them to try all offences which Magistrates of that class can try. We propose only to give them power to try certain offences, and those of the most trivial kind. For, if we are obliged to take the Act in its integrity, and every offence which by it is cognizable by a Subordinate Magistrate of the 1st Class must be tried by him, we must send a man who has been riding furiously along the road at Gogo to Veerungaum or Prantej, where the Magistrate or Subordinate of the 1st Class may be, or we must else let him off unpunished. I think you will agree that it is better to make offences of this nature cognizable by any Subordinate Magistrate, though the punishment may not exceed a month's imprisonment, or Rupees 50 fine, than that the accused should have to travel from one end of our enormous Zillahs to another, and thus suffer enhanced punishment, or else escape punishment altogether, because the prosecutor would rather let him off than partake of his tedious journey.

“The second Section was added on the recommendation of the Judges of the Sudder Adawlut. The whole of the offences enumerated therein, with the exception of Section 283, “causing danger or obstruction in any public way or line of navigation” are included in the District Police Act, and it will therefore be for the Select Committee to decide whether that Section need be retained, or whether it would not be advisable to add Section 283 to the provisions of Section XXXV. of the District Police Act.

“There is yet another Bill that I wish to lay before the Council. It is one for investing Landholders with the charge of the Police within their respective lands. As stated in the “Objects and Reasons,” Regulation XV. A.D. 1827 was recognised in Section 442 of the Criminal Procedure Code but somehow was repealed by Act XVII. of 1862. The Bill contains the purport of the whole of the 1st Chapter of Regulation XV. and 2 Sections only (XIV. and XV.) of the 2nd Chapter. I need offer no further remarks upon it now. It will be desirable that it should be referred to the same Select Committee as the other three. I ought to remark that in framing these Police Bills I have received the greatest assistance from the Police Commissioners, who have, since these Bills have been printed, offered further suggestions for improving them, which, as none of them amount to material alterations, I shall suggest for adoption in Committee.

“I now move that the following Bills :—

I. “A Bill to enable Magistrates to depute to Subordinate Magistrates power to try certain offences punishable under the Indian Penal Code, and to enable District Police Officers to try certain minor offences specified in Chapter XIV of the Indian Penal Code.”

II. " A Bill for the Regulation of the District Police in the Presidency of Bombay "

III. " A Bill for the Regulation of the Village Police in the Presidency of Bombay "

IV. " A Bill to entrust Landholders with the charge of the Police within their respective lands,"

be read a first time, and referred to a Select Committee, consisting of

His Excellency Sir W. R. MANSFIELD,  
The Honorable Mr. ROBERTSON,  
The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR, and  
The MOVER,

with orders to report at the next meeting of Council."

The PRESIDENT said he proposed to adjourn the Council to-day for some time, and he thought it quite within the spirit of the Rules to suspend Rules 12 and 17 to enable the three last of these Bills to be read a first time and referred to Select Committees, and declared Rules 12 and 17 suspended

The four Bills were then read a first time, and referred to a Select Committee, consisting of

His Excellency Sir W. R. MANSFIELD,  
The Honorable Mr. ROBERTSON,  
The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR, and  
The MOVER,

with instructions to report at the next sitting of Council, and the Report to be translated into Marathi, Goozerathi, and Canarese

Mr. FRERE, in introducing the " Bill to amend Act XVIII. of 1862, as far as regards Prisons and Jails." said that the object of the Bill was to authorise the Judges of the High Court and Police Magistrates to send persons sentenced to rigorous imprisonment, and to be imprisoned either in the House of Correction or Common Jail at their discretion, and to preserve the right of the Government to transfer prisoners from one Jail to another. The Bill was recommended by the Judges of the late Supreme Court, as they found that they were restricted as to whether prisoners should be sent to the County Jail or to the House of Correction. The state of the Jails and sanitary considerations rendered it desirable that they should be allowed the option of sending convicts to either or both of them as they may think best, and he moved that the Bill be read a first time, and referred to a Select Committee, consisting of

The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY,  
The Honorable the ADVOCATE GENERAL, and  
The MOVER,

with instructions to report at next meeting of Council.

*Carried.*

The Bill was then read a first time.

Read a first time and referred to a Select Committee

Bill to amend Act XVIII of 1862 as far as regards Prisons and Jails.

Read a first time and referred to a Select Committee

Bill for bringing  
under the Regula-  
tions and Acts the  
Province of Sattara, &c

Mr. FRÈRE, in introducing a "Bill for bringing under the Regulations and Acts of the Presidency of Bombay the Province of Sattara, certain Villages and lapsed states in the Collectorate of Sholapoor, and in the Southern Maratha Country, certain lands ceded to the Government of Bombay for Railway purposes and the district of North Canara, with the exception of the Talooka Cundapoor, and for excluding the village of Moochundee, Purgunna Jutt, from the operation of the Regulations and Acts of the Presidency of Bombay," said.

"That the Bill was merely formal, and though it was a troublesome one to prepare, it will give the Council little trouble. The death of the Rajah of Sattara brought that Territory under this Government, and the Bill therefore provides for the Collectorate of Sattara being now brought under the Regulations and Acts of Government instead of continuing as it hitherto has done, an extra Regulation Province.

"Schedule A, however, does not include the whole of the Territories of the late Rajah, for there are eleven villages entered in Schedule B which lapsed with the Sattara State, but were in 1853, for the convenience of management, transferred to the Collector of Belgaum, and are accordingly included in the list of the Southern Maratha Country.

"Lonee, Boodroog, and Luchan, too, were ceded by the Rajah of Sattara in 1842, but have never been brought under the Regulations. They are not included in Schedule A any more than Ashte and 3 others, life grants to Rughoonathrow Saheb Muntree, which formed part of the Sattara Territory, but are situated in the Southern Maratha Country, and are consequently placed in Schedule B.

"The death of Gopalrow Sahele Merelekhkur in 1842, of Wamonrow Saheb Soneekur in 1845-46, of Purushram Punt Bhow Tasgaomkur in 1848, of the Chief of Kagwar, Rao Saheb Putwurdhun in 1857, brought a number of villages under this Government, which, together with the confiscated Jagheer or the Nungoondkur, it was necessary to bring under the Regulations and Acts. Advantage would also be taken to include Bhimleh and Tambveh, received from Scindia in 1829, and which ought to have been brought some years ago under the Regulations, and also to bring Tudwaleh, Unkulgee, Areshunker, Wudwudgee, and Arwundee, which had lapsed from the Neepaneekur in 1839, but were by oversight omitted from Act VI. of 1842, under the present laws.

"Pandegaom, which lapsed to Government by the death of Chintamonrow Kriswadeekur, one of the Putwurdhuns of Koorundwar, will also be included. The whole Purgunnas of Nowlgoond and Badamee and Turf Sholapore and Turf Nedee were brought under the Regulations by Act VII. of 1830. Two villages in each of the former and one in each of the latter are entered in Schedule B, it might be unnecessary to include them, but it will be a subject for the consideration of the Committee whether they should be retained or not. It will be observed that the arrangement of names is different in Schedules A and B. The former is the one that I prefer; but I was obliged to adopt the latter, because in the Neeldroog Purgunna, in Sholapoor, for instance,



the greater number of the villages are in foreign Territory, the difficulty of enumerating the excepted village would be extreme. Again, parts of some of these divisions were brought under the former Regulations, and sometimes they are repealed in the Schedule. I wished to have had them so arranged as to have referred to them once only, but for much the same reason, part of the Purgunna or Turf being in one Zillah, part in other, and, perhaps, a part in foreign Territory, I found the re-arrangement would be most difficult, if not impossible.

“The Council will perceive that in the Bill the Sattara State is called a Province. It will, I think, be preferable when referring to its former state to designate it generally as the Territory, and when referring to it since it came into British possession, to call it, as it really is, the Collectorate of Sattara.

“In other parts of Khandeish, the Deccan, and Southern Maratha Country, in fact in all our more recent acquisitions, certain suits against Government and on other subjects are exempted from the jurisdiction of the Civil Courts, and there are also certain privileged persons who are exempted from the ordinary jurisdiction of the Civil Courts. I am not an advocate for the extension of these privileges, but it will lead to very great confusion if these excepted suits and privileged persons are made subject to the ordinary jurisdiction in these villages or districts while they enjoy exemption in the adjoining one. I shall therefore propose in Committee to insert the usual Clauses providing for their exemption.

“The Council may have some idea of the difficulties I have had to contend with in preparing the Schedules annexed to this Bill, from the numerous corrections the Deputy Secretary has sent to them since the Bill was first printed

“For these corrections and much assistance in every way I am indebted to the Collectors of the several Zillahs in or near where these villages are placed; and I hope we shall have the names further corrected if the Collectors see mistakes in them—for what with difference of spelling and misprints, the small schedule attached to our first Act of this year is not correct, the Sub-Collector of Broach, Mr. Moriarty, having brought it to my notice that the village of Sansrode is there called Tasrode—a mistake of which if the correction is necessary, it can only be done by a new Act.”

Mr. FRERE concluded by moving that the Bill be read a first time, and referred to a Select Committee consisting of

The Honorable Mr. TRISTRAM,  
The Honorable Mr. ROBERTSON,  
The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR, and  
The MOVER,

with instructions to report at the first Meeting of Council. The Report to be translated into Marathi and Canarese.

*Carried.*

The Bill was then read a first time.

Bill for the Summary Settlement of Claims to exemption from the payment of Government Land Revenue, &c. in those parts of the Bombay Presidency which are not subject to the operation of Act XI of 1852 of the Council of India  
First Reading

On the next order of the day being read, "A Bill for the Summary Settlement of Claims to exemption from the payment of Government Land Revenue, and for regulating the terms upon which such exemption shall be recognised in future in those parts of the Bombay Presidency which are not subject to the operation of Act XI. of 1852 of the Council of India," the PRESIDENT said that as the Bill had not been published in the *Government Gazette*, it would be necessary to suspend Rules 12 and 17, in order to allow the Bill to be read a first time, and as it was very desirable that the Bill should be passed this year, he declared Rules 12 and 17 suspended.

Mr ROBERTSON in introducing the Bill said:—

"In introducing the Summary Settlement Bill which I did a fortnight ago, I explained that the Bill for the Summary Settlement of Inamdars' holdings, which went up to the Government of India eighteen months ago, was intended to apply to the whole of the districts of this Presidency, which were under two separate laws for the trial and adjudication of the right to exemption from the payment of land revenue. I also explained that in one portion, *viz.* in the districts of the Deccan and Southern Maratha Country, the law for the adjudication of claims was considered such as to render it unnecessary before proceeding to carry out the proposed settlement to await the passing of the Bill before the Government of India, and that in consequence of the Settlement having been introduced into those districts, it has now become necessary to submit two Bills to this Council, the object of the one being to legalize what had already been done, and the object of the other being to extend a similar settlement to the districts of Guzerat and the Concans. The Bill which I have now the honour to introduce is this last-mentioned Bill, it differs in some essential points from the Bill already before the Council. The principle of these differences is that the amount of compromise which it has been decided to demand from the holders of lands exempt from the payment of land revenue in the districts to which this Bill applies, has been fixed at two annas only in each Rupee of assessment; the reasons which have induced the Government to make this difference, I cannot better explain than by quoting from the letter of the Revenue Commissioner, N. D., with which he submitted the draft of the Bill to Government:—

"In the Deccan and Southern Maratha Country the interests of the State in regard to alienated lands were from the first acquisition of that part of the Presidency watched with some care, and for the last ten years inquiries under Act XI. of 1852 have been vigorously prosecuted therein, while on the other hand, in Guzerat, the same vigilance has not been displayed by the local authorities. The tenures there are also more complicated, and the law has been a Regulation of 1827 which at the time it was framed was well adapted to provide for proper inquiry, but which on being referred to now when many of its provisions have for years been in abeyance, only causes much doubt and difficulty in rendering a final and satisfactory decision on any question almost impossible. It is obvious therefore that a district

where the action of Government in regard to alienated lands has been rigorous, and where the provisions of the law are not only astringent but clear, a summary settlement was likely to be acceptable on terms very different from those which would find favour in a district where for many years the rights of Government had been but feebly pressed."

"Another point on which there is a difference between the Deccan and the present Bill is that there is no separate provision made in this one for the payment of Nuzzerana in consideration of which a transferable right is conferred upon the Deccan holders, and it is intended by this Bill to extend to the Guzerat holders by the single payment of two annas on each Rupee of assessment all the advantages conferred by the double payment of a Chowtaee and Nuzzerana on the Deccan holders. In the Deccan, adjudicated claims can come under the settlement by the payment of the one anna Nuzzerana, but here those claims are allowed this option on the payment of the full amount only.

"The provisions of Regulation XVII. of 1827, which is the law applicable to the trial and adjudication of claims to exemption in the districts to which the present Bill refers, have many of them as above stated been for years in abeyance, it has therefore been considered desirable in preparing this Bill to repeal Chapters 9 and 10 of that Regulation and Regulation VI of 1833, and to re-enact their provisions, substituting a procedure based on those enactments, but adapted to the circumstances under which inquiry will, in the event of its being demanded, take place.

"In section 42 of Regulation XVII of 1827 reference is made to a notice which was issued in the Zillahs of Surat, Broach, Kaira, Ahmedabad, and the Concans in accordance with Regulation III of 1814, wherein the holders of land exempt from the payment of public revenue under Sunnuds were required to register their Sunnuds within one year of the publication of the said notice, and it is at the same time declared in the above-quoted Section of Regulation XVII of 1827, that no Sunnud which had not been so registered shall be held to preclude an assessment being imposed on the land. In the 16th Section of the present Bill this has however been modified so as to extend the period of Registration, rendering Sunnuds admissible as evidence of title up to one year after the date on which the Code of 1827 came into force.

"Again, by Section 19 of the new Bill, the decision of the Collector or other trying authority, if in favour of the continuance of exemption, is to be final, whereas under Section 45 of Regulation XVII. of 1827 such decision required the confirmation of Government. If the decision be against the claimant, however, appeal is allowed or under the previous law to the Zillah Courts, provided the annual value of the exemption decided against be upwards of Rupees fifty. These modifications have been made in the new law as compared with the old one with the view of expediting the final disposal of cases into which inquiry into title may be claimed.

“Under the former Regulations service lands were declared to be resumable at the pleasure of Government under general rules to be framed from time to time; but the manner in which this provision was introduced into Regulation VI. of 1833 is so expressed as to have raised doubts as to the force and meaning of the words. As it is however reasonable that Government should have control over its servants, provision to give them control over service lands has been made in the present Bill.

“In Section 17, and again in Section 18, Clause 2, the provisions of the Stamp Law are declared to be applicable to all proceedings of inquiry into title held under this Act, but as the office of the trying authority has been declared to be for the purposes of inquiry a Court of Civil Judicature, I think it was unnecessary to introduce this provision into the Bill, and shall hereafter propose the omission of it.

Read a first time  
and referred to a  
Select Committee

“With these observations, I beg to propose the First Reading of the Bill, and that it be referred to a Select Committee consisting of

The Honorable Mr. INVERARITY.

The Honorable Mr. TRISTRAM.

The Honorable Mr. JUGONNATH SUNKERSETT.

The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR,

And the MOVER.

“The Report to be translated into Marathi and Guzerathi.”

The Bill was then read a first time, and referred to a Select Committee as above named.

Cotton Frauds  
Bill, Mr Scott's in-  
tentions regarding

Mr Scott said he had promised at the last meeting to state what course he would pursue with reference to the suggestion of His Excellency the Commander-in-Chief to appoint a Select Committee to take evidence on the subject of Cotton Frauds. He now intimated that he did not think the course suggested practicable, and that probably the Council would agree with him that the object would be better gained by requesting the Executive Government to appoint a Commission for the purpose, composed partly of their own experienced officers, and partly of experienced merchants. The Chamber of Commerce, he might add, was about to address Government on the subject.

Remarks of His  
Excellency the  
Commander-in-  
Chief on the  
amendment that  
day proposed by  
Mr Tristram

His Excellency the COMMANDER-IN-CHIEF stated that before the Council rose, he wished to make a few remarks with reference to the amendment proposed by Mr. TRISTRAM. He had been completely taken by surprise by the amendment which had been carried by the Honorable Member, the same having been brought forward without any previous notice whatever. The Clause on which the amendment was so unexpectedly moved had received very careful consideration in Committee and much compromise had taken place, the result being an unanimous signature including that of the Honorable Gentleman. The only protest made to the general report came on another point from the Honorable Mr. Jugonnath Sunkersett, who had very fairly stated the course he intended to pursue. His Excellency felt there was a moral pressure placed on him in this case. From public motives he did not

wish to delay the passage of the Bill as he might have done, but he submitted that the proceeding he had described was irregular and rendered the transaction of business difficult and uncertain. It was quite without precedent in other Legislative assemblies. He believed that with more time for consideration the Council might have arrived at a different conclusion, notwithstanding the ability with which the Honorable Member had supported his amendment.

Mr. TRISTRAM explained he should be sorry if after what had fallen from His Excellency the Council should consider there had been a traitor in the camp of the Select Committee. Possibly it had escaped the recollection of His Excellency that at the conclusion of one of the protracted sittings of the Committee, he (Mr TRISTRAM) had suggested this very amendment in the Clause; but another important alteration having just then been brought under discussion, the alteration unfortunately escaped his (Mr TRISTRAM'S) attention, until the amended Bill had been printed and circulated. His objection to the Clause as it stood recurred to him, but it was then too late to give the required three days' notice of amendment, but he so strongly felt the necessity there was to prevent the possibility of doubt as to the meaning of the Clause, that at the risk of irregularity in the proceeding he had taken the only opportunity which would present itself to urge consideration of the point in full Council. Mr Tristram regretted having taken His Excellency by surprise, but trusted the explanation now given would be considered satisfactory.

The PRESIDENT explained that according to the rules by which the business of the Council was conducted, any member had a right at any stage of the proceedings, before a Bill was passed, to make any suggestions that he might think necessary for amending the Bill.

The PRESIDENT in adjourning the Council, said :—

He was glad to find that the state of business before the Council was such that he was able to release them from further attendance by adjourning the Session.

The number of Bills passed during the Session was not more than six, but some of them were valuable and important measures: especially the Bill for enlarging the jurisdiction of the Court of Small Causes which had been passed at that Meeting.

Other most important Bills had been advanced as far as time would allow, and were now awaiting the period fixed for the next stage of proceeding before they could be finally disposed of.

To some of them the Committees had devoted a great deal of time, trouble, and attention, sitting daily, sometimes for many hours a day. The best thanks of Government were due on this account to their colleagues, some of whom had attended to the business before the Council at a great sacrifice of their own valuable time and leisure. One Bill only had been withdrawn, *i. e.*, that relating to the abolition of the office of Law Officer of the Zillah Courts in the Mofussil, as it seemed likely that the object might be attained without recourse to legislation.

At the opening of the present Session he (the PRESIDENT) expressed a hope that during its course he might be able to bring in a Bill to give legal

The President's  
address in adjourning  
the Session

effect to the Resolution of the Government of India, dated the 17th October last, on the subject of the Sale of Waste Lands and the Redemption of Land Tax.

He was not at that time aware of the course which Her Majesty's Government proposed to follow with regard to that Resolution, and he spoke with reference mainly to the duty imposed on the local Governments by the last paragraph of the Resolution, in preparing the Drafts of such laws as might be needed to give legal effect to the provisions of the Resolution so as to secure for all grantees under the Resolution a Legislative title to their property.

He (the PRESIDENT) had carefully read everything which had been published in the shape of criticism of the Resolution, and must confess that nothing he had read or heard had in any way altered the opinion he then expressed of the provisions of the Resolution, or induced him to doubt the justice and sound policy of its provisions.

It is true that many for whose opinions on such subjects he (the PRESIDENT) had the highest respect did not agree with him; but he felt so confident in the soundness of the principles on which the Resolution is founded, that he would be well content to trust to time and discussion, assured that any of us who may be living 10 years hence will find a very general agreement as to the wisdom and justice, if not the necessity, of the main provisions of the Resolution.

But whatever may be our individual opinions, we have in the mean time received very detailed and definite instructions from Her Majesty's Government as to the course to be pursued in dealing with Waste Lands and the Land Tax. The measures directed in the Secretary of State's despatch of the 9th of July last, which has been published in the *Calcutta Government Gazette*, do not go so far as the Resolution of the 17th of last October, but there can be no doubt they will prove of very great value to all interests connected with the land which is liable to Government assessment, and if carried out in the same spirit in which they are conceived, will do much to remove present uncertainties of tenure and assessment, and to afford to labour and capital devoted to the improvement of land great security against over-taxation of such improvements.

It will be the earnest desire of the Bombay Government to secure these benefits to all interested in the land, but the necessary measures will differ materially from those he (the PRESIDENT) contemplated when previously alluding to this subject, and cannot possibly be introduced this Session.

It might, perhaps, be found necessary to have an extra Session before the usual period, say, in October, but he hoped not.

The Council was then adjourned to the 15th December 1862.

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

L. H. BAYLEY,  
Deputy Secretary to Government.

*Bombay, 21st October 1862.*

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PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

2.



FROM THE 15th JULY 1863 TO THE 19th SEPTEMBER 1863.

Published by the Authority of the Council.

**B o m b a y :**

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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 Act of Parliament, 24 and 25 Victoria, Chapter 67.

The Council met at Poona, on Wednesday the 15th July 1863

*P R E S E N T*:—

His Excellency SIR H B E. FRERE, K C B., Governor of Bombay,  
Presiding

His Excellency SIR W. R. MANSFIELD, K.C B ,  
The Honorable Mr. W. E. FRERE,  
The Honorable Mr. J. D INVERARITY,  
The Honorable Mr. H. L. ANDERSON,  
The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY,  
The Honorable Mr MADHOWROW VITTUL VINCHOORKUR,  
The Honorable Mr. JUGONNATH SUNKERSETT,  
The Honorable Mr. PREMABHAI HEMABHAI,  
The Honorable Mr. A. D. ROBERTSON,  
The Honorable Mr. M. H. SCOTT.

The CHIEF SECRETARY administered the usual declaration of office to Mr H. M BIRDWOOD, appointed Under Secretary to Government

The CHIEF SECRETARY also administered the usual declaration of office and the oath of allegiance to Her Majesty the Queen to Mr. M. R. WESTROPP, appointed an additional Member of the Council of the Governor of Bombay for the purpose of making Laws and Regulations.

The Honorable Mr. WESTROPP then took his seat

1 P

Declaration of  
Office administered  
to Mr. Birdwood,  
Under Secretary to  
Government

Declaration of  
Office and Oath of  
allegiance adminis-  
tered to Mr. Wes-  
tropp, additional  
Member of Council

President's Ad-  
dress

The PRESIDENT informed the Council that the list of Bills which were set down for discussion during their present sitting was not a long one, but it comprised some measures of very great importance.

The Bill for regulating proceedings in cases of Insolvency was a measure of the greatest importance, and would, he hoped, prove a very valuable addition to the Statute Book.

It would require careful consideration to determine how far it was within the powers of this Council to pass the measure as it stood, or whether it would be requisite to invoke the authority of the Council of the Governor General. But in either case it would be desirable to put the measure into as perfect a shape as possible with reference to the requirements of this Presidency.

He hoped also that Government would be able to lay before the Council a Bill to give legal effect to the provisions of the Revenue Survey Rules, and to define the rights and liabilities of all parties connected with the land which had been subject to the Survey and Assessment. This was a measure which it was the wish of the late lamented Mr. Goldsmid and Major Wingate, who organized the Survey, to have passed, as soon as practical experience had shown that the Survey Rules were calculated to effect the objects aimed at. The Council was aware that those objects had been more than fulfilled, and that the Survey had been productive of the best results to every interest affected by it. To it, he (the President) believed, might fairly be attributed much of the present prosperity and contentment of the agricultural classes in every part of the Presidency into which the Survey rates had been introduced, and it was most desirable to give that legal validity and security to the measure which, owing to a variety of causes, had been so long postponed.

But where so many interests were affected, it was most desirable that all parties concerned should have the fullest notice of the details of the measure, and ample opportunity for discussing them, and therefore, though he (the President) hoped the measure would be very shortly laid before the Council, its final passing would probably be deferred till the Council met in Bombay

The principal other measures which were in a state to be laid before the Council were—

- 1 A Bill for the periodical Survey of Steam Vessels.
- 2 A Bill to repeal the Regulation which makes it necessary that a Sub-Collector should also be *ex-officio* Joint Magistrate of the District.

There were a few other measures of minor importance which might probably be laid before the Council during their present sitting. But they were not at present in a shape which rendered their early submission to the Council a matter of certainty.

Besides the Bills there is one more subject of considerable importance, which will engage the attention of the Council, and that is, the revision of the Standing Rules for the transaction of business in the Council. It is the desire of Her Majesty's Secretary of State that these Rules should, as far as practicable, be assimilated throughout the three Presidencies. This has been done by the Madras and Bengal Councils, and it is desirable that the subject should now engage the attention of this Council.

The Council then proceeded to consider the Orders of the day.

The Honorable Mr. INVERARITY moved the first reading of the Bill to provide for the periodical Survey of Steam Vessels in the Ports, Harbours, Rivers or Waters of the Presidency of Bombay. In doing so, the Honorable gentleman said "The question of a law of more general application than that now proposed has been under discussion on various occasions during the last 12 or 13 years, but there have been circumstances and differences of opinion which have interposed and stood in the way of its enactment. The necessity for a law such as that now proposed was exemplified so long ago as towards the close of the year 1853, when in the postal contract entered into with the Bombay Steam Navigation Company, a clause was inserted empowering Government to appoint an officer periodically to survey the Company's Vessels employed in carrying the mails. The necessity which existed ten years ago has augmented with the increase of steamers frequenting the Ports and Waters of this Presidency.

Mr Inverarity moves the first reading of a "Bill to provide for the periodical Survey of Steam Vessels in the Ports, Harbours, Rivers, or Waters of the Presidency of Bombay

"The Bombay Chamber of Commerce and other authorities who have been consulted, consider that a measure such as that now proposed is in the highest degree desirable, and that the Bill is well calculated to effect the object in view. The principle of the Bill has been already affirmed on the other side of India by the passing of the Bengal Act V of 1862, of which the present Bill may be said to be a transcript. As it meets the want now felt in this Presidency of some guarantee to the public for the seaworthiness and efficiency of Steamers frequenting its Ports and Rivers, I beg to move that this Bill, to provide for the Periodical Survey of Steam Vessels in the Ports, Harbours, Rivers, and Waters of the Presidency of Bombay, be read a first time."

The question was then put that the Bill be read a first time

*Carried.*

Bill read a first time and referred to a Select Committee

The Honorable Mr. INVERARITY then moved that the Bill be referred to a Select Committee consisting of

The Honorable Mr. SCOTT,  
The Honorable Mr. ROBERTSON,  
And the MOVER.

*Carried.*

Bill ordered to be translated into Canarese

The Honorable Mr. FRERE noticed that in the Statement of Objects and Reasons no provision was made for the translation of the Bill into Canarese. He thought that it was advisable that the Bill should be translated into Canarese.

The Honorable Mr. INVERARITY concurred in this suggestion.

The Honorable Mr. ROBERTSON said that he did not see the necessity for translating the Bill into Canarese, as any cases arising out of the Act would be tried in Bombay. He thought that the translation of the Bill into Canarese would only delay its introduction; he did not, however, wish to divide the Council, but would give his assent to the Honorable Mr. Frere's proposal.

It was then agreed that the words "Sindhee and Canarese" should be substituted for the words "and Sindhee" in the Statement of Objects and Reasons.

Mr Westropp requests leave to introduce a Bill to amend Act XXI of 1848

The Honorable Mr. WESTROPP then asked for leave to introduce a Bill to amend Act XXI of 1848. The Honorable gentleman said: "That Act XXI. of 1848 declared wagers and wagering contracts to be null and void, and prohibited the maintenance of any action or suit upon them in any Court of Justice. So far, therefore, as regarded the principals in such transactions, neither of them can maintain against the other any action upon the wager or contract of that description. Nevertheless the object of the Legislature, namely, the prevention of the system of gambling which pervaded and still pervades at least Western India, has been wholly frustrated. Time-bargains as to the prices of Opium and Cotton are made to an enormous extent in Bombay and its provinces, and have a very injurious effect on the real markets for Opium and Cotton, and especially on the latter. He (Mr. Westropp) believed that his Honorable friend Mr. Scott would support him in that statement. Act XXI. of 1848 had been systematically evaded by means of a combination amongst Shroffs. Had the Act declared wagers or wagering contracts to be illegal, all collateral contracts founded upon such transactions would be tainted by the illegality of the original contract, and could not be enforced by suit. The infliction of a penalty on the parties to wagers or wagering contracts would have been



equivalent to a declaration of their illegality. In the absence of any such implied or of any express declaration of illegality, the Supreme Court, and the High Court, following like decisions made in England upon an analogous English Statute, had been reluctantly compelled to enforce contracts collateral to wagers and wagering contracts. Time-bargains on the prices of Opium and Cotton, where no delivery of the commodity itself is contemplated, are wagering contracts. By the present system pursued in the bazars, time-bargains are effected through shroffs, who charge brokerage and commission for permitting the employment of their names as those of the principals in the contracts, their constituents, the real wagerers, remaining often wholly unknown to each other. The shroff of the winner pays to the shroff of the loser the difference between the wagering price and the real or conventional market price of the day on which the wager is to be decided. The shroffs generally keep faith with each other. The instances to the contrary are rare, and a shroff, who in his time-bargains is a defaulter, suffers a species of excommunication, inasmuch as his brethren not only cease to effect time-bargains with him, but decline to cash his hoondies, or have any other monetary dealings with him. Hence the original wager is generally carried out. The shroff of the loser having paid the amount of the loss, brings an action against the loser, if he do not voluntarily pay, to recover the money paid on his behalf, and the brokerage and commission, that is to say, the shroff sues the loser not on the wagering contracts (it having been fulfilled when the amount of the loss had been paid to the shroff of the winner), but on collateral contracts in respect of the money paid and the trouble and risk in entering into the original contract. In any event the shroff recovers a verdict for the brokerage and the commission, and if the loser, before the amount of the loss has been actually paid, have not prohibited his shroff from actually making that payment, the latter will also recover a verdict for that amount. The proposed Bill will not go so far as to annex a penalty to wagers or wagering contracts such legislation might seem of too harsh a character. The Bill, therefore, will not probably have the effect of completely preventing time-bargains, yet as it will prohibit the maintenance, by any shroff, broker, agent, or other person, of actions on contracts collateral to such transactions, he (Mr Westropp) trusted it would greatly discourage time-bargains, of which at present shroffs are undoubtedly the main upholders."

The PRESIDENT said that under Rule 13, no member could move for leave to bring in a Bill without giving three days' previous notice of the title and subject to the Secretary. No such notice had, he believed, been given in the present instance. But considering the importance of the measure proposed by the Honorable member, he (the President) had no objection to suspend the Standing Order.

Leave granted to Mr Westropp to introduce a Bill to amend Act XXI of 1848

Rule 13 was then suspended, and the question was put that leave be given to the Honorable Mr. Westropp to introduce a Bill to amend Act XXI. of 1848

*Carried.*

Mr Westropp inquires whether the proposed Insolvent Debtors' Act for the Mofussil contains any provision to alter the Hindoo Law that makes the sons and grandsons of a Hindoo liable for the debts of their deceased ancestor

To Honorable Mr. WESTROPP then asked whether the proposed Insolvent Debtors' Act for the Mofussil would contain any enactment declaring that the sons or grandsons of a Hindoo should be liable in respect of his debts to the extent only of such property of their parent as might come to their hands. In the Mofussil of this Presidency, the sons and grandsons of a Hindoo are still by the Hindoo Law liable to pay the debts of their deceased ancestor, although he may not have left any assets available for the purpose. This legal liability was originally founded upon religious reasons. The injustice of it had, however, for a long time past been recognized by Hindoos themselves, and the time had come for relieving them from it. In the Supreme Court or in the High Court, at its original side, the heir of a Hindoo is permitted to plead to an action for the debt of his ancestor that he (the heir) has not received any property of his ancestor available for the payment of his debts. So an administrator or executor may plead *plene administravit* Such pleas form a good defence in Bombay, and there is no valid reason why the Law in the Mofussil should not be the same. If there were no provisions in the Insolvent Debtors' Bill to alter the Hindoo Law as administered in the Mofussil on this subject, he (Mr. Westropp) would ask for permission to bring in a Bill for that purpose.

Mr. Frere replies.

The Honorable Mr FRERE said that the Insolvency Bill was in his hands, and that it contained provisions for amending certain points in the Law of Debtor and Creditor These provisions, however, could be more conveniently discussed when the Bill was before the Council.

The PRESIDENT then adjourned the Council to Wednesday the 22nd instant, at 3 P M.

By order of His Excellency the Governor in Council,

H. M. BIRDWOOD,  
Officiating Under Secretary to Government.

**PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.**

Abstract from the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations under the Provisions of the Act of Parliament, 24 and 25 Victoria, Chapter 67.

The Council met at Poona, on Wednesday the 22nd July 1863

*PRESENT —*

HIS EXCELLENCY SIR H. B. E. FRERE, K C B, Governor of Bombay, Presiding.

The Honorable Mr. W. E. FRERE,

The Honorable Mr. J. D. INVERARITY,

The Honorable Mr. H. L. ANDERSON,

• The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR,

The Honorable Mr. JUGONNATH SUNKERSETT,

The Honorable Mr. PREMABHAI HEMABHAI,

The Honorable Mr. A. D. ROBERTSON

The UNDER SECRETARY presented a petition addressed to the Secretary to the Legislative Council, which was ordered to be filed, not being in conformity with Rule 41 of the Rules for regulating the conduct of business by the Council of the Governor of Bombay.

Petition.

The Council proceeded to consider the Report of the Select Committee on the "Bill to provide for the Periodical Survey of Steam Vessels in the Ports, Harbours, Rivers or Waters of the Presidency of Bombay."

Report of the Select Committee on the Bill to provide for the Periodical Survey of Steam Vessels in the Ports, Harbours, Rivers, or Waters of the Presidency of Bombay, considered.

On the question that Section II. stand part of the Bill, the Honorable Mr. MADHOWROW VITTUL VINCHOORKUR moved that the words "fit and proper" be omitted from the Section, as it was not to be supposed that the Governor in Council would appoint any but a fit and proper person to be a Surveyor under the Act.

The Honorable Mr. INVERARITY said that these words should certainly be retained.

The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR pressed his amendment and the Council divided :—

<i>Ayes—1.</i>	<i>Noes—6.</i>
Honorable Mr. MADHOWROW VIT- TUL VINCHOORKUR.	Honorable Mr. FRERE, Honorable Mr. INVERARITY, Honorable Mr. ANDERSON, Honorable Mr. JUGONNATH SUNKERSETT, Honorable Mr. PREMABHAI HEMABHAI, Honorable Mr. ROBERTSON

The amendment therefore was lost.

On the question that Section III. stand part of the Bill, the Honorable Mr FRERE said that the words "as soon as reasonably may be after the arrival of such steam vessel," were open to objection, on the ground that the object of the Bill was to ensure the seaworthiness of vessels before leaving a port, not to ascertain their state after a sea-voyage.

The Honorable Mr. INVERARITY explained that a vessel could be best surveyed when she was empty, and if the survey was made a reasonable time after the arrival of a vessel in port, the work of loading or unloading her would not be interfered with.

The Honorable Mr. FRERE would not press his objection, as the Section was taken from the Act already passed by the Lieutenant Governor of Bengal.

The Honorable Mr. FRERE then moved the substitution of the words "or equipments" for "equipments or articles" in Section III.

*Carried.*

The PRESIDENT said that it was desirable to expunge the words "as nearly as the circumstances of each case will admit" from Section IV.

*Carried.*

On the question that Section IV. stand part of the Bill, the Honorable Mr. FRERE asked, with reference to the last sentence, what would be the effect in case the Captain disobeyed the officer of Customs or Pilot and took his vessel out of port without a certificate, as no penalty was provided for it in the Act.

The Honorable Mr. INVERARITY said that in general a vessel would not leave a harbour without a Pilot, for if she did the insurance would thereby be vitiated. Besides the Section provided that no Port-clearance should be given to a vessel that was not provided with a certificate, and this would be sufficient to ensure a certificate being taken, for no vessel plying to Indian or English Ports would venture to leave without a clearance.

The Honorable Mr. ROBERTSON drew attention to Sections 126 and 127 of the Consolidated Customs Act (No. VI. of 1863), which provided that no vessel should leave any port of British India without a Port-clearance, and which authorized the infliction of a heavy penalty on any Pilot who should take charge of any vessel proceeding to sea without a Port-clearance.

The Honorable Mr. FRERE said that under these explanations he was not prepared to propose any alteration of Section V.

On the question that Section VI. stand part of the Bill, the Honorable Mr. FRERE said that he was sure it would afford no pleasure to the Governor in Council to deprive any Pilot even temporarily of his licence. He moved that the word "discretion" be substituted for the word "pleasure."

*Carried.*

On the question that Section II. stand part of the Bill, the Honorable Mr. FRERE moved that the words "where the same may be easily read" be placed immediately after the word "suspended" instead of in their present place

*Carried.*

The Honorable Mr. ANDERSON remarked that Section XIII. authorized a delegated officer to cancel a certificate that might have been granted by a superior authority, as for instance, by the Governor in Council, under the provisions of Section VII. The Honorable member moved that the words "or any officer appointed or authorized by him for that purpose," and also the words "or such officer as last aforesaid" be omitted from this Section.

*Carried.*

On the question being put that Section XIV. stand part of the Bill, the Honorable Mr. FRERE moved that the word "competent" be omitted in line 11 of that Section, he had, he said, opposed the omission of the words "fit and proper" in the second Section, but as the Surveyors to be appointed under this Section were a sort of appellate Court, he thought embarrassment might arise if the word was retained, and the commander or owner chose to question their competency.

The Honorable Mr. INVERARITY had no objection, and the word was omitted.

The PRESIDENT said that it was desirable to add the words "and condition" after the word "description" in columns 5 and 6 of Schedule A

*Carried.*

\* The PRESIDENT then adjourned the Council to Wednesday, the 29th instant, at 3 P M.

By order of his Excellency the Governor in Council,

H. M. BIRDWOOD,  
Officiating Under-Secretary to Government

Poona, 23rd July 1863

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\* NOTE.—The Council was afterwards adjourned to the 1st August.

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament, 24 and 25 Victoria, Chapter 67.

The Council met at Poona, on Saturday the 1st August 1863.

### PRESENT.—

His Excellency Sir H. B. E. FRERE, K C B., Governor of Bombay,  
Presiding.

His Excellency Sir W. R. MANSFIELD, K C B.,  
The Honorable Mr. W. E. FRERE,  
The Honorable Mr. J. D. INVERARITY,  
The Honorable Mr. H. L. ANDERSON,  
The Honorable Mr. JUGONNATH SUNKERSETT,  
The Honorable Mr. PREMABHAI HEMABHAI,  
The Honorable Mr. A. D. ROBERTSON,  
The Honorable Mr. M. H. SCOTT,  
The Honorable Mr. M. R. WESTROPP

Report of the Select Committee on the "Bill to provide for the Periodical Survey of Steam Vessels in the Ports, Harbours, Rivers or Waters of the Bombay Presidency," further considered

The Council proceeded to consider the Orders of the Day.

The Honorable Mr INVERARITY moved the substitution of the words "her Engines and equipments" for the words "and her Engines" in the note to Schedule A of the "Bill to provide for the Periodical Survey of Steam Vessels in the Ports, Harbours, Rivers or Waters of the Bombay Presidency."

### *Carried*

The Honorable Mr Scott said that it was desirable that no vessel should proceed to sea without her proper complement of boats; and the certificate given under the Bill should specify whether a ship's boats are in good condition. He was not aware whether any Act applicable to British India contained provisions similar to those of Sections 292, 293, and 294 of the Merchant Shipping Act. The Honorable gentleman thought it desirable that the second reading of the Bill should be postponed until the Council had received information on this point.

The Honorable Mr. WESTROPP said that he would be able to procure the required information by the next meeting of the Council

The Honorable Mr. INVERNARITY then moved that the further consideration of the Bill be deferred to the next meeting of the Council

Consideration of the Bill for the Survey of Steam Vessels deferred

*Carried*

The Honorable Mr. WESTROPP said that before moving the first reading of the Bill to amend Act XXI of 1848 (for avoiding Wagers), he would mention that the provisions of Section 18 of the Standing Rules for the transaction of the business of the Council had unavoidably not been complied with in the case of the present Bill, for although the English copies of it had been circulated more than a fortnight ago, it had been published in the *Government Gazette* on the 27th ultimo only, whereas it should have been published on the 25th ultimo

Mr Westropp requests that Rule 18 be suspended

The PRESIDENT suspended Rule 18.

Rule 18 suspended

The Honorable Mr WESTROPP then moved that the Bill be read a first time, and said that the Council would doubtless have observed, that a Statute (16 and 17 Victoria, Chapter 119) severer than the Bill now proposed, had been enacted by the British Parliament for the suppression of betting-offices in the United Kingdom, which placed them on the same level with common gambling-houses, and rendered the persons who kept such offices subject to heavy penalties. It could not therefore be objected to the proposed measure, which aimed at the suppression of what were virtually betting-offices in this Presidency, that it was unprecedented or affirmed a principle unrecognized by recent legislation at home. This Bill did certainly contain some uncommon but not altogether unprecedented clauses. It however carefully avoided the imposition of pains and penalties. The consequence of that avoidance was, in order to impart vitality to the measure, the necessity of introducing into it Sections III. and IV which gave to the loser of a wager of the particular kind mentioned in those Sections power to recover from a shroff who might have acted as his agent in the transaction, any sum of money or advance that might have been deposited with him to abide the event of the wager whether or not the money had been paid over to the winner. But in the absence of pains and penalties, it was indispensable to the efficiency of the Bill that such a power should be given to the loser in order to render wagering contracts on opium, cotton and other articles of merchandize so unsafe, as to deter shroffs from assisting, nay, more, stimulating other persons to engage in such transactions. It was notorious that Act XXI. of 1848 had wholly failed in Bombay to effect

Mr Westropp moves that the Bill to amend Act XXI of 1848 (for avoiding Wagers) be read a first time

the end which the Legislature had in view in enacting it, namely, the discouragement of time-bargains, and this was almost wholly owing to the fact that the shroffs and brokers, who were the great promoters of time-bargains, were not touched by that Act. They could reap their profits by way of commission or brokerage, and could recover them and their advances and payments if need be in a Court of Justice, whatever might be the case with the principals. If Sections III and IV. of the proposed Bill were to become law, shroffs, brokers and other agents would be very shy of engaging in any such wagering contracts as are embraced by those Sections, on behalf of principals who may even after the fulfilment of the contract overturn the whole transaction from its foundation and recover their money. Without the help and instigation of the shroffs such contracts could not be entered into in anything like their present numbers. He (Mr. Westropp) further said, that although the first Section of the Bill declared contracts collateral to any wagering agreements null and void, and prohibited the maintenance of actions upon any such collateral contracts, the third and fourth Sections were limited to time-bargains or other wagers relating to the price or value of opium, cotton, or any other article of merchandize. It was not meant that these Sections should apply to any contracts that did not interfere with the free course of trade or were not otherwise injurious to the community. For instance, the loser of a bet on the event of a horse-race or on the relative speed of two drops of water that might be making their way down a pane of glass could not recover under the provisions of these Sections, any sum that he might have deposited with an umpire or other third party to abide the event of such a bet, if that sum had without any countermand from the loser been paid over to the winner. Under Act XXI of 1848 the winner of such a bet could not by action recover the amount of it from the loser. The Courts of Law in India could not entertain such a suit. But if the parties to such a bet chose to carry it out, this Bill would not enable the loser to re-open the transaction. Assuming that the Council approved of the principle of the Bill, it would be necessary for Honorable members to consider whether the provisions of the third and fourth Sections should be rendered more widely applicable by including within their scope wagering agreements as to the price or value of bank shares, or shares in other joint stock companies. He had not thought it prudent to include them. Mr. Westropp added, that he had consulted some of the members of the Bar as to the provisions of the Bill, and had received from them several valuable suggestions which he would bring forward when the Bill came to be considered by the Select Committee. For the present he would simply propose that the Bill be read a first time, and in doing so, he would beg the Council to bear in mind that the main



object of the Bill was to prevent the systematic and pernicious evasion of Act XXI. of 1848.

His Excellency SIR WILLIAM MANSFIELD said that he had not had much time to devote to the consideration of the Bill, nor had he been able to consult any gentleman of the legal profession in regard to it. But though he laboured under these disadvantages, he had little hesitation in saying that the Bill was entirely opposed to the principles which have guided the British Parliament in its legislation during the last few years; for his part he objected to the Bill both in its details and in its principle. He did not think that this Council would be justified in passing a Bill of the present nature until it had much fuller information before it in regard to the persons against whom the proposed legislation was aimed than was possessed he was sure by the majority of the members of the Council. Here was a certain class of men against whom very serious allegations were brought, who were accused of evading the law and of persuading others to do the same, who were charged with interfering to a pernicious extent with the free course of trade; yet he would speak for himself that, until he heard these allegations made in this Council by the Honorable gentleman who had been allowed to introduce the Bill, he had been entirely ignorant of the facts that there was any occasion whatever for making these allegations; and he thought he could say the same for most of the Honorable gentlemen now present. He did not think it right that these Honorable gentlemen should undertake to legislate for a body of men of whom and of whose transactions they had no personal knowledge whatever. These men lay under serious accusations affecting their character for honesty, and they ought to be heard in their own defence before any such measure as the present was proceeded with. Sir William Mansfield further objected to the vagueness which attached to the phraseology of the Bill; no definition was given of a "collateral contract." A "collateral contract" was a very elastic phrase, and might include contracts of a perfectly legitimate character which, nevertheless, if this Bill became law, would be held as null and void. Suppose that A made an advance of money for B in execution of orders, and for a perfectly lawful purpose, would it be right that B should be allowed to evade his liability by pleading that the money paid for him had been disbursed for a purpose which this Bill held to be immoral. He had not the advantage of his Honorable friend's legal training and acumen, but it required little knowledge of law to say that it would be contrary to all the principles of justice that B should be allowed to set up any such plea as the above, yet he could, under the proposed Bill, set up such a plea and avoid paying his just debts if he could only show

Sir W Mansfield  
opposes the first  
reading of the Bill.

that the purpose for which he received the advance, lawful though it was, came in a remote manner within the meaning of the words "a collateral contract," as used in the proposed Bill. The Honorable gentleman denied that the offices of shroffs, who arranged time-bargains, were at all analogous to the betting-houses at home; none but the lowest classes at home frequented the betting-houses, and the Legislature in suppressing betting-houses did so in order to protect from ruin persons who were too poor and too ignorant to protect themselves. The Honorable Mr. Scott would, perhaps, be able to tell them whether such a description was applicable to the people for whom the shroffs of Bombay made the advances referred to. The Honorable gentleman said, that persons who chose to bet on the results of a horse-race were allowed to do so without any interference from the legislature, and he could not see why persons who engaged in trade, should be put to greater disadvantage than persons who lost and won money for their own pleasure. In considering the principle of the Bill, the Honorable gentleman said that, so far as he could see, the Bill was one for the protection of dishonesty and fraud. It was the agents with whom deposits had been left, who would be the sufferers under it. The principals would escape quite free. The dishonesty of the principals would in this way be protected, but such a provision was in direct violation of the whole course of modern legislation which strove to make each individual offender suffer for his own act, and to screen as much as possible any other party from the consequences of it. It was impossible, besides, to make a people moral by legislation. The Honorable gentleman had no faith in cloistered virtue, whether in the nunnery or in the harem. Such virtue had no effect on the general public, it did not influence others by its example, and when exposed to temptation it yielded more speedily to it than that more genuine sort of virtue that had been allowed to mature itself in a free and natural manner. Every one was convinced of the frail nature, and of the weak influence of this cloistered virtue in the situations mentioned by him, and he thought that it would have as little influence for good, and be of as little value if it were introduced into the precincts of the Stock Exchange. It was much better to let the public look out for themselves. They are the best judges of what is best for them. The trade of Bombay was not in such an infantile state that it required to be carefully bandaged up in swaddling clothes. The shroffs of Bombay might well ask why they should be trammelled in a manner which was strange to other Legislatures. Thinking as he did, the Honorable gentleman said that he would oppose the first reading of the Bill.

Mr Premabhai Hemabhai states his objections to the Bill

The Honorable Mr. PREMABHAI HEMABHAI said that the Bill was unnecessarily severe, for it mixed up legitimate transactions with those

which were of an objectionable character. He said that many transactions that would come under the wording of the Bill were still of a perfectly legitimate character. He thought too, that the fourth Section allowed an unnecessarily long time within which suits might be brought under it. The result would be that the Courts would be deluged with suits and in many cases most vexatious interference would be occasioned to parties who had engaged in nothing but *bond fide* transactions.

The Honorable Mr. WESTROPP said that he was prepared to limit the time within which suits might be brought under Section IV. to six months, but this was a question which could best be considered by the Select Committee.

The Honorable Mr. SCOTT supported the motion for the first reading of the Bill. He said that it was incorrect to say that the object of the Bill was to make people moral by legislation. This was not its main object. The Bill appeared at first to interfere with the free course of trade, but what it really aimed at was the prevention of a very injurious interference with legitimate trade. If this object was attained, it would be well, and if the Bill subverted morality at the same time, it would be all the better. To illustrate the evil effects of the system which the Bill aimed at, the Honorable gentleman would mention the fact that, owing to combinations among the shroffs, the price of a khandy of cotton had within the last two years varied within a very few days to the extent of about Rs. 100. The magnitude of this variation would be the more apparent when it was remembered that three years ago a khandy of cotton did not cost much more than Rs. 100. It must be obvious to the Council that such an unsteadiness in the price of cotton or of opium must have a most baneful effect on the transactions of the mercantile community, for whom it rendered any thing like healthy speculation perfectly impossible. He had been appealed to by the Honorable gentleman who opposed the Mover to say whether the persons who betted with the aid of the Bombay shroffs, were in the same position as the persons who used to frequent the betting-houses at home. The Bombay shroffs, as a class, might be wealthy enough, but he could say that the mania for speculation in Bombay had reached down to a very low class indeed. Men of small means, clerks and others in the receipt in some cases of not more than Rs. 20 a month, had all suffered severely from time-bargains, and in some instances gomasthas and moonims entrusted with funds on behalf of merchants who lived up-country, had been induced dishonestly to misappropriate such funds to reimburse themselves for losses which they had incurred in connection with time-bargains.

Mr Scott supports the first reading of the Bill.

He spoke from personal experience when he said that this reckless engagement in time-bargains had led to much dishonesty. He pointed out that the system of contracting by way of wager was not analogous to betting on the event of a horse-race. In the latter case the loser and the winner of the bet were the only persons affected by the result of the race, whereas in the case of time-bargains such as those now under consideration, the whole community suffered. The Bill before the Council aimed, in his opinion, at putting an end to a very great evil, and he would therefore support the motion for its first reading.

Mr Anderson  
speaks in support  
of the Bill

The Honorable Mr. ANDERSON said that he had been much struck with an observation made by His Excellency the Commander-in-Chief that no enactment similar to the proposed measure had been passed for Calcutta or Madras. It might be doubted perhaps whether this Council had the power to pass a measure which extended the provisions of an Act of the Government of India. But this was an objection that would not, in the absence of any other consideration, weigh with him to such an extent as to induce him to oppose the first reading of the Bill. The Honorable gentleman said that though he admitted that it was a matter of great delicacy for a Legislature to deal with questions of morality, still he was not prepared to go the whole length with the Commander-in-Chief in the remarks made by His Excellency. Several instances occurred to him in which the Legislature had successfully dealt with questions of this nature. For example Lotteries, though engaged in at the time by all classes of the community, were put down in the United Kingdom by law about 40 years ago. It was true the Glasgow Improvement Lotteries, as they were called, were permitted by law so lately as 30 years ago. But this was through a mere oversight, and he (Mr. Anderson) was under the impression that a declaratory Act was passed after these lotteries were held, stating that no public lotteries would in future be allowed. So stringently has this law been interpreted that even Art Unions have been declared illegal, and they only now proceed by the tacit acquiescence of the Executive. Again, the Honorable gentleman remembered a time when it was impossible to walk down St James's street without being struck by the magnificence of palatial buildings devoted to and supported by gambling. But now they no longer exist. The provisions of the law were called into robust action, and the original character of these edifices disappeared. To take another instance. In England the Legislature had always shrunk from dealing with Prostitution, as it had been dealt with in Paris and Vienna. This reticence had greatly excited the wonder of foreigners. But though the Legislature had abstained from an attempt to enforce morality, it had

interfered with the notorious "night-houses" which afforded so shameless an encouragement to vice. It appeared then that when evils become directly detrimental to the public interests, the Legislature would take action. The question then with reference to the present Bill was, whether the evil had attained to that degree of detriment to the public which would justify legislative interference. On this point he was willing to be guided by the large experience of the Honorable and learned Mover, and of the Honorable Mr Scott. His Excellency had argued with great force that the measure would protect dishonesty. It might possibly do so at first, but if the practice were barred by legal difficulties, if it ceased to become profitable, the Council might be sure that the evil would languish and eventually disappear. With respect to betting on horse-races to which His Excellency the Commander-in-Chief had adverted, he (Mr Anderson) would remark that the law had always opposed itself to such wagers. His Excellency would probably remember the "Qui-tam" actions of 1844. In fact such betting was sanctioned and sustained by a Code of Honour, and had therefore very little in common with the practices against which the present Bill was directed. Although generally much impressed by the force of His Excellency the Commander-in-Chief's argument, he (Mr Anderson) believing from the strong testimony of the Honorable Mr Westropp and the Honorable Mr. Scott that great and real detriment was caused to trade and public morality by this species of gambling, would support the first reading of the Bill.

The Honorable Mr. JUGONNATH SUNKERSETT said that he should support the Bill, and that any alterations in it that might be advisable could best be considered when it was referred to a Select Committee.

Mr Jugonnath Sunkersett supports the first reading.

The Honorable Mr. FRERE said that as he had not spoken in his turn, he must ask His Excellency the President's permission to make a few remarks previous to moving that the Bill be referred to a Committee to report on the necessity for such an enactment. From the remarks made by the Honorable members on his left (Messrs. Scott and Anderson) he thought that further information was required as to the extent of the evil this Bill was intended to cure, and that the Council was not as yet in a state to legislate on the subject. They had not sufficient information to enable them to judge whether the Bill was really required or not. He was of opinion that it would be advisable to adopt the course followed in the case of the Cotton Frauds Bill. A Committee was appointed to procure information, and after this information was procured, the necessity for the Bill was apparent and it was passed. The Honorable gentlemen moved

Mr Frere moves that a Committee be appointed to inquire into the extent of the evils arising from time-bargains.

that a Committee be appointed to inquire into the extent of the evils arising from time-bargains, and to report to the Council the best means of remedying them should they be found to exist.

The President objects to the Council appointing such a Committee.

The PRESIDENT said that it would not be regular to appoint a Committee of that Council as proposed by the Honorable Mr. Fiere until the Council had first disposed of the question before them, which related to the principle of the Bill; by agreeing to or rejecting the proposition that it be read a first time

Sir W Mansfield says that there is a precedent for such a course

HIS EXCELLENCY SIR WILLIAM MANSFIELD said that a precedent for the course proposed was to be found in the case of the Cotton Bill; and he would say, that had it not been for the information obtained by the Committee, that Bill would never have been passed. He said that in regard to the present Bill he was not as yet satisfied in his own mind that it was needed. If he felt satisfied that it was needed, he would not think of opposing it.

The President describes the course that should be taken by Mr Frere

The PRESIDENT said that the present was simply a question of form. It did not appear to him that sitting as a Council for the purpose of making Laws, they could appoint the Committee proposed by the Honorable Mr. Frere, until they had disposed of the question of principle whether the Bill should or should not be read a first time. If the Bill were read a first time and a Select Committee of that Council appointed, it would be for the Select Committee to make such inquiry as that suggested by Mr Frere, or it would be open to the Honorable gentleman as a member of Government, to bring the question of the necessity for inquiry at any time before Government, whether the motion for the first reading were or were not carried.

Mr Westropp replies to the arguments used in opposition to his motion for the first reading of the Bill

The Honorable Mr. WESTROPP then replied to the arguments that had been urged in opposition to the Bill. He said that he had listened to the observations of His Excellency the Commander-in-Chief with attention and respect, but thought that his objections would have been more properly aimed against any legislative restriction of gambling and wagers than against a Bill of which the object was to prevent the frustration of an existing law. The propriety of legislating against gambling and wagering contracts was a principle already well established both by the Imperial and Indian Legislatures. In the reigns of Charles II, Queen Anne, George II., George III., and Queen Victoria, Parliament had passed enactments more or less prohibitory of gambling and wagering contracts. In 1848, in consequence of the great prevalence of time-bargains as to the price of opium during the preceding years, the Legislative Council of India passed Act XXI. of that year, declaring that all agreements by way of gaming or wagering should

be null and void, and that no suits should be allowed in any Court of Law or Equity for recovering any sum of money or valuable thing alleged to be won on any wager, or entrusted to any person to abide the event of any game, or on which any wager is made. His Excellency's speech, therefore, would have been better timed fifteen years ago, and should have been addressed to the Legislature of India in 1848, rather than in 1863 to the Legislative Council of Bombay. The first Section of Act XXI of 1848 was copied from the Statute 8 and 9 Victoria, Chapter 109, Section 18, passed by Parliament two or three years previously to the Indian Act. The principle had received further confirmation by the recent Statute 16 and 17 Victoria, Chapter 119, by which betting offices had been put down with a strong hand in the United Kingdom. The Acts against stock jobbing, passed in the reign of George the Second, were similar in principle and actually contained enactments very much akin to the third and fourth Sections of this Bill. It was accordingly quite too late now to declaim against legislature prohibitive of gambling contracts. The question for the consideration of this Council was, whether Act XXI. of 1848 should be suffered to remain a dead letter in the Statute Book, so far as Bombay was concerned, merely because a body of shroffs found it profitable to combine to defeat its operation. His Excellency rested his opinion that there was no analogy between the proceedings of the shroffs and the English betting-offices, on the supposition that all the persons who employed the shroffs were worthy persons, whereas he believed the English betting-offices to have been resorted to solely by the humbler classes. But that supposition was completely erroneous. No doubt these were not matters which lay in His Excellency's path, and he could not be expected to be acquainted with them. To the legal profession however, and to the mercantile community, it was notorious that Act XXI. of 1848 was set at nought by the shroffs and brokers, and that multitudes of persons of every class of society in the native community of Bombay and its provinces, from the highest class to the lowest class, were involved in these useless and ruinous practices. The poorest mehtas and servants entered into time-bargains through the shroffs. Without the aid of the shroffs, those mehtas and other poor persons could not engage in those transactions, they would not have sufficient credit in the bazaar to effect time-bargains in their own names. The shroffs, in consideration of the commission which they charge, permit their names to be used as principals, and incur the risk as to the solvency of their poor constituents. It was proved in the recent trials in the High Court that many of the shroffs had entered into and signed an agreement amongst themselves for the conduct and regulation of time-bargains in cotton. He (Mr. Westropp) had frequently seen and read that agreement in Court.

The shroffs had acted upon it. In June 1862, when the committee of shroffs was engaged in fixing the price by which the wagers in cotton should be regulated under that agreement, Bombay was, for upwards of a fortnight, kept in a state of turmoil, so large was the number of persons interested in the wagers then awaiting decision. Great complaints were made as to the rate at which it was fixed by that committee. Those time-bargains had and continued to have a most disastrous effect in raising the price of cotton in the real market. This measure so far from being intended to impose fetters on the trade of Bombay, as supposed by the Commander-in-Chief, was intended to emancipate it from the pernicious influence of what had no pretence to call itself trade, not a single pound of cotton, opium, linseed, or of any other of the commodities which are the subject of these time-bargains being either delivered or intended to be delivered under them, as has been over and over again proved in the Supreme and High Courts. There was more opium and cotton pretended to be sold under these time-bargains in Bombay in one year than could be produced in India in 20 years. They were mere bets, and it was perfectly idle to give them the name of trade. There could be no doubt that many mehtas, gomashtras and moonims, employed to conduct in Bombay the legitimate trade of their masters, who lived in the Mofussil, had resorted to the funds of their masters in order to make good their own losses in time-bargains entered into on their own account. How then could it be denied that the trade of Bombay required protection against such illicit proceedings, and why should any tenderness be shown henceforward to those by whose contrivance and confederacy they are carried on to the detriment of the *bonâ fide* Bombay merchants, whether European or Native? But this protection is not needed for Bombay merchants alone. The unnatural and improper enhancement of the price of commodities in Bombay most injuriously affects the European manufacturers and the consumers everywhere. Is not this Council to show any consideration for the distressed manufacturers of Lancashire! Are not their sufferings increased by the artificial augmentation of the price of cotton caused by the mischievous operation of the Bombay betting market? So long as by their gambling men injure none save themselves, no urgent necessity may exist for the interference of the Legislature. But the present case is widely different. The fair merchant in Bombay, the European manufacturer and the consumers in all parts of the world suffer by the present system of gambling practised in Bombay. It had been suggested that the Bombay Council had not authority to entertain or pass this Bill, because it purported to amend an Act of the Legislative Council of India. However, there was no doubt that the Bombay Council had ample authority under the 42nd Section of the Statute (24 and 25 Vic.



Chapter 67, passed in 1861) by which it was created, "to repeal and amend any Laws and Regulations made prior to the coming into operation of this Act (24 and 25 Vic) by any authority, in India, so far as they affect this Presidency" (of Bombay) This Bill, like any other Bill, is of course subject to the veto of the Governor General. The objection that this Bill, inasmuch as it is confined to Bombay, is piece-meal legislation, is untenable. The same objection might be applied to any Act passed by this Council even to the very Bill which stood first on the Orders of this day, relating to the Survey of Steam Vessels in this Presidency. Section 42, just quoted from the Statute by which this Council was created, showed that Parliament contemplated that there should be such piece-meal legislation. Probably the evil sought to be remedied by this Bill had not prevailed to the same extent in Madras and Calcutta as in Bombay. Nor was the extent of the cotton markets of Calcutta and Madras so great as that of Bombay. The injury arising from time-bargains would therefore be less felt there than in Bombay, which is the principal Port of India for the exportation of cotton. With reference to the Honorable Mr Premabhai Hemabhai's remarks, Mr Westropp said that he was quite content to strike the expression "time-bargains" out of the third and fourth Sections, and to substitute the words "wager or agreement by way of gaming or wagering." Any attempt at closer definition would only afford opportunities of evading the provisions of the Bill. It was argued by two Honorable members, that further inquiry was needed before such a measure ought to be passed. If the majority of the Select Committee to which he intended to move that the Bill be referred, deemed further inquiries advisable, he would not oppose it, although he well knew it to be unnecessary. There would be considerable difficulty in the way of the Council in procuring much direct evidence. Shoofs, brokers, and persons who engaged in time-bargains would of course refuse to come forward to expose themselves. The existence of the system was however as notorious as possible. The Judges of the High Court, the Bar, and Solicitors, heard of it daily. In many account books produced in Courts even in actions not founded upon or relating to time-bargains, the existence of such transactions is constantly lighted upon incidentally. Many persons, who claimed the benefit of the Insolvent Debtors' Act and many other Insolvents who do not seek that relief, but who compound with their creditors, owe their insolvency to time-bargains in opium, cotton, linseed, or other commodities. As a general rule, although not universally, they conceal as far as possible that their insolvency arose from such causes. The Chief Justice felt strongly disposed to recommend an enactment authorizing the Insolvent Court to refuse a certificate to any Insolvent who at any time within six months preceding

his insolvency had engaged in time-bargains. In fact, speculation by time-bargains has filled Western India with insolvency and dishonesty. Mr Westropp here remarked, that the only difference between Section 18 of the Statute 8 and 9 Victoria, and Section I. of Act XXI. of 1848, was the reservation in the former of the right to sue for any plate or subscription constituting a prize in a lawful game. He concluded by saying that the present Bill was a much less severe measure than the English Act for the suppression of betting-offices, and that the evil sought to be remedied by this Bill was much greater and more extensive in its operation than the English betting-offices.

HIS EXCELLENCY SIR WILLIAM MANSFIELD said that he wished to divide the Council

Bill to amend  
Act XXI of 1848  
read a first time

The question was then put that the Bill to amend Act XXI of 1848 be read a first time.

The Council divided :—

*Ayes*—8

The Honorable Mr FRERE,  
The Honorable Mr INVERARITY,  
The Honorable Mr ANDERSON,  
The Honorable Mr JUGONNATH  
SUNKERSETT,  
The Honorable Mr. PREMABHAI  
HEMABHAI,  
The Honorable Mr. ROBERTSON,  
The Honorable Mr SCOTT,  
The Honorable Mr. WESTROPP.

*Noes*—1.

His Excellency Sir WILLIAM  
MANSFIELD

The first reading was therefore carried.

Select Commit-  
tee appointed to  
consider the Bill

The Honorable Mr. WESTROPP moved that the following gentlemen be appointed a Select Committee to consider the Bill, with instructions to report on the same within three weeks.

The Honorable Mr. FRERE,  
The Honorable Mr. ANDERSON,  
The Honorable Mr. PREMABHAI HEMABHAI,  
The Honorable Mr. SCOTT,  
And the Mover

*Carried.*

The Honorable Mr FRERE then moved that the Executive Government be requested to appoint a Committee to inquire into the extent of the evils arising from time-bargains, and to report to the Council the best means of remedying them, should they be found to exist.

Mr Frere moves that the Executive Government be requested to appoint a Committee to inquire into the extent of the evils arising from Time-Bargains

The PRESIDENT said that the first reading having been carried and a Select Committee appointed, it would be more regular if such a proposition for inquiry were brought forward elsewhere than in the Council sitting, as they then were, for the purpose of making Laws and Regulations.

The motion was withdrawn, and the PRESIDENT adjourned the Council to Saturday the 8th instant, at 3 P M Motion withdrawn

By order of His Excellency the Governor in Council,

H BIRDWOOD,  
Under-Secretary to Government

*Poona, 1st August 1863*

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament, 24 and 25 Victoria, Chapter 67

The Council met at Poona, on Wednesday, the 8th August 1863.

### PRESENT —

His Excellency Sir H. B. E. FRERE, K C B, Governor of Bombay,  
Presiding

His Excellency Sir W. R. MANSFIELD, K C B,

The Honorable Mr W. E. FRERE,

The Honorable Mr. J. D. INVERARITY,

The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHAY,

The Honorable Mr. MADHOWROW VITTUL VINCHORKUR,

The Honorable Mr. PREMABHAI HEMABHAI,

The Honorable Mr. A. D. ROBERTSON,

The Honorable Mr. M. H. SCOTT,

The Honorable Mr. M. R. WESTROPP

The UNDER-SECRETARY presented a petition from some Mahomedan inhabitants of Bombay, praying that they be allowed to bury their dead in the burying grounds that have hitherto been used by their community

Petition

The PRESIDENT ordered the Petition to be transferred to the Judicial Department of the Secretariate, for disposal

The Council then proceeded to consider the Orders of the Day.

Report of the Select Committee on the Bill "to provide for the Survey of Steam Vessels in the Ports, Harbours, Rivers, or Waters of the Presidency of Bombay," further considered

The Honorable Mr. INVERARITY proposed that in Section III. of the Bill "to provide for the Periodical Survey of Steam Vessels in the Ports, Harbours, Rivers, or Waters of the Presidency of Bombay," the words "liable for each offence to a penalty not exceeding Five hundred Rupees, commutable to simple imprisonment under Section 67 of the Indian Penal Code," be omitted, and that the following words be substituted for them —

"deemed guilty of contempt of lawful authority and punishable under Section 176 or 186 of the Indian Penal Code, whichever may be applicable to the case."

*Carried*

The Honorable Mr. INVERARITY proposed that the word "boats" be

inserted between the words "machinery" and "or" in line 14 of Section III, and between the words "machinery" and "and" in line 20 of the same Section

*Carried.*

The Honorable Mr INVERARITY proposed that in Section XII the words "incur a penalty not exceeding Five hundred Rupees commutable to simple imprisonment under Section 67 of the Indian Penal Code" be omitted, and that the words "be deemed guilty of contempt of lawful authority and be punishable under Section 175 of the Indian Penal Code," be substituted for them

*Carried.*

The Honorable Mr INVERARITY moved that in Clauses 1 and 3 of Section XIII the word "boats" be inserted between the words "hull" and "equipments," and that in the last line but one of the same Section the words "boats, equipments and machinery" be inserted between the words "vessel" and "again "

*Carried*

The Honorable Mr INVERARITY said that it was desirable to introduce a new Section into the Bill, similar to Sections 292, 293, and 294 of the Merchant Shipping Act, which provided that no vessel should go to sea without having her proper complement of boats on board. Such a Section would properly come between the present Sections XIV and XV of the Bill. The Honorable gentleman said that as he had given no previous notice that he would introduce such a Section, it could not be introduced unless Rule 26 of the Standing Orders were suspended.

The PRESIDENT said that, as the proposed amendment was in accordance with the general object of the Bill, it would be desirable that Rule 26 be suspended

This was agreed to, and the Honorable Mr INVERARITY proposed that the following words stand as Section XV of the Bill —

"It is hereby declared that Sections 292, 293, and 294 of the Merchant Shipping Act (17 and 18 Vic. Chapter 104) and Schedule S of that Act, are and shall be applicable to all Steam Vessels proceeding to sea from any port or place in the Presidency of Bombay or its dependencies"

*Carried.*

The Honorable Mr INVERARITY proposed that an explanatory Clause be added to the last Section of the Bill as follows —

"When the survey of a steam vessel is contemplated by any part of this

Act, such survey shall be held to include a survey of such vessels, hull, rigging, machinery, boats, equipments, and other appurtenances."

*Carried*

The Honorable Mr INVERARITY proposed that the word "boats" be inserted between the words "engines" and "and" in the declaratory part of Schedule A

*Carried*

Mr Inverarity proposes that the Bill be reprinted before it be read a second time

The Honorable Mr INVERARITY proposed that the Bill be reprinted as now amended before it be read a second time

*Carried.*

The President points out that as the Bill contains penal clauses, it will require to be submitted to the Viceroy before it can be passed

The PRESIDENT reminded the Council that as the Bill contained penal clauses it would, under the instructions recently issued by Her Majesty's Secretary of State for India, require to be submitted to His Excellency the Right Honorable the Governor General before it was read a second time and passed

Sir W Mansfield considers that the proper time for submitting a Bill to the Viceroy is either before it is considered in Council or else after it is passed

HIS EXCELLENCY SIR WILLIAM MANSFIELD asked whether it would not have been better to have submitted the Bill for previous sanction before it had been read a first time. He thought that in cases where the previous sanction of the Supreme Government was required for any Bill under the consideration of the Council of the Governor of Bombay, it was not a safe plan to wait until the Bill had been modified by this Council before it was submitted for sanction. The assent now required was not an assent to the whole Bill, but to the penal clauses contained in it, and this assent could as well be given at first as after the Bill had been amended. There was this advantage too in submitting a Bill for sanction before it had been considered in Council, that in case the Bill were rejected by the Supreme Government on account of its penal clauses, the time of this Council would not needlessly be taken up in modifying other parts of it. He did not anticipate that the present Bill would be rejected on account of its penal clauses, for its principle had already been affirmed on the other side of India. But he thought that it was a dangerous precedent to establish to submit a Bill for sanction, and to submit it therefore to the chance of rejection after it had been matured in Council. In other cases in which the consent of the Supreme Government to a measure could not be counted on, this Council might have the mortification of having all its work undone, simply because a measure contained some penal clauses that were not absolutely necessary to it, but which nevertheless might prove fatal to it, simply because the decision of the Supreme Government in regard to these clauses had not been obtained before this Council had deliberated on the

measure as a whole. Sir William Mansfield said that the law provided a time when a Bill, as amended and approved of by this Council, was to be submitted for the sanction of the Governor General. This was after the Bill had been passed by this Council. Until a Bill had arrived at this stage the law allowed the local Council a certain amount of independence in connection with the measures before it, and he thought they would be compromising their independence in this respect if they were to subject to the possibility of rejection a measure that had virtually received the final approval of this Council, though it had not been formally passed by them.

The Honorable Mr. WESTROPP said that a Bill was frequently so much altered by the Select Committee to which it was referred, that the measure recommended by the Committee, and, generally speaking, subsequently adopted by the Council, bore a very faint resemblance to that which had been originally introduced. New provisions very often entailed the necessity of new penalties, so that a Bill presented to the Governor General for his preliminary approbation would sometimes be scarcely recognizable when submitted for his final assent. It would seem therefore to be desirable that in such instances as the Statute 24 and 25 Vic Chapter 67, did not preclude such a course, a Bill inflicting penalties should be submitted in as nearly as possible its ultimate form for sanction of the Governor General previously to its being passed into law. The Bill that gave rise to the present discussion had been that very day considerably altered in its penal clauses, and a fresh clause of a penal character had been imported into it from the Merchant Shipping Act. Therefore, if the Bill had been submitted for approbation of the Governor General in its original shape, it would not have correctly represented the measure that would have been finally tendered for his assent after it had passed through all its stages in this Council. He (Mr Westropp) thought it might fetter the deliberations of the Council to an injurious extent if the assent of the Governor General were to be obtained to penal provisions while in a crude state, and much time might be thus wasted. The original penalties in a Bill though sanctioned by the Governor General, might not meet the approbation either of the Select Committee or of a majority of the Council, and there would be difficulty in altering them. If they were altered or added to after they had been sanctioned, the whole Bill, in which they were incorporated, might afterwards be rejected simply because it contained penal clauses, different in manner and character from those which had been previously sanctioned. He did not mean to say that Sir C. Wood's letter was to be regarded as rendering it indispensably necessary that in every case a penal clause should be submitted for the preliminary approval of the Viceroy, but he thought that time would probably be saved and the probability of the final rejection of a Bill avoided by forwarding it to the Governor General after it had passed through the hands of a Select

Mr Westropp thinks that the most appropriate time for submitting a Bill similar to the present is after it has been considered by a Select Committee, and before it is passed.

Committee, and had assumed nearly its final form. The 43rd Section of the Statute 25 and 24 Vic Chapter 67 no doubt rendered it necessary that before this Council can even take into consideration any act *altering* in any way the Penal Code, the previous sanction of the Viceroy should be obtained. That proviso would, however, scarcely be applicable to a Bill inflicting penalties with reference to a special subject not at all embraced within the Penal Code. Although that Code abrogated most of the pre-existing Criminal Statutes and Acts, yet it excepted existing special and local laws. Of special laws, the Postage Act, the Electric Telegraph Act, and the Railway Act, were examples. The present Bill (relating to Steam Vessels) was a special measure, and although of course not coming within the exception of the Penal Code, inasmuch as that applied only to pre-existing special laws, yet it in some measure fell within its spirit, and the Government of India would probably not be disposed to give any very rigorous construction to Section 43 of the Statute 24 and 25 Vic. Chapter 67 in this case, as the Bill did not, in its present shape, alter any provision of the Penal Code, although it did create new penalties for new offences.

The President considers that the Bill can be conveniently submitted in its present shape and at its present stage

The PRESIDENT said he was not prepared to agree with His Excellency Sir William Mansfield that it was now too late to ask for sanction for the present measure. On the contrary, the present seemed to him the most convenient time for that purpose, and the Executive Council had already arrived at the same decision when considering the Despatch of Her Majesty's Secretary of State in regard to the subject under discussion. By sending a Bill for previous sanction after it had been amended in Council, those evils would be avoided that had been dwelt on by the Honorable Mr Westropp, and he did not think that the independence of this Council would in any way be compromised by submitting Bills for sanction when in this state. The object of sending a Bill containing a penal clause for sanction was not to ascertain the will of the Viceroy in regard to the principle of the Bill, but to let the Government of India know that a local Council was engaged in penal legislation, so as to enable the Supreme Government to check such legislation in case it provided anything that was not consistent with the principle of the Indian Penal Code. It was never supposed that the Penal Code or any other of the new Codes was perfect or final; but it would be very objectionable if modifications of these Codes were made in the several local Councils independently of the guidance of the Supreme Government. The Codes were intended to be comprehensive and generally applicable, and it was necessary that in all extensions or alterations of the Codes, uniformity should, as far as possible, be preserved whenever it was found necessary to resort to special penal legislation in any of the local Councils. The duty of maintaining this uniformity devolved, by Law, as the Secretary of State observed, upon His Excellency the Governor General



in Council. He thought therefore that the present Bill might be submitted at its present stage for the criticism of the Governor General in Council without the danger of establishing a precedent prejudicial to the independence of this Council.

The Honorable Mr ROBERTSON said that he thought that it was discretionary with the Council to submit the present Bill for the previous sanction of the Supreme Government. It would be observed, that the instructions of Her Majesty's Secretary of State were rather directory than mandatory, and in the endorsement of the Government of India forwarding these instructions, it was stated that they were forwarded for information, whereas, if they had been meant to be followed in the case of every Bill containing a penal clause, they would have been forwarded for "information and guidance."

Mr Robertson does not consider it binding on the Council to submit the present Bill for sanction before it is passed.

The Honorable Mr FRERE said that he never anticipated the present discussion, and was not therefore prepared for it. He was under the impression however that contradictory orders had been received by them from the Government of India. On a former occasion a number of Bills that had been submitted by this Council for approval before they had been passed were returned, with a request that, in future, Bills should not be sent for sanction until they had been passed, unless they came under the provisions of Section 43 of the Indian Council's Act. He might, however, be wrong in his impression. He thought that the proper time for submitting a Bill that contained penal clauses for the sanction of the Supreme Government could be decided better by the Select Committee that would be appointed that day to revise the Rules for the conduct of the Business of the Council, than in a debate of the present character.

Mr Frere thinks that the question now raised can be better decided by the Select Committee that was to revise the Rules

The PRESIDENT then directed the Under Secretary to submit the Bill to provide for the Survey of Steam Vessels in its present state, for the remarks of His Excellency the Governor General in Council, with special reference to the penal clauses.

The Under Secretary directed to submit the Bill "to provide for the Survey of Steam Vessels" for the remarks of H E the Governor General in Council

The Honorable Mr. FRERE in moving the first reading of the "Bill to remove any doubts which may arise as to the legality of acts done, and proceedings held in the Collectorate of Sattara, between the 1st January and 14th April 1863, both days inclusive," said that Honorable members were aware that up to the passing of Act III of 1863, Sattara had not been under the Acts and Regulations of the Presidency of Bombay. It had been a non-Regulation Province. The Collector had been the chief local judicial authority, and appeals lay from his decisions to the Governor in Council

Mr Frere moves the first reading of the "Bill to remove any doubts which may arise as to the legality of acts done, and proceedings held in the Collectorate of Sattara, between the 1st Jan and 14th of April 1863, both days inclusive"

When the draft Act III. was prepared, it was intended to bring Sattara under the Regulations from the 1st January last. The Council had anticipated that this Act would have become law before that date, but unforeseen delays had occurred in introducing it. No one who had not taken a part in preparing such a Schedule as that attached to Act III., could appreciate the labour and time required for it. Frequent alterations had to be made in the list of villages, and these alterations involved repeated correspondence with the local officers. The result of all this was that the Act was not introduced until the 10th September, when it was read a first time; the Council was then adjourned *sine die*, and the Bill was not read a second time till the 19th December, when it was passed, but it did not receive the assent of the Governor General until the 25th March, and was not published in the *Government Gazette* until the 15th April last. A promise had long before been made to the Collector of Sattara that the Province should be brought under the Regulations on the 1st January 1863, and in fulfilment of that promise the Act had been drafted; and though the delay which had arisen rendered it impossible that the promise should be fulfilled, the wording of the Section by some oversight remained unaltered, and consequently, though by the Act Sattara was from the 1st day of the present year by law under the Regulations, Civil and Criminal, cases and all business, Civil and Criminal, had nevertheless been carried on by the same officers, under the same rules and in the same manner as they had been before the 1st January.

It was not to be imagined that the officers who had so long conducted the administration of Sattara would have committed more injustice in the 105 days between the 1st January and 15th April than they had done before they were the same officers and equally capable to do strict justice then as they had been before; but there was the technical objection to their proceedings that an Act had been passed which required that the work should have been performed by them under titles and appointments different from those they had held before, to declare that their proceedings for more than 105 days were as legal as if Act III. of 1863 had not been passed, was the object of the Bill he now introduced; and as men's minds might be unsettled by these technicalities, he thought it desirable that the Bill should be passed without any delay; and to enable this to be done, he would ask His Excellency the President to suspend the Standing Orders.

The PRESIDENT said that as the object of the Bill was merely to correct a clerical error, there could be no objection to suspending the Rules, in order that the error that had been made might be corrected with as little delay as possible.

The PRESIDENT then suspended Rules 12th, 17th, 20th, 21st, and 24th.

Rules 12th, 17th,  
20th, 21st, and  
24th suspended

Mr. FRERE then moved that the Bill be read a first time

- The question was then put that the Bill be read a first time

Bill read a first  
time

*Carried*

On the question that Section I stand part of the Bill, the Honorable Mr WESTROPP proposed that the words " and decrees" be inserted between the words " orders" and " made" in line 2 , that the words " in any suit or other proceeding, Civil or Criminal, now pending or hereafter to be instituted" be inserted between the words " court" and " to" in line 10 , that the words " sentences, orders, and decrees on the ground aforesaid" be inserted between the words " proceedings" and " but" in line 11 , and that the words " or decrees" be inserted between the words " orders" and " made" in line 12 of the Section

Question put  
that Sec I stand  
part of the Bill

*Carried*

Mr. FRERE then moved that the Bill, as amended, be read a second time.

*Carried.*

The Bill was accordingly read a second time and passed

Bill read a se-  
cond time and  
passed

The PRESIDENT then proposed that His Excellency Sir W MANSFIELD and the Honorable Mr FRERE, the Honorable Mr ANDERSON, the Honorable Mr JUGONNATH SUNKERSETT, and the Honorable Mr SCOTT, be appointed a Select Committee to consider and revise the Rules for the conduct of Business at Meetings of the Council

Select Commit-  
tee appointed to  
consider and revise  
the Rules for the  
conduct of Busi-  
ness at Meetings of  
the Council

*Carried*

\* The PRESIDENT then adjourned the Council to Saturday next the 15th instant, at 3 P M

By order of His Excellency the Governor in Council,

H M. BIRDWOOD,  
Officiating Under Secretary to Government

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\* NOTE —The Council was afterwards adjourned to the 29th August

**PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.**

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 Act of Parliament, 24 and 25 Victoria, Chapter 67.

The Council met at Poona, on Saturday the 29th August 1863, at 3 P. M.

*P R E S E N T*—

His Excellency Sir H. B. E. FRERE, K. C. B. Governor of Bombay,  
Presiding

His Excellency Sir W. R. MANSFIELD, K. C. B.,

The Honorable Mr. W. E. FRERE,

The Honorable Mr. J. D. INVERARITY,

The Honorable Mr. H. L. ANDERSON,

The Honorable Mr. RUSTOMJEE JAMSETJEE JEJREBHOY.

The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR.

The Honorable Mr. A. D. ROBERTSON,

The Honorable Mr. M. H. SCOTT,

The Honorable Mr. M. R. WESTROPP.

The Council proceeded to consider the Orders of the Day.

The Honorable Mr. WESTROPP presented the Report of the Select Committee upon the Bill to amend Act XXI. of 1848 (for avoiding Wages).

His Excellency Sir WILLIAM MANSFIELD observed that the Report of the Select Committee could scarcely be considered at this meeting of the Council, as the provisions of Rule 25 of the Standing Orders had not been complied with in regard to it. The Report should have been in the hands of the members three days before the Council met, but it had not been circulated more than two days ago; and for his part he had not had time to read through the whole of it, until the morning of the day on which they met. If the Report had been before him for a longer time, he would have proposed an amendment to the motion for considering the Report of the Select Committee. But, as it was, he had not had the opportunity of sending to the Secretary a copy of his amendment, as was required by the Rules. The object he would have had in view in proposing an amendment would have been to re-introduce a discussion on the principle of the Bill. This could not now be done, unless the Council would alter its ordinary proce-

Mr Westropp presents the Report of the Select Committee on the Bill to amend Act XXI. of 1848

Sir W Mansfield asks leave to propose an amendment to the first order of the day.

ture, and permit him to move his amendment, and so give the Mover of the Bill an opportunity of saying all that he had to say in favour of it. He (Sir William Mansfield) trusted the Council would allow him to do this, if it were only for the purpose of hearing his Honorable and learned friend. The Honorable members were aware that they would shortly lose the services of the Honorable Mr. Westropp. However much they might congratulate him on his elevation to the Bench of the High Court, still, they could not but regret the great loss the Council would sustain in losing his most valuable assistance, and though the Honorable gentleman would no doubt make provision for the charge of his Bill after he had himself left the Council, still it was not to be expected that any other Honorable member would be able to say so much in support of the measure as would be said by him whose peculiar property it was. It was well known that he (Sir W. Mansfield) was opposed to the Bill; and the course he advocated was therefore adverse to the policy he might adopt in his own interest. But the interest of the Public required that all that could be said for the measure should be said by those most competent to say it, and for this reason he would ask permission of the Council to propose an amendment to the first Order of the Day. If this permission were granted, an opportunity would be given to the Mover of again discussing the principle of the Bill.

The PRESIDENT said that such an amendment as was contemplated by Sir W. Mansfield could only be moved when the Council was in Committee on the Bill itself, considering it Clause by Clause, and was not in form as a motion on considering the Report.

The Honorable Mr. WESTROPP asked for leave to make a few remarks in reply to His Excellency the Commander-in-Chief, and said that he felt much indebted to Sir William Mansfield for his kind wish to give him an opportunity of discussing the principle of the Bill, and thought it probable that the President and Council would, as the present was the last occasion in which he would have an opportunity of addressing them, extend to him a similar indulgence. Consistently with his statement, on the first reading of the Bill, that he had no desire to carry the Bill through the Council with undue haste, or to shun inquiry into the alleged necessity for it, it was his intention now to move that the consideration of the Report be adjourned until the next meeting of Council. Having heard from his Honorable friend Mr. Scott, that the Bombay Chamber of Commerce had the measure under their consideration, he thought it most desirable that they should have a sufficient opportunity of canvassing its provisions, and that the Council should be informed of the result of those deliberations. It would be highly useful to the Council to be informed of the views of so important and influential a body. Those views might be communicated through his Honorable friend Mr. Scott, he being a member of the Chamber of Commerce, and

The President points out that such an amendment can only be moved when the Council is in Committee on the Bill.

Mr. Westropp speaks in favour of the principle of the Bill to amend Act XXI of 1848, and moves that the further consideration of the Bill be deferred to the next meeting of the Council.

they would, of course, meet with the most attentive consideration. Henceforward the Bill would be in the charge of his Honorable friend Mr. Scott, who would, no doubt, treat it with all the care and anxiety due to an adopted child. He (Mr. Westropp) thought it a very healthy sign that so much discussion had taken place outside this Council with regard to the Bill. Considerable diversity of opinion seemed to exist as to its merits. The more it was criticised, the better pleased its author would be. He had no wish to force on the Legislature or community a Bill, either erroneous in principle, or faulty in detail, nor would he be above receiving a good suggestion for its improvement from any quarter whence it might come. He considered however, that many of the objections made to the measure were untenable in principle, and many were founded on a misapprehension as to its scope and effect, and as to the existing state of the law, both here and in Great Britain. For instance, an impression had gone abroad that a man who had no cotton actually in hand was making a time-bargain,—that is to say, a wagering agreement within the meaning of Act XXI. of 1848, if he contracted to deliver a certain amount of cotton on a certain date. This is not necessarily the case. If there were an intention to deliver, the transaction was perfectly genuine. It is only when, *at the time of making the contract*, there is no intention of delivering the cotton, but simply an arrangement to receive the difference between the contract price and the market rate, or any other conventionally ascertained rate at the time of pretended delivery, that the transaction is a wagering agreement within Act XXI. of 1848, and assumes the character of a bet on the price of cotton at a certain date. A merchant making a *bond-fide* contract to sell or deliver, may enforce its performance, or sue for damages for its breach, whether or not the party bound to deliver had the commodity in his possession at the time of making the contract. The present Bill does not in any respect alter or affect that right of the vendor or purchaser. He (Mr. Westropp) would here refer to a passage in the 13th paragraph of the Report: “Your Committee have been unable to discover that any instance has occurred in which the Courts have held an agreement to have been one by way of gaming or wagering, in which such decision has been overturned or even impeached. The burden of proving that a transaction is an agreement by way of gaming or wagering, lies on the party who alleges it to be so, and your Committee do not apprehend that the Courts will be henceforward less strict than they have hitherto been, in requiring clear proof of such an allegation.” A party defending himself under Act XXI. of 1848, or the present Bill, must raise a special issue, putting forward the enactment on which he relies, so that the plaintiff may not be taken by surprise at the trial. He (Mr. Westropp) knew some few cases in which there could be little doubt that time-bargains had, even since the passing of Act XXI. of 1848, been successfully sued

on by the principals, the very full measure of proof which the Court requires that the transactions were mere wagers being wanting. But he had never known, nor had he been able to discover, any converse case in which a *bond fide* transaction had been ruled to be a wagering transaction. There was not, he believed, the slightest ground for alarm on the part of the mercantile community, that any such decisions would be made. In a case of doubt the Courts would be bound to support the validity of the contract: It had been said at the debate on the first reading by Sir William Mansfield, that the present Bill was opposed to the principles which guided modern legislation, but surely there could not be any more signal error than that statement. The repeal by the Stat. 23 and 24 Vic., c. 28 of Sir John Barnard's Act, (7 and 8 Geo. II., c. 8,) and of the Act which rendered it perpetual, had been elsewhere cited as an instance of modern legislation contrary to the principle of this Bill, and it had been asserted that time-bargains in stock were now recognized as valid by the law of England. That was quite a mistake. Time-bargains in stock are, in common with all other wagering agreements, still subject in England to the 18th Section of the Stat. 8 and 9 Vic., c. 109, and are therefore null and void, and incapable of being enforced by suit. That statute was left untouched by the Stat. 23 and 24 Vic., c. 28. Sir John Barnard's Act was moreover of a character widely different from the present Bill. That statute imposed a penalty of £500 upon persons entering into contracts or agreements upon which any premium, or consideration in the nature of a premium, should be given or paid for liberty to put upon, or to deliver any public or joint-stock, or other public securities whatsoever, or any part, share, or interest therein, and also all wagers, and contracts in the nature of wagers, &c., and declared that all such contracts and wagers, &c., should be null and void. The fifth section of it confounded legitimate transactions with wagering transactions, and subjected to a penalty of £100 any person who voluntarily compounded by paying or receiving the difference for not delivering, transferring, or assigning stock according to contract. The crowning injustice of that Act lay in its 8th section, which actually subjected persons contracting to sell stock, which they were not possessed of, or entitled to at the time of making the contract, to a penalty of £500, and further subjected the broker who negotiated the contract to a fine of £100. So that although the vendor might have fully intended to procure and deliver at the appointed time the stock, yet inasmuch as he was not possessed of or entitled to it, at the time of making the contract, he was liable to a fine of £500, and his broker to a fine of £100. That statute also compelled any person to answer, upon oath, bills preferred against him in Chancery, seeking a discovery of offences against the statute, and it contained many other oppressive and complicated provisions. Amongst others it introduced that pest of society, the

common informer, whom it allowed to recover penalties from persons offending against its provisions. In advocating the repeal of Sir J. Barnard's Act, the Solicitor General expressly said that there was no intention of intermeddling with the Statute 8 and 9 Vic., c. 109, sec. 18, or of rendering time-bargains in stock valid. The existence of the Statute 8 and 9 Vic., c. 109, sec. 18, enabled the Legislature of England to repeal the oppressive and unjust Statute 7 and 8 Geo. II., c. 8, (Sir J. Barnard's Act,) without detriment to the public, and without encouragement to the gambler in stock. From the 33rd year of the reign of Henry the Eighth, down to the present time, the efforts of the British Legislature have been directed with assiduous care against gambling and gaming-houses. From time to time gambling, as might be expected, exhibited itself in different phases, sometimes in the form of faro, then as basset, afterwards as roulette hazard, &c. Each was successively put down by the Legislature as the exigency arose. When it was discovered that the arm of the law, as constituted by the Statute 8 and 9 Vic., c. 109, and the succeeding statutes, was not long or powerful enough to reach and strike down gambling in the last phase which it assumed, namely, that of betting-offices, Sir Alexander Cockburn, then Attorney-General, determined to rid Great Britain of that nuisance, introduced and carried the Statute 16 and 17 Vic., c. 119, which at once laid the axe to the root of this evil. That Act commenced thus:—"Whereas a kind of gaming "has of late sprung up tending to the *injury* and *demoralization* of improvident persons by the opening of places called Betting-Houses, or Offices," &c. That was the solemn and deliberate expression of the opinion of the Lords and Commons of England of the character of gambling in the year 1853, and not either in the middle or dark ages as some of the opponents of the present Bill would appear to suppose. The evil was extensive and popular, but nevertheless Parliament did not for one moment hesitate as to the propriety of crushing it. How then can it be said with even the show of truth, that the present measure is contrary to the spirit of recent legislation. No political economist either in 1853, or since, has condemned the Act for the suppression of betting-offices. It not only punished those who kept or advertised such establishments with heavy penalties of fine and imprisonment, with or without hard labour, but its 5th section compelled the refund of any deposit on any bet received by the keeper, manager, or assistant of any such establishment. The principle, therefore, of the 7th and 8th Sections of the present Bill is fully sanctioned by that section of the Betting-Office Act, which there, as in the present Bill, is applied to the go-between. A reference to the enactments already mentioned, and to the numerous Acts mentioned in the Report of the Committee, especially in the 15th paragraph of it, must satisfy any reasonable person that the British Legislature has never flinched in its determination to keep down the vice of gambling with



a strong hand, and that the present Bill is in full accordance with the current of modern legislation. As it is in England, so it is in France. The French Code prohibits the maintenance of actions to enforce gambling contracts. Turning, then, to India, we find that gambling is discountenanced by other Acts besides Acts XXI. of 1848. Look at Sections 56 to 66 of the Presidency Towns Police Act (XIII. of 1856). These Sections deal very severely with gambling. Section 66 indeed goes somewhat further than he (Mr. Westropp) would feel inclined to go. It authorized a police officer to apprehend without warrant any person found gambling with cards, dice, counters, money, or other instruments of gaming in any public street, place, or thoroughfare, or publicly fighting cocks, or present as a spectator of such cock-fighting, and such person is declared liable to a fine of 20 Rupees, or to imprisonment with or without hard labour for any term exceeding one month, and such instruments of gaming *and money* shall be forfeited. The 56th Section renders the keeper of a gaming-house liable to a fine of 500 Rupees, or to imprisonment not exceeding three months. The same Section subjects any person who advances or furnishes money for the purpose of gaming with persons frequenting such house, &c. to similar penalties. A person found playing in such a house is, by the 57th Section, liable to a fine of Rupees 200, or imprisonment for one month. If he (Mr. Westropp) had penned his Bill in the spirit of Act XIII. of 1856, he would have fined and imprisoned shroffs who enabled parties to enter into time-bargains. It was certainly rather hard that a party of poor natives sitting down to a rubber of whist on the Bombay Esplanade, should render themselves liable to a fine or imprisonment, while rich shroffs might with complete impunity set at defiance an Act of the Legislature, and injure the honest and fair-trading mercantile community and the manufacturers and consumers of cotton everywhere by their gigantic system of betting on the price of that commodity. The information received by the Committee, and the knowledge of the facts expressed by several members of it, warranted him in making that statement. The Report found that statement to be true, and left no question open, except whether the principle of Act XXI. of 1848 was correct. The Report was so framed in order to give any member of the Committee who might disapprove of Act XXI. of 1848 the opportunity of voting on that ground against the second reading of the Bill. Is any Honorable member prepared to bring in a Bill to repeal Act XXI. of 1848? Has that Act or the Stat. 8 and 9 Vic, c. 109, sec. 18, on which it is founded, ever been condemned? He who is prepared to condemn them or the Betting-office Act, must be prepared to demand their repeal, and the right of free gambling, and the great principle of non-intervention with gambling-houses and betting offices. He (Mr. Westropp) trusted that no member of that Committee would be found to advocate such a course, contrary alike to

morality, good policy, and to the whole course of British Legislation. For several years Act XXI, of 1848 was effective. No wholesale evasion of it had taken place until 1858 or 1859. The defect in Act XXI, of 1848 became apparent in 1859, when the decision referred to in the Statement of Objects and Reasons for the present Bill, in the suit of Joravermull Sewlall against Byramjee Dadabhoy was made, establishing the right of the shroff to recover money paid, and brokerage and commission in respect of time-bargains entered into by him on behalf of his constituent. Thenceforth the evasion was wholesale, and time-bargains became, through the instrumentality of the shroffs, more rife than ever. It would be no answer to the present Bill to say, "Act XXI. of 1848 has become *effete*: let it remain so" It is not *effete*; it still prevents principals from suing each other on wagering contracts of any description. To keep it unamended on the Statute Book would be to render the Courts of Justice the accomplices of the shroffs in the evasion of the Act, and to hold out a premium to the latter at the expense of their principals; in fact, to say to the agent that he might carry out by the connivance of the law, a wagering contract, and to the principal that he might not. The only manly, straightforward, and consistent course for an opponent of the principle of the present Bill, will be to advocate a repeal of Act XXI, of 1848; and he (Mr. Westropp) apprehended that if any person had the temerity to propose a measure for the repeal of Act XXI. of 1848, or of the Stat 8 and 9 Vic., c 106, sec. 18, and the like Acts, he would find very few thinking persons who would concur with him in thus encouraging and legalising gambling in all its branches. For his part he was content to rely on the Report of the Select Committee, and on the statements of the Judges of the High Court, who had rightly laid the whole of the mischief occasioned by time-bargains at the door of the shroffs. The shroff in fact held the same relation to the makers of time-bargains, as is held by receivers of stolen goods to thieves. If there were no receivers of stolen goods there would be few thieves, and if there were no shroffs, there would be few makers of time-bargains. The persons who engage in time-bargains with the aid of shroffs are of two classes: first, those who have no credit of their own, and require the guarantee of the shroff in the bazaar; and secondly, those who, though possessed of ample means and credit, are ashamed to let it be known that they engage in such disreputable transactions. Neither of these parties would gamble in cotton or opium, if there were no shroffs to give them credit, and to hide them from shame. But in saying that he hoped his Bill, if passed, would put an end to such gambling, he must be understood as saying so *sub modo*. No legislation could perhaps extinguish gambling. But the impossibility of obtaining complete success is not a reason for abstaining from legislation in any case. Partial success, partial prevention,

is all that can be attained in most cases. So long as human nature is what it is, so long will murders and robberies be committed. But it is still the duty of the Legislature to do what it can to put down such crimes, and so it is the duty of the Legislature to repress, so far as it can, an immorality injurious to community, and to the course of legitimate trade. With respect to the present frame of the Bill, he (Mr. Westropp) would remark that, although he fully concurred in the recommendation of the Select Committee that the Bill should be passed without any important alteration, yet he was not disposed to show any superstitious or obstinate adherence to its details. Should a majority of the Council be of opinion that Section I. was too wide in its scope, and that the Bill should throughout be confined to contracts collateral to wagering agreements on the price or value of cotton, opium, or other articles of merchandize, in the same manner as the 7th and 8th Sections of it are, that alteration might be easily made, and he would gladly assist his Honorable friend Mr. Scott in remodelling the measure. But, for his part, he thought it safer to leave the Bill as it was. It would not affect any legitimate or *bonâ fide* transactions. There was a great deal of Hindoo and other ingenuity in Bombay, and if the Bill were narrowed in its scope, or too strict a definition of a collateral contract were attempted, a way might be opened for parties to evade its provisions, and those of Act XXI of 1848. He would now put himself in order by moving that the further consideration of the Bill be deferred until the next meeting of the Council."

His Excellency SIR WILLIAM MANSFIELD then said "Sir, I desire to speak on this motion. I had intended to move an amendment which should re-open the discussion on the principle of the Bill for the suppression of time-bargains before the Reports of the Select Committee should be considered. The course pursued by my Honorable friend leads to the same purpose, he having informed us that the Chamber of Commerce are considering the questions involved in the Bill, and that this Council might therefore not think it expedient to proceed to a decisive vote, till we shall be favoured with the opinions of the Chamber of Commerce. Before coming to the merits of the question, I must first invite the attention of the Council to the position in which it stands. When the Bill was first introduced by my Honorable and learned friend, the Standing Orders were suspended to enable him to present it to the Council without the necessary notice. The remarks he then made were, owing to my previous want of acquaintance with the subject, entirely unintelligible to me, as I venture to think they were to some others in this room. When I obtained a further knowledge of the subject, I opposed the first reading of the Bill, because, amongst other reasons, it appeared to me that no facts had been laid before the Council which warranted us to proceed to legislate on the matter. In this opinion I was supported by my Honorable friend Mr. Frere. I maintain that we

Sir W. Mansfield  
objects to the prin-  
ciple of the Bill

should not be surprised into legislation without being duly informed, in a regular manner, on all the facts which should lead to such a course. My Honorable friend opposite, Mr. Anderson, who supported the first reading, owned that until he had heard the Honorable Mr. Westropp's first remarks, he had been ignorant of the matter concerned. Considering the high official position of my Honorable friend, this is a proof that the facts were not to be found on the surface. He said that afterwards he had made some inquiries; but surely this is not the sort of proof on which we should commit ourselves to legislation. Well, having got thus far, the Standing Orders were again suspended, owing to the contemplated early removal of the Honorable member who had charge of the Bill to another scene, and the first reading was passed, although the Bill had not yet been translated. Thus, whereas some of the members of the Council complained that they were called on to legislate without information, so the class which was attacked by the Bill—the shroffs who had received such hard language from the Honorable Mr. Westropp—these men who perform the most important functions of trade and exchange; these men who are at the same time stigmatised as being like receivers of stolen goods, might complain that they were absolutely taken by surprise. The Council is aware that, in his despatches and orders under which the Legislative Council is constituted, the Secretary of State has warned us that the danger we have to guard against most carefully is hasty legislation. As yet we have had no facts laid before us, not a tittle of what can be called evidence. We have had the opinions of the Chief Justice, of Mr. Westropp, of Mr. Couch, of Sir J. Arnould, of Mr. McIlwraith, of Mr. Steel, but of real evidence we have not had one tittle. The shroffs have been treated to abuse and hard names; but we know that this is the lot of bankers and tradesmen of all degrees when they ply a lucrative trade and insist on their dues. May we not therefore say, that to legislate without information, without evidence, and with opinions in the place of facts, is to render ourselves obnoxious to the charge of hasty legislation, against which we have been warned by the Secretary of State. In the face of contradiction I have always maintained that a Select Committee of this Council is not in a position to obtain the information, when it is of such a kind as that required by the measure under consideration. We are all of us men of business engaged in engrossing occupations. I appeal to all Honorable members present to bear me out in my remarks, that we can spare but a very short time in the twenty-four hours for Legislative business, and that it is a very serious matter when we have to attend to either meetings of the Council or Select Committees. In short, every such meeting is a matter of great personal inconvenience, simply owing to the manner in which our time is taken up. Now, I should like to know how a Select Committee of this Council, under such circumstances, could gain evidence

on such points as this Bill involves? How can it have time to summon witnesses in the first place, and then to examine, and sift, and collate, and reduce the evidence in the second? It is evident that what is wanted for such a purpose, as I have maintained before, is to have a Government Commission of Inquiry, which would have a paid Secretary with no other business on his hands. I do not say that a Select Committee has not the necessary authority, it is not a question of authority, but a Select Committee has not the power and the capacity. Officially, it has all the authority required to conduct the inquiry, but I repeat that, practically, it is without the power for the reasons I have given, and that, therefore, it cannot conduct such an inquiry to a satisfactory conclusion. I now proceed to consider the value of certain analogies which were used in the last debate by my Honorable friend opposite (Mr Anderson) in argument against my views. Thus the Honorable gentleman defended the Bill on the ground that lotteries had been abolished as a matter of public morality. But I deny the correctness of the analogy. Lotteries were abolished in England because, generally, they were State institutions for augmenting the public revenue; it was held that it was a wrong thing to excite the people to gambling for such a public purpose. In the time of Queen Anne private lotteries were voted to be a nuisance, but I am not aware that, of late years, or at the time that lotteries were abolished by law, it could be said that private lotteries in any manner entered into the habits of the English people. The exception of that very *dilettante* affair, the Art Union Institution, cannot certainly be quoted. It will be admitted that it is one thing to determine whether a means of filling the public treasury is improper, and it is quite another to interfere with private speculation as is proposed by this Bill. It is true that when public lotteries were abolished, the opportunity was taken to include private lotteries also; but it was not against private lotteries that the action of the Legislature was set in motion. (Sir William Mansfield here read an extract from the *Encyclopædia Britannica* regarding the history of British lotteries.) Mr Anderson, then, with a happy audacity instanced the case of prevention of prostitution, as an analogy which might be quoted, and he gave the example of the abolished night-houses as being a case in point of the interference of the Legislature. Really, unfortunate shroffs had something to complain of, by one Honorable member they were bracketed with receivers of stolen goods, and by another with the owners of night-houses. But really and truly the analogy, if pursued, is all on my side of the question. If the object is to protect the public morality, we should surely attack those who are guilty of the vice, instead of coming down on those who are assumed to be accessories. But the true analogy seems to be of the Lock Hospital, which is an institution to protect the immorality of those who actually cause and create prostitution. How-

ever, I do not wish to lay any weight on argument from such analogies ; such analogies drawn from different things are always unsatisfactory. Let us proceed to the question itself. It was admitted on a former occasion, both by Mr Westropp and Mr. Scott, that the Bill could not escape the charge of, to a certain extent, protecting dishonesty by releasing a man on certain grounds from discharging the obligations which he had incurred. I desire particularly to guard myself, and by no means to impute, even by a shadow, more strength to the admissions of my Honorable friends than they intended to convey ; but still I conceive that what was admitted is such a blot on the Bill that it cannot pass. Sir Joseph Arnould gives a modified support to the Bill, but he declines to entertain that portion of it to which I now refer. Thus he says, "The man who enters into a gambling contract is, it is conceded, guilty of an immorality ; but the man who after having entered into a gambling contract afterwards breaks it to avoid loss, is guilty of a second immorality. The State ought not to permit the machinery of courts of justice to be employed in order to protect from the consequences of one immorality a litigant whose only '*locus standi*' is a second immorality." (Sir William Mansfield then proceeded to attribute a like meaning to Mr. Couch, but was reminded by the Honorable Mr. Westropp that he must have misapprehended the clause alluded to in Mr. Couch's letter.) If I turn back to the Statement of Objects and Reasons accompanying the first draft of the Bill, I find that Sir Matthew Sausse may, perhaps, even side with me when he indicates he contemplated recommending to the Legislature that a certificate should not be granted to an insolvent for six months, if it should be discovered that the insolvent had been a party to a time-bargain. The Honorable the Chief Justice seems here to have hit upon the right principle if it be necessary to legislate on this matter, as he would thus render the principal responsible instead of the accessory. I have asked more than once for a definition of what is meant by collateral contract, but I have not as yet received an answer. I have asked whether a collateral contract includes the repayment of advances by a person who has borrowed money. When money is advanced to another person, is the party who advances it debarred from recovering it in any circumstances by the use made of it by the other party ? It seems to me that when you once allow yourself to question the reason of a loan as an element to be considered in the question of the recovery of it, you place yourself in an unsatisfactory position, and are in danger of making a daring invasion on the rights of property. It is a most serious thing to make a precedent for exonerating a man from paying his engagements ; if commercial morality is touched, it is impossible to be answerable for the consequences, or if in any manner you interfere with the principle of original responsibility. The larger the transactions of the merchants, the more important are such considerations to

them. The petty dealer may succeed in spite of a principle being violated, but not so the great merchant with his numberless customers and transactions. It is known that in the case of horse-racing no action will hold to protect the winners of bets; but I have asked, and without getting an answer, whether if money, which had been lent, were squandered in bets and races, the lender would be debarred from recovering it. My Honorable friend opposite on a late occasion, when touching the analogy of wagers on horse-racing, had said that they were generally settled by laws of honour. But in truth questions of horse-racing, which generally turn on facts such as the age of a horse, do frequently come into courts of law, and are settled there. Take, for instance, the very actions referred to by my Honorable friend which occurred in 1844, with respect to the age of the horse *Running Rein*, if I recollect rightly.

(Here the Honorable Mr. ANDERSON stopped Sir William Mansfield, and intimated that he had alluded to wagers, whereas stakes were recovered at law.)

In the course of this argument it has often been alleged that prices are injuriously affected by the abuse of time-bargains. I must take leave to join issue on that assertion, it being entirely opposed to all the notions of the greatest economists both of this and the last generation. It always happens that when the attempt is made to put on a restriction, we are told that the absence of it affects prices, and then all the banded strength of scientific writers is demanded to overcome the prejudice which has been thus caused. But further, if prices are really affected by the abuse of time-bargains, it is necessary that the fact should be shown in evidence, and not merely be stated as an opinion. The truth is, the price of cotton depends on its value in the several markets: if there is a dearth at Liverpool, or New York, there is a rise in prices at Bombay. If the distant markets have a glut, Bombay experiences a fall of price, and markets are not really affected by fictitious pretences of sales. There is, indeed, one result of these time-bargains which I can easily understand being very disagreeable; it follows that the trouble of the great merchant is immensely increased by the gambling and puddling of 5000 small speculators. But I should like to know what is the business of merchants, and what is it that causes the success and fortune of one, and the ruin of another? What is it but that one has the ability and the acumen to deal with difficult calculations and puzzling chances, while the other is without such qualities. But I should like to know what a time-bargain is? Let us suppose a great merchant borrowing £400,000 to take up cotton at 15 per-cent. He despatches his cotton to Liverpool in the belief that when it arrives the price will have risen to such an amount that he will not only pay off the loan with its 15 per-cent., but obtain a large profit besides. In short, he backs time. What is this but a time-bargain

on a great scale, which I take to be a very ordinary operation by which large fortunes are made. I draw attention to this as showing the great difficulty of discriminating in these matters. Where are you to draw your distinction? If you are to legislate against bargains in one form, you will have a great difficulty in escaping the other. I now proceed to look at what has been called the evidence. In the opinion of Mr Kelly it is mentioned that he had sent out upwards of sixty notices for clients. What is the meaning of this? Do these notices affect the delivery of goods, or what? In short, what are these notices for.

(Here the Honorable Mr. WESTROPP explained the nature of these notices, saying.—The delivery mentioned in them is nominal. Such notices are of two sorts, one being from one shroff in the character of principal to another shroff in the same character pretending to call for delivery of the goods, but really only seeking to procure payment of the difference between the betting and the settling price. The other sort of notice is from a shroff to his constituent, seeking reimbursement of money paid for him on account of losses in time-bargains and commission and brokerage on these bargains.)

I would ask what is the value of Mr Kelly's letter to an outsider? If we go on to Mr. McIlwraith's letter we find him expressing very trenchant opinions, but all that he says is merely opinion, in which we are certainly not bound to agree. He is so positive that he does not think it necessary to enter into lengthened arguments. Again, Mr. Steel complains because so many people engage in these bets or bargains. Thus he says that the Bill "is certainly calculated to interfere with the liberty of the gambler, but on the other hand it will only secure the liberty of the merchant to trade at a market price free from undue influences." I should like to know what he means by undue influences. He might as well say that the difficulties of wind and weather are undue influences, or any other chance, without contending with which commerce would have no risks. In such case I suppose we should have a commercial Utopia. Every man would be safe, and every one would realize large fortunes,—in short, I imagine every one would be a merchant. But as I have said before, a clever man contends against influences of every sort; a stupid one cannot meet them. The former makes a fortune, the latter is ruined. That forms no ground for legislation. Why should the capitalist—the merchant—be protected more than others? In looking further down the documents I come to the agreement of the sixty shroffs. I read it, but I fairly admit to my Honorable friend that it is beyond me. If I look to the Bill in its amended form, in considering the first Clause, I accept my Honorable friend's declaration that in the opinion of some of the gentlemen he has consulted, it may go too far, although such is not his own opinion. We may therefore assume, that



if we get into Committee, some changes would have to be made in this Clause. I therefore pass it by without further remark. With respect to the second Clause, if the Bill had stopped there, although I do not think it is needed, there would have been no occasion for strong opposition. There is no doubt that the commission and brokerage alluded to come under the head of collateral contracts such as those objected to by the Judges. To the third Clause I have the strongest objection, as it seems to me to open the door widely to interference with property and the promotion of malicious suits, each of which would depend on the definition of wagering or gaming. It also appears to me that this Clause will not only affect opium and cotton bargains, but every description of jobbing in stock, or shares which shall not be made for ready money,—in short, of almost every transaction for what is called “the account.” The fifth Clause seems to me liable to the same criticism. The sixth Clause declares that “any advance made, or sum of money, &c. entrusted to any shroff, &c, to abide the event of any agreement for paying, or wagering, shall be recoverable by the depositor, &c, whether such depositor be or be not the loser, &c.” I must urge again upon the Council that what is here stated is opposed to morality and the first principles of justice. It is impossible to dwell too strongly on this point, and that we must not invade the principle that every man shall recover his due. What does Blackstone say about this? “Such among others are these principles, that we should live honestly, should hurt nobody, and should render to every one his due; to which three general precepts Justinian has reduced the whole doctrine of law: *Juris præcepta sunt hæc, honeste vivere, alterum non lædere, suum cuique tribuere*” The seventh and eighth Clauses are of similar character to the sixth. They alike tend to shield the dishonest man at the expense of the agent who acts by his order according to the nature of his business. I can only say that they appear to me to place the shroffs absolutely at the mercy of dishonest and designing men. The latter will always have it in their power to allege that an advance was made for wagering purposes, and the *onus* of disproof will be thrown on the shroff, or banker, who has given accommodation according to the custom of his house. It cannot be disputed that, with the exception of one or two acts, the course proposed to us to follow is opposed to the whole spirit of modern legislation. I do not think that the Betting-Houses Act, which was meant to meet very exceptional circumstances of the lowest class of population, can be quoted as a serious precedent. But further I deny that we ought to be bound by precedents in such a matter. We must look to what we consider right according to the first principles of morality, and we must refuse to be bound by one or two precedents of an exceptional character. But there is another most important point. You must beware of an attempt to trammel and restrict the people too much.

They can never improve in morals, and exercise a proper responsibility for themselves if they are bandaged and swathed in petty restrictions. A man must learn to appreciate the consequences of his own immoral acts, and by those consequences his improvement will be worked out. I consider that the Courts of Law at Bombay, where the lessons of justice are read by Judges of the highest character, and whose bar is laid by lawyers of the highest honour and learning, afford the school where men can best learn to appreciate the consequences of their actions, and where, therefore, the object of this Bill can be attained without further legislation.

Mr Westropp  
replies.

The Honorable Mr. WESTROPP in reply said that, knowing that the President and many members of the Council had a pressing engagement elsewhere he felt that at that late hour he must content himself by noticing as briefly as possible the graver mistakes only into which His Excellency the Commander-in-Chief had fallen. Before advertng to them, he would, however, observe with reference to what His Excellency had said as to hasty legislation, that the motion with which he (Mr. Westropp) had concluded ought to have protected him from the supposition that he desired the Council to proceed with this Bill without due deliberation. Sir William Mansfield had stated that in suits brought under Sections VII. and VIII. of the Bill, the *onus* would be thrown on the shroff or the winner of proving that the money sought to be recovered from the shroff or the winner was not advanced in respect of wagering agreements. His Excellency, however, was quite in error in supposing that such would be the case. Both with regard to those Sections and all the other Sections in the Bill, the *onus* of proving any advance or payment to have been made in respect of a wagering agreement would be cast upon the party who asserted such to be the fact. If a shroff or any other man wilfully advanced his money for the furtherance of purposes immoral, and even now, under the ban of Act XXI. of 1848, it was but maudlin sympathy on the part of those who condoled with him on his inability to recover it. It would be difficult for any person still rational to furnish forth much compassion for a man compelled to refund money obtained upon a betting transaction, forbidden by the existing law both here and in Great Britain, beneficial to nobody except the idle gambler, and detrimental to many by its pernicious effect on the *bond-fide* market for merchandize. Cotton, which might fairly be deemed almost a necessary of life, ought especially to be protected from such illegitimate operations. Sir William Mansfield had asked whether money lent to a gentleman, which the latter afterwards squandered in wagers on a horse-race, could be recovered by the lender notwithstanding the present Bill. It certainly could be recovered by the lender if he did not lend it for that purpose. If, however, he lent it actually for that purpose, the first Clause of the Bill would prevent him from being able to recover it by suit. But inasmuch

as His Excellency had put that question when he was dealing with the 7th and 8th Clauses of the Bill, he probably meant to ask whether money paid in respect of a lost wager on a horse-race could under those Sections be recovered from the winner by the loser. It most certainly could not. Those Sections applied only to wagers or wagering agreements on the price or value of cotton, opium, or other articles of merchandize. So that if the loser of a wager on a horse-race thought proper to pay the amount, that transaction could not be re-opened. His Excellency seemed to hold that the 7th and 8th Clauses of the Bill were framed to protect the dishonest man at the expense of the innocent agent. Here again His Excellency's logic was at fault. The intention of those Clauses was to deter the agent—that is to say, the shroffs (who have with unbounded effrontery banded themselves together by a solemn league and covenant to set the Legislature at defiance, and to violate the law of the land)—from persisting in their illegal, immoral, and mischievous purpose. Those constituents who availed themselves of this Bill in order to compel shroffs to refund might be disreputable too. It was not, however, for their sakes that those Clauses had been framed, but for the benefit of the industrious and honest trader and the innocent manufacturer and consumer. The casual protection given to some dishonest and unsuccessful gamblers was but a slender evil intermixed with a great good, namely, the discouragement of this especially mischievous phase of gambling. Leaving for the present the shroffs—those guileless and meritorious clients of His Excellency,—and turning to his remarks on the 4th Section of the Bill, that it established a novel and dangerous precedent in enabling Courts of Justice to inquire into the consideration of judgments, deeds, and other securities, he felt bound to inform His Excellency that there was nothing whatever either novel or dangerous in such a power. Courts are entitled to, and do constantly inquire into the consideration for which a deed or other security is given, and if it appear on investigation that such a document has been given for any illegal or fraudulent purpose, or *contra bonos mores*, it will be set aside or treated as null and void. Take as an example the shocking instance of a deed of settlement made in favour of a female, with a view to accomplish her seduction, and that the seducer gaining his object, and subsequently is vile enough to repudiate alike both the victim and the settlement, the law will not enforce it in her favour. The reason of this is that having been given in consideration of future illicit cohabitation, the deed was *contra bonos mores*, and is therefore null and void. This is not Statute Law; it is the Common Law of England. Even past cohabitation is not such a consideration as will support a simple contract. It will not, however, invalidate a deed or document under seal. It would be a useless waste of time at this late hour to multiply instances in which Courts of equity and of law rigorously investigate the consideration for

which documents are given. Such powers are absolutely indispensable for the administration of justice, and have been exercised with benefit to the public and without complaint in the case of documents impeached on the ground of fraud, undue influence, immorality, or illegality. In making that objection His Excellency had travelled into a region that was unknown to him. The Council was further told by him that this Bill would hamper all exchange operations. If this were the conclusion to which His Excellency had arrived, although he may have read the Bill, he most assuredly had not understood it. It had nothing whatever to do with exchange operations, or with any *bond-fide* transactions for "the account." Those which are not *bond-fide*—those, in simple language, which are mere time-bargains—are already void under Act XXI. of 1848. Again, he was in error in supposing that betting-offices had been the resort in England of the poor and humble only. Those offices had been used by persons of the higher and middle classes also, and the evil was considered so extensive, and the necessity for checking it so urgent, that the Act to suppress them was passed rapidly. It had worked well, and met with the general support of Parliament. Who will venture to affirm that the common gaming-house, which for centuries before the establishment of the betting offices had been declared by Statute Law to be a nuisance and indictable as such, was the special resort of the poor and needy? It was notoriously the resort of the rich, the improvident, and the idle of all classes. Next, as to Sir William Mansfield's objection that the Select Committee had not obtained any evidence which would justify the Council in amending Act XXI. of 1848, he would only mention that Act XXI. of 1848 was passed on precisely the same sort of evidence as that on which the Select Committee had relied in framing their Report, namely, the experience of Courts of Justice. The agreement signed by the sixty shroffs was of itself sufficient evidence, established as its real character was in many cases in the High Court, viz. the treaty of sixty shroffs for the maintenance and encouragement of gambling on the price of cotton. Those decisions stand in full force and unimpeached. Not a single shroff now ventures to contend in Court that its character was otherwise. His Excellency, however, had said that the document was beyond his comprehension. No doubt it was intended to be so. That document had been purposely prepared so as not to disclose its true character further than could be avoided. The object of the sixty shroffs who had signed it was to throw sand into the eyes of the Court, and to make the Judges believe that the transactions to which the document referred were of genuine character, and contemplated the actual delivery of cotton. It was not until after careful and searching investigation that the true character of the agreement had been discovered. Again His Excellency, with a strange confusion of thought and language, had said that what the Committee had supplied to the Council were only

opinions—not facts. But he (Mr. Westropp) would say, that what the Judges of the High Court certified under their hands as having been proved in suits tried by them, was as good evidence, nay, far better than could be procured by a Select Committee or Government commission from other quarters, and was not a matter of opinion, but was entitled to be regarded as conclusive as to any facts within their cognizance, as the Judges would certainly hold any statement made by His Excellency the Commander-in-Chief in regard to facts connected with military matters, of which His Excellency had personal knowledge. The facts of which the Judges spoke were elicited on oath from witnesses examined and cross-examined in a manner not attainable by any Government Commission, where the stimulus of litigation would not be present. As the statements of Sir J Arnould and Mr. Justice Couch stood high in the Courts of Law, so did those of Mr. McIlwraith and Mr. Steel in the Courts of Commerce. Mr. Kelly had been requested by him (Mr. Westropp) to state how many notices in respect of time-bargains he had sent out at one of the periods of nominal delivery (settling days) mentioned in the agreement of the sixty shroffs. He replied that in two or three days he must have sent out at least 350 notices. He (Mr. Westropp) had seen many such notices in Court. They often, as a pretence, demand delivery, but really are mere stimulants to pay the difference. Others again demand reimbursement to the shroffs for moneys paid, or pretended to be paid, by them, on account of their constituents in respect of their wagering contracts. Mr. Kelly had then to deal with 350 recusants. He was only one solicitor amongst many similarly employed. Then, again, how many men must have paid without the gentle impulse of an attorney's letter? These considerations suffice to show, if it were necessary to prove that which is a matter of public notoriety, how wide-spread is the system of gambling in time-bargains nominally on the price of merchandize. It was too late for him to notice—with one exception however—the remaining arguments of Sir William Mansfield, but he had not doubt that his Honorable friends, Mr. Scott and Mr. Anderson, would effectually dispose of those passages in his speech especially pointed towards them, whenever they next had an opportunity of discussing the Bill and the Report upon it. He would, however, say that although many other causes also tended to raise the price of cotton, and amongst these the American war in particular, yet there could not be any doubt that the fictitious demand for cotton, added to the real demand, both being enormous in amount, had a general tendency to force the price upwards. The last mistake of Sir William Mansfield which he (Mr. Westropp) would notice was his extraordinary supposition that the Chief Justice sided in opinion with His Excellency. No doubt the Chief Justice was anxious to have the means of punishing the reckless principal by a future proviso in the Insolvent Act

But if Sir William Mansfield had read the extract from the Chief Justice's judgment given in the Statement of Objects and Reasons for the Bill, he would have seen that the Chief Justice regarded the shroffs as the authors and fosterers of the evil, and, therefore, as the chief delinquents.

Consideration of the Report of the Select Committee on the Bill to amend Act XXI. of 1848 postponed

The question was then put that the first Order of the Day be postponed.

*Carried.*

The President adjourned the Council to Saturday the 12th September, at 3 P.M.

By order of His Excellency the Governor in Council,

H. M. BIRDWOOD,

Under Secretary to Government.

*Poona, 17th September 1863.*

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### PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament, 24 and 25 Victoria, Chapter 67.

The Council met at Poona, on Saturday the 12th September 1863, at 11 A.M.

#### *PRESENT:—*

His Excellency Sir H. B. E. FRERE, K.C.B., Governor of Bombay,  
Presiding.

His Excellency Sir W. R. MANSFIELD, K.C.B.,

The Honorable Mr. W. E. FRERE,

The Honorable Mr. J. D. INVERARITY,

The Honorable Mr. H. L. ANDERSON,

The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY,

The Honorable Mr. JUGONNATH SUNKERSETT,

The Honorable Mr. A. D. ROBERTSON,

The Honorable Mr. M. H. SCOTT.

Report of the Select Committee on the Bill to amend Act XXI of 1848 further considered.

The Council proceeded to consider the Orders of the Day.

The PRESIDENT said that to enable His Excellency Sir William Mansfield to move the amendment of which he had given notice, he would *pro forma* put the question that Section I. of the Bill to amend Act XXI. of 1848 do stand part of the Bill.

His Excellency Sir WILLIAM MANSFIELD said that on two occasions he had been prevented taking a course which would have led to delay, and afforded means for gathering the information of which they stood in need. This happened when he was acting in conjunction with the Honorable Mr. Frere when the Bill went to a first reading. At the last meeting of the Council a debate on the principle had been brought on informally by the learned Judge who had now left the Council, and he had then expressed his views on the measure at some length. But if the Council were now to consider the Bill Clause by Clause, there would be no opportunity of again discussing the principle of the Bill, and no opportunity therefore of rejecting the Bill as erroneous in principle, for if the Council once began considering the Report of the Select Committee, their doing so would imply that the Bill was correct in principle and only needed revision as to its details. It was not to be supposed that the Council would discuss the details of a measure, if it disapproved of it as erroneous in principle. He was anxious therefore that the details of the measure should not be discussed, and to adjourn such a discussion indefinitely, he thought it necessary that before the Report of the Select Committee was brought on for consideration, the amendment of which he had given notice should be put to the Council. If his amendment were moved, a discussion would be induced on the principle of the Bill in quite a formal manner, and this he believed would meet the views of his Honorable friends who differed with him about the measure. He would therefore ask permission to move that the consideration of the Bill to amend Act XXI. of 1848 (for avoiding Wagers) be adjourned to that day six months.

The PRESIDENT said that when the Report of a Select Committee is taken into consideration, it is not implied that members were precluded from discussing the principle of a measure. In taking the Bill into consideration Clause by Clause, Honorable members would be quite unfettered, not only as to the number of times they might speak on any given point, but also as to the subject of their remarks; so that there was nothing to prevent any amount of discussion on the principle of the Bill. It was very true that the former discussions on the principle of the Bill had been brought on in an informal manner; but the Bill itself was introduced under very peculiar circumstances, and he (the President) could not regret that Standing Orders had been set aside to enable the Bill to be carried through its earlier stages, for the interest which this Bill had aroused in so many different quarters

The President proposes to put the question that Sec I of the Bill to amend Act XXI of 1848 stand part of the Bill

Sir W Mansfield objects to the question being put, and moves that the consideration of the Report of the Select Committee on the Bill to amend Act XXI. of 1848 (for avoiding Wagers) be adjourned for six months.

The President says that the proper course was to put the Bill Clause by Clause, and it would be open to Sir W Mansfield to move his amendment after the first Clause of the Bill was put.

sufficiently showed the importance which attached to it. This measure had been brought in by their late colleague the Honorable Mr. Westropp; and he was elevated to a seat on the Bench of the High Court so soon afterwards that it would have been impossible for him to have stated his views on the Bill if some of the Standing Orders of the Council had not been suspended in his favour. He (the President) had objected to the appointment of a Commission of Inquiry, because the appointment of such a Commission was a function that properly belonged to the Executive Government. If the Council of the Governor when assembled for Legislative purposes once trespassed upon such duties, they would soon be involved in most inextricable confusion. For similar reasons he had not acceded to the proposal made by the Honorable Mr. Frere for the appointment of a Special Committee to inquire into the evils which it was the object of this Bill to remedy. Such inquiry was quite within the province of the Select Committee to whom the Bill was referred. The Select Committee were of course aware that it was not imperative for them to submit their Report so soon as they had done. They might have waited until they had collected sufficient evidence as to the evils complained of, to enable each one of the members of the Committee to sign the Report in token of his approval of the principle of the Bill, or else to express his disapproval by not signing the Report. As to the course to be followed by them to-day, His Excellency Sir William Mansfield would understand that though as a matter of convenience the principle of a Bill was generally discussed before the Bill was referred to a Select Committee, yet as a matter of right the principle might be discussed at any time. The regular course for the Council now was to put the Bill Clause by Clause.

Sir W Mansfield states that his only object is to induce a discussion on the principle of the Bill

His Excellency Sir WILLIAM MANSFIELD said that he would defer to His Excellency's ruling, as his only object was to re-induce a discussion on the principle of the Bill, and on no account have it set aside on a point of form. Under the views expressed by His Excellency, it would be competent for him to raise such a discussion after the question was put that that first Section of the proposed Bill do stand part of the Bill. He (Sir William Mansfield) could have no object in pressing his amendment before the question regarding the first Section was put to the Council. But while deferring to His Excellency's ruling he must take this opportunity of saying that it appeared to him that Her Majesty's Secretary of State, with a view of depriving this Council of the character of a Parliament, contemplated that it should always be in Committee; in fact, as was shown by the care taken to direct the Council to abstain from any terms in their Rules which should imply another sense. In short, the Council was a Legislative Department of the Governor's Council.

The President asks whether he

The PRESIDENT said that the view expressed by His Excellency as to the intention of Her Majesty's Secretary of State that the Council should



always be in Committee could scarcely be correct Under Rule 21 of the Standing Orders the Council was empowered to appoint Committees for any purpose connected with its business, it was therefore to be inferred that the Council was not itself in Committee when it appointed a Committee He (the President) had heard with surprise and regret His Excellency's remark that His Excellency and the Honorable Mr. Frere had been twice prevented from bringing on a discussion on the principle of the Bill He would wish, therefore, before proceeding with the Bill, to ask the Honorable Mr. Frere, how he (the President) had prevented as full an inquiry into the necessity for the measure as the Honorable Mr. Frere required

had ever prevented a discussion on the principle of the Bill from being brought on

The Honorable Mr. FRERE in reply referred to the 1st paragraph of the Report of the Committee, in which they have recommended that "the Bill if approved in its main principle by the Honorable Council should be passed without material departure from its present form," and stated that those words had been inserted by the Committee to enable him to question the necessity for the Bill at all He had twice, when the Bill was first introduced, attempted to obtain evidence upon the subject before proceeding to legislate on it, and he had afterwards in Committee applied for further evidence, but all that he could get were the opinions of the Judges of the High Court, Mr. Kelly, Mr. Steel, and Mr. Mellwraith, all of them no doubt most valuable as opinions, but not, he thought, sufficient evidence for the Council to legislate upon, and he should therefore vote, as he had told the members of the Select Committee he should do, against the Bill, until he had further evidence of the necessity for it.

Mr. Frere replies

The PRESIDENT then put the question that the first Section of the Bill to amend Act XXI. of 1848 (for avoiding Wagers) do stand part of the Bill

Question put that Section I stand part of the Bill

His Excellency Sir WILLIAM MANSFIELD moved that the consideration of the Bill to amend Act XXI. of 1848 (for avoiding Wagers) be adjourned to that day six months. He had already expressed his views on the subject on former occasions, and he would therefore reserve any further remarks he might have to offer until he had heard what any Honorable members who wished to oppose his amendment had to say against it.

Sir W Mansfield moves that the consideration of the Bill be adjourned to six months

The Honorable Mr. SCOTT said —

"SIR,—I feel it to be my duty to oppose His Excellency's amendment I regret exceedingly that the Council is deprived of the advice and assistance of the Honorable mover of this Bill, and I must crave their forbearance if I attempt very feebly to supply his place.

Mr Scott opposes Sir W. Mansfield's amendment

"It will be in the recollection of the Council that at our last meeting the debate on this subject was somewhat prematurely brought to a close by your Excellency's engagements elsewhere. I was anxious then, as I am anxious now, to make a few remarks in reply to what then fell from His

Excellency the Commander-in-Chief. With every member of this Council I always listen with the greatest possible respect to what falls from His Excellency's lips, and when I find my opinion differing from his, I am led very carefully to scrutinize the reasoning by which my own conclusions have been arrived at. As regards the present subject, I have so scrutinized with the greatest care all my reasoning, I have weighed with the greatest care all His Excellency's arguments; but I find myself still differing from him on every point.

"I may say at starting that the prevailing feeling in my mind as regards this subject is one of intense astonishment that we should have found so much to say about it; that not only in this Council, but elsewhere, there should have been so much apparent excitement on the subject. In my innocence I supposed that there could be no great doubt as to the meaning of the word *time-bargain* in the common mercantile acceptation of the term; and I imagined that as this Bill aimed merely at preventing the systematic evasion of an existing law, which for 15 years has stood upon our Statute Book unquestioned, nay, tacitly approved by those now so loud in opposition, no great discussion could take place upon its principle. Its principle is that of Act XXI. of 1848, of that of the English Act 8th and 9th Victoria, both hitherto unquestioned and unattacked; its Clauses of course I expected to have discussion about. I did not expect that the means by which it sought to obtain its ends would be equally satisfactory to all, and I expected a fight over these.

"Sir, a *time-bargain* in the common acceptation of the term (the Bill, be it remarked, does not use the term at all) is a *fictional* sale of some commodity or security for nominal delivery at a future date; a *bet* upon the future value of such commodity or security; a simple gambling transaction. This is what I maintain a *time-bargain* to be. By a strange omission in Act XXI. of 1848 a door was left open for its evasion; by the dodge of agency it has been systematically evaded, and this omission it is the object of this Bill to supply.

"Sir, I venture to think that all the arguments which I have heard here, all which I have seen elsewhere, against the Bill, would have been in place had we been now about to pass Act XXI., but are sadly inappropriate now. I have not heard here, nor have I seen elsewhere, any proposal to repeal Act XXI., and I maintain that the only consistent course for those who oppose this Bill would be to agitate for the repeal of Act XXI. There can only be two consistent courses with regard to this matter, either to advocate the repeal of Act XXI., or to support a Bill for rendering it effective. Surely, Sir, His Excellency and the opponents of this Bill will not say 'Act XXI. has partially fulfilled its object, it has kept out of court the principals to a gambling transaction, it has so far done good, let us not

draw the string too tight, let us still leave a loophole by which a certain amount of the evil thing may creep into our courts.'

"When His Excellency the Commander-in-Chief last addressed the Council, he attacked the Report of the Select Committee as being a mere bundle of opinions, as containing no statement of facts supporting these

"His Excellency said.—

"As yet we have had no facts laid before us, not a tittle of what can be called evidence. We have had the opinions of the Chief Justice, of Mr. Westropp, of Mr. Couch, of Sir J Arnould, of Mr McIlwraith, of Mr. Steel, but of real evidence we have not had one tittle.'

"Now, Sir, I protest against this accusation as most unfair. The Committee have not laid before the Council all the evidence which they obtained, all the facts which came before them, it is manifestly impossible that they should do so, but I maintain that they have laid before the Council very full and sufficient evidence in proof of the justice of the conclusions at which they have arrived, they have given *opinions* but they have given *facts* also.

"What is the evidence, what the so-called opinions which the Committee have laid before the Council? First, there are the remarks of the Chief Justice, and these, be it remembered, are contained in no private communication, but in a judgment delivered from the Bench.

"What does Sir Matthew Sausse say?

"We regret very much that we are compelled even indirectly to afford the sanction of the Court to such transactions, but we are bound by the decisions on the English Act analogous to Act XXI. of 1848. We the more regret it because the plaintiffs are the persons who have enabled the defendant to engage in those wagers and time-bargains, but when this case was before the Court on the demurrer, the authorities that were then cited showed plainly that the Act does not exclude such an action as the present by an agent for brokerage and commission, and for money paid for losses incurred by the person for whom he is acting on wager.'

"Then, Sir Joseph Arnould, what does he say?

"There can be no doubt that the evil against which Act XXI of 1848 and the present Bill are aimed, prevails in the lower as well as the higher classes of the native community. I know this not only from ordinary experience and observation, which can leave no doubt on the point to any resident in Bombay who does not close his eyes and ears to all that is passing in daily life, but also from the fact that in my judicial capacity suits arising out of gambling transactions have come before me, involving members of the lower as well as of the higher classes of the native community. There

can be no doubt whatever that Act XXI. of 1848 has been, and is constantly being, systematically evaded by the intervention of shroffs and native bankers.'

"Then Mr. Justice Couch, and what does he say?

"In answer to your 3rd question, whether the evil against which Act XXI. of 1848 and your Bill are aimed prevails in the lower as well as the higher classes of the native community, I can say that my experience leads me to think that it does, and facts have been proved before me in Court, showing that the clerks and servants of the native merchants are in the habit of making time-bargains, and that in some cases it has led to the committing of crime. To your 4th question, whether Act XXI. of 1848 has been evaded by the intervention of shroffs and native bankers, my answer is that it undoubtedly has, and not only been evaded, but the practice of gaming and wagering has, I think, been greatly promoted and encouraged by the combination amongst them, and the rules they have made for their conduct with respect to time-bargains. This was illustrated by several cases tried by me, in which it appeared that a writing was drawn up, and signed by the various shroffs and native bankers, or their representatives for regulating time-bargains in cotton, and providing for the fixing of the prices at which they were to be settled. This writing required that the price should be fixed, having regard to the actual price of cotton, but on an occasion when the price had arisen to a great extent, the shroffs, after several meetings and great discussions, fixed the price at a much lower sum, with the view, as it appeared, of promoting an easy settlement of the bets, and I think also of preventing the practice of making bets in this manner by their agency from receiving a check or discouragement.'

"Sir, are these a mere bundle of opinions? they are the statements of opinion undoubtedly, but they are the statements of facts also, and of what facts? these—

1.—That the Courts are bound by the law as it now stands to afford their indirect sanction to gambling contracts. That, as one of the Judges more strongly puts it, 'Act XXI. of 1848 has been, and is constantly being, systematically evaded by the intervention of shroffs and native bankers.'

2.—That the evil against which Act. XXI. and this Bill are aimed, prevails in the lower as well as in the higher classes of the native community, and that in some cases it has led to the committing of crime.

“The Council will observe that I am laying before them not what the Judges state as matters of opinion, but as matters of fact which have been proved before them.

“Sir, had the Judges only favoured us with their *opinions*, I conceive that there might have been worse grounds for legislating to supply an omission in the existing law, than the unanimous opinion of such men as now sit on the Bench of Her Majesty’s High Court.

“Then, Sir, we come to the letter of Mr. Kelly, one of the most eminent Solicitors of the High Court; and what does Mr. Kelly say? I would call His Excellency’s attention to this, that Mr. Kelly ventures on no opinion at all. He merely states facts, and facts very pregnant with information. He says—

“‘I have on such occasions sent out, on behalf of a client, upwards of 60 notices in one day, and at the same time sent out 10, 20, or as many as 50 notices for other clients. On one particular occasion, I think, I must, in the course of two or three days, have sent out at least 350 notices.’

“Then we come to the letters of Messrs. McIlwraith and Steel, and here I must crave the forbearance of the Council if I refer for a moment to a personal matter. It has been most industriously circulated outside that I endeavoured to represent to the Committee and through them to the Council, the minds of these two gentlemen as representing those of the mercantile community of Bombay. Sir, my colleagues in the Committee know that I never did anything of the kind, they know that I merely brought forward the letters of these two gentlemen as giving the views of two merchants of great experience in Bombay, of about the two oldest members of the Chamber, of two valued personal friends whose advice and opinion I had asked for my own satisfaction.

“The opinions of the members of the Chamber of Commerce, to obtain which this debate was adjourned for a fortnight, I hope we should have in time, and I am glad to say that, though late, I was enabled this morning to put a first instalment of these opinions in the hands of the members of this Council.

“I have to apologize for this digression.

“Now, what to Messrs. McIlwraith and Steel give as the fruits of their lengthened experience as Bombay merchants, as merchants in the conduct of large transactions, and in daily communication with large numbers of native traders?

“They state that all classes of the community, the penniless as well the wealthy, indulge in these gambling transactions, that owing to the present defective law, these pernicious transactions are almost exclusively confined

to one agency, that of the shroffs; and that they have a most disturbing influence on the operations of legitimate commerce.

“ These, Sir, they state as the facts which their experience has proved to them, and they then stated their opinion and their hope with regard to this Bill. Their opinion that it would go to remedy the existing evil, and their hope that it might speedily become law.

“ But, Sir, I would refer to more valuable evidence still which the Committee had before them. They were assisted in their deliberations by my Honorable colleague, Mr. Premabhai Hemabhai, whom I regret not to see here to-day, and who is probably better able to advise on such a subject than almost any other person in the Presidency, had he been here, I purposed appealing to him, as I now do to my Honorable friend on my right, Mr. Rustomjee Jamsetjee Jejeebhoy, for confirmation of the truth of all the statements set forth by the Committee, and of the justice of all their conclusions.

“ Then, Sir, the Committee had the benefit of the great experience of the Honorable and learned mover of this Bill—and in support of his assertions that these gambling transactions had greatly increased insolvency, Mr. Westropp gave not his own assurance merely, but extracts from the records of the Insolvent Court.

“ For one moment, Sir, I may be permitted to allude to myself—I would only say that I would have made but a poor use of all my experience as a Bombay merchant did I not know a good deal about the questions which the Committee had to consider, and I believe firmly that they have arrived at a right decision upon all these questions.

“ These questions I take to have been the following :—

1. Whether Act XXI. of 1848 is or is not systematically evaded ?
2. Whether the system of time-bargaining prevails among the lower as well as the higher classes of the community ?
3. Whether it is productive of evil ?
4. Whether it has a disturbing effect on the legitimate operations of commerce ?

“ Sir, the Committee have replied in the affirmative to all these questions, and they base their conclusions not on a mere bundle of opinions, but upon what I venture to call very full and satisfactory evidence.

“ Sir William Mansfield in his speech a fortnight ago proceeded to speak of the shroffs, and wanted to know what they had to say on this subject. I can tell him what I was unable the other day to do what they said in 1848. I hold in my hand a petition to the Governor General in Council, which is dated 6th June 1848, and which was signed not only by almost all the influential European and Native firms of that day, but by all

the principal shroffs also, by in many cases the very men whose names appear at the foot of the bond or agreement which forms Appendix G of the Committee's Report—I beg His Excellency's special attention to this fact I find attached to this petition the name of my Honorable colleague Mr. Premabhai Hemabhai, and I find also the honoured name of Mr. Rustomjee Jamssetjee's father.

“ Now, what did the European and Native merchants, together with the principal Bombay shroffs, find to say about *time-bargains* in 1848? With the permission of the Council I will read' extracts from their petition It was as follows :—

To the Right Honorable the EARL of DALHOUSIE,

Governor General of India in Council.

The Memorial of the undersigned European and Native merchants and inhabitants of Bombay.

**SHEWETH,**—That your memorialists, who are largely engaged in the trade and commerce of India, and deeply interested in its prosperity and well-being, respectively crave leave to draw the attention of your Lordship in Council to a most pernicious class of transactions now extensively carried on throughout India under the protection of law, and familiarly known as opium gambling.

That the transactions above referred to consist of wagers to be determined by the market price of opium at some future day, or by the average amount that will be realized at a forthcoming Government sale. They are entered into in various forms, sometimes in the shape of a contract to buy a certain number of chests of opium to be delivered at a future day at a fixed price per chest, there being no intention to deliver or receive the opium, but on the understanding that the difference in value between the price fixed in the contract and the market price at the time of the delivery shall be paid.

That gambling in opium as above, though comparatively speaking of modern origin and until recently confined to the wealthy and a few, has lately spread itself as a system of speculation throughout India, and is now keenly engaged in by goomashtas, clerks, petty dealers, petty brokers, and even the lowest menial servants, and transactions are carried on to the extent of millions of rupees, without the least consideration being given by the parties to their ability to adjust their losses should they happen to be on the losing side.

That it is difficult to exaggerate the mischievous consequences which do and must result from so extensive a system of gambling pervading a whole community. In the first place, all legitimate

commerce in the article, the subject of this unhealthy speculation, is destroyed. The honest dealer and exporter is driven out of the market by the drug being forced up to an undue value having no reference to the demand ; and his operations, which should be protected and encouraged, are made to give way to the purpose and combinations of a body of gamblers. Numbers who engage in it have no means of paying there losses when incurred, and recklessly go on in the hope of retrieving themselves. False appearances, deceit, trickery in every shape are resorted to, to preserve their credit and turn the market in their favour, and finally barefaced repudiation or insolvency affords a channel of escape from liability.

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That an invaluable blessing would be conferred upon India, its commerce, and its inhabitants, if the protection now afforded by law to gambling contracts were withdrawn, and if the law in this respect were placed on the footing on which it now stands in England, in conformity with the suggestion thrown out by the Lords of the Privy Council to that effect in delivering their judgment on the above case of *Ramlall Thackoorseydas versus Soogunmull Dhoondmull*.

Your memorialists therefore pray that your Lordship in Council will be pleased to pass an Act introducing, and making applicable to the territories subject to the Government of the East India Company, the 18th Section of the 8th and 9th Victoria, chapter 109, together with such other provisions as may seem advisable to your Lordship in Council, for the more effectual suppression of gambling in India.

And your memorialists will, &c.

“ In 1848 there appears to have been very little doubt as to the true nature and tendency of the time-bargain system.

His Excellency has taunted us with applying hard words to the shroffs. Sir, I have never used such hard words, nor have I ever heard such hard words used by others, as they themselves in the Petition from which I have quoted apply to those who indulge in these time-bargains. I appeal to all the members of the Council informed upon this matter. I appeal to the whole community, whether there is a single word in the above petition which does not apply to the present day.

“ It was in answer to this petition that Act XXI. was passed, that Act which some of those who petitioned for it have since contrived successfully to evade by that loop-hole which we now seek to close. It is but fair to say that this petition was signed when most of the shroffs were crushed, or



nearly so, by the gigantic speculations of one man, and it was in a time of adversity that they saw thus clearly the evils of the system in which they had been engaged.

“ Sir Wilham Mansfield then went on to say that no member of this Council had much time to devote to its duties, that stolen minutes were all we had to spare, and in this remark at any rate I feel that I must agree with him. His Excellency then proceeded to consider various analogies which had been brought forward in this discussion, upon these I am not careful to enter, they are but uncertain friends at the best, and apt to turn into very dangerous enemies when least expected

“ Sir William then brought a charge against Mr. Westropp and myself to the effect that we admit that this Bill would under certain circumstances protect dishonesty; that, as put by Sir Joseph Arnould, it would enable a man to escape the consequences of a first immorality by the commission of a second. Sir, I in no degree shrink from this admission. I give great weight to Sir Joseph Arnould's words, but I consider them nevertheless more fitted to captivate by their sound than to convince by their reasoning

“ The promoters of this Bill seek to put an end to these gambling transactions. to effect this they resort to no penal enactments, though for these precedents may be found; they simply endeavour to place all such transactions beyond the pale of the law, they say ‘gamble if you will, but do not appeal to our courts to decide your bets, have your code of honour if you will, but expect no assistance from the law;’ to this I would add, ‘I trust that code may fail you, as it has failed you hitherto.’

“ Further we say, ‘if any of you have received from another a sum of money or other valuable thing for the carrying out of an immoral transaction which the law will not recognize, the law will equally refuse to recognize an advance for such a purpose, and will consider the advance a loan which you may be forced to return to the giver.’

“ Sir, I humbly submit that there is no injustice in this, but I as frankly admit that I would gladly part with Sections VII. and VIII. If I could find any better way of making the Act effective, I would gladly part with them, as I would gladly part with that pest, the *common informer*, or with the system of *Queen's evidence*, could the ends of justice be otherwise attained.

“ The Committee have, however, failed to discover any other means of rendering the law effective, except by a resort to penal enactments. The Honorable mover of this Bill, with all his experience, has similarly failed, and I think I may fairly challenge those who quarrel with those provisions to find us better ones; if they can, we shall adopt them.

“ His Excellency the Commander-in-Chief then appealed to our pity for the shroffs, who would, he said, be left by our Bill ‘absolutely at the

mercy of dishonest and designing men.' To this I can only reply, 'serve them right, if they enter into such transactions with such men. If they deal with men whom their own code of honour will not bind, their losses be on their own heads. If there be not sufficient honour among them to enable them safely to indulge in such transactions, let them give them up,' and if this be the conclusion arrived at, I for one say 'so much the better.'

"I will not do more than merely recall to the recollection of the Council the striking, though somewhat shocking, precedent adduced by the Honorable mover of this Bill at the last meeting of the Council.

"His Excellency then came to the statements of the merchants whose letters are attached to the Report, and with reference to these proceeded to say.—

"'In the course of this argument it has often been alleged that prices are injuriously affected by the abuse of time-bargains. I must take leave to join issue on that assertion, it being entirely opposed to all the notions of the greatest economists, both of this and the last generation.'

"Now, Sir, on this point I must take leave to join issue with His Excellency, and with all the greatest economists of the age too if need be. All the reasoning in the world cannot reason away a fact, and this I maintain to be a fact, as within my own knowledge, though happily proved by evidence other than mine, that from time to time the operations of the gamblers in the Bombay bazaar have so affected prices as for the moment to paralyze the operations of legitimate traders; on this point I appeal for support to my Honorable friends Messrs. Rustomjee Jamsetjee Jejeebhoy, and Premabhai Hemabhai.

"The Council will find the following very significant sentence in the minutes by the Chamber of Commerce just laid upon the table:—

"'One of the most influential members of the mercantile community thus writes.—'The value of this influence (that of the time-bargainers) we can estimate, but it will puzzle theorists to determine the extent of the illegitimate means which may be resorted to, by the losers for instance, to arrange the market and thus bring about fictitiously low rates on settling day; thus saving them from loss, or reducing the amount of it. We have ourselves been solicited to purchase (fictitiously) a quantity of cotton just before settling day at Rs. 40 to 50 below the market rate; and the same request was, we believe, made to many other firms'

"The house which I myself represent has more than once been besought on various pretexts to enter the market in order to support prices for settling day, and though we and others declined, merchants were found to do the work

“His Excellency then went on to imply that this is a Bill for the protection of Bombay merchants. This temptation of self-interest is one easy to make, not always so easy to rebut, even by those conscious of rectitude; but Sir, I entirely repudiate it for myself, and on behalf of all my brother merchants who think with me on this matter. We come forward not to trammel, but to untrammel the great trade of this Presidency, and because we are ourselves interested in that trade, because we know more about it than outsiders, are we at every time to have the imputation of self-interest cast in our teeth?”

“His Excellency holds that a merchant’s duty, a merchant’s business, is always to be combating difficulties—one other statement in which I can agree with him, but this I take it is pretty much the common lot of all of us. He goes on to say, however, that he cannot understand what ‘*undue influences*’ are; that there can be no undue influences as affecting markets. Sir, I think the Council will now understand what undue influences may be. When merchants find all their calculations on the prospects of markets, the prospects of politics, and the position of the great primary question of supply and demand, upset by the operations of gamblers in the Bombay Bazaar, then I can say an undue influence is at work. How can I reason on the necessities of native shroffs? How assess from day to day the comparative influence of the Bulls and the Bears? He would be a heaven-born merchant indeed who could claim to do this successfully!”

“I had thought of making some reference to the minutes of the members of the Chamber of Commerce now on the table, but it seems better to defer doing so until the opinions of the whole Chamber have been elicited. I will therefore now only call upon the Council to negative the amendment of His Excellency the Commander-in-Chief.”

The PRESIDENT said that he had that morning received a letter from the Honorable Mr. Premabhai Hemabhai, who was unable to attend at this meeting of the Council. He would request the Under Secretary to read this letter.

The Under Secretary read the following letter—

“To H. M BIRDWOOD, Esq,  
Under Secretary to Government.

“Sir,—I have the honour to request you will be pleased to lay this communication from me before the Honorable Council of the Governor of Bombay for the purpose of making Laws and Regulations, with reference to the Bill now before them to amend Act XXI. of 1848.

2. “I entirely concur in the views of the Honorable Sir Joseph Arnould expressed in his reply, dated 1st ultimo, to a letter from

The Under Secretary reads a letter received from the Honorable Mr Premabhai Hemabhai regarding the Bill to amend Act XXI of 1848

the Honorable Mr. Westropp, and would accordingly have Sections V., VI. and VII. of the Bill omitted altogether as encouraging double immorality.

3. "The chief object of introducing this Bill I understand is to prevent the machinery of Courts of Justice being employed in enforcing wagering contracts either directly or indirectly, and I am of opinion that that object would be sufficiently gained by Section II. of the Bill as it now stands.
4. "I am further of opinion that Section VIII. of the Bill is superfluous, for Legislative enactments are held to be prospective, except when they are expressly made retrospective.
5. "I think it desirable to add one Section to the Bill to define what shall be considered gaming or wagering contracts within the meaning of the Act. A good definition of the phrase in the Act itself, would, I am persuaded, save a great deal of litigation, especially in the Mofussil, where the Judges and Advocates are not trained lawyers, and remove from the minds of native merchants all apprehension of *bonâ fide* contracts being liable to be set aside as wagering ones."

I have the honour to be, &c.

(Signed) PREMABHAI HEMABHAI."

*Bombay, 9th September 1863.*

Mr Frere supports the amendment

The Honorable Mr. FRERE said that he was obliged to the Honorable Mr Scott for his admission that the intention of the supporters of the Bill was to say to the gamblers, "you may gamble as much as you like, but you must not call upon our courts to aid you in recovering your bets," as that admission would save him the trouble of showing that the Bill would not put a stop to gambling in time-bargains. It is now admitted that it is not intended to do so, it is only intended to keep the suits out of court. With this admission, he could very well understand that the Bill would be a great benefit to the Judges of the High Court; it would lighten their labours, and might claim their approval, but why Mr. Kelly, who he considered did not issue his 350 notices in two or three days without deriving some benefit from them, should approve of it, was more difficult to be comprehended. But apart from these considerations, he was not yet satisfied of the necessity for the measure. They were told that it was necessary because the evil of gambling prevailed in the lower as well as in the higher classes of the native community, and has, among the clerks and servants of native merchants in some cases, led to the commission of crime; and secondly, that time-bargains have had the effect of causing great fluctuations in the *bonâ fide* markets for the commodities, the nominal subjects of such transactions,

more especially the case with cotton, the price of which has at times been enormously increased by the operation of the time-bargain system. In support of these two positions they had not had a tittle of evidence, they had had the opinions of Judges of the High Court, of Solicitors, of Merchants, but these were mere opinions, and if opinions were all that were wanted, he would not pay the Council so bad a compliment as to think that there were not Honorable members there whose opinions should have more weight in that Council than any they could obtain elsewhere. The opinions of the Judges, he begged to say, were not evidence; the opinions they arrived at were not formed when they were trying the question whether this Bill should be passed or not, but they were formed when they were trying some other issue; the opinions they formed were incidental to some other point, they were not their decisions upon the point before the Council. The Committee had heard from Mr Westropp that much of the insolvency in Bombay was caused by time-bargains, but no single instance had been produced that time-bargains had ever led to insolvency or to the commission of crime. But even granting that it was proved that they had led to the commission of enormous crimes, the promoters of the Bill did not wish to put a stop to time-bargains. They say "gamble as much as you please, but you must not call upon our courts to aid you in recovering your gains." The evil still is to continue and of course all its accompanying ills. All that the time-bargainers are to be deprived of is the means of recovering their gains in court.

They were next told that time-bargains have a bad effect upon the legitimate trade in cotton, the price of which has been at times enormously increased by the operation of the time-bargain system, if that increase can be prevented by this Bill they could understand why the Merchants should approve of it. The only evidence, the Honorable member said, that he had seen in the whole case was to this point, and proved the very contrary to be the case. It was furnished by the notes of the Honorable Mr Justice Couch's decision in the case of *Volumchund Maneckchund vs Thucker Vussunjee Juvraj*. It had not been laid before the Council, but the Honorable Mr Westropp had allowed him to see it. The case was a clear time-bargain, and the dispute had (according to the agreement of the sixty shroffs so well known to the Council as Appendix G) to be decided by "the assembly", it appears that the meeting was adjourned from time to time until the fifth meeting, when a committee was appointed, by which after great deliberation, (he believed from evening until after daylight the next morning) the price was fixed at Rs. 186 per candy; the market price at that time was Rs. 235. In previous years the price had always been fixed at within 2 or 3 per cent. of the market price, but on this occasion the market price of cotton had risen so high that the committee appeared to have been

afraid that if they adopted it as a standard the price would be fixed so high that it would not be paid, and so Rs. 186 was adopted as being as much as could be got. This, if it proved anything, he (Mr. Frere) contended proved that the legitimate market injured the time-bargains; certainly not that the time-bargains injured the legitimate market, for there was no question but that the rise in the price of cotton which caused "the assembly" that sleepless night was a fair and legitimate rise in the market itself. Mr. Frere then remarked that the Honorable member on his left (Mr. Scott) had just referred to the petition of the principal European and Native merchants and shroffs in 1848 against time-bargains, as showing that then even they were opposed to them. Mr. Scott had already in answer to a question put by Mr. Frere said that Ramlall's name was not to that petition, and the Council must not give too much weight to the virtuous indignation of those who signed it. To those who recollect 1848, it is well known that all these men or at any rate several of them, had been dallying in time-bargains with Ramlall, but Ramlall had been too clever for them, and they burnt their fingers. Had Ramlall been ruined, and made such a petition as this, we probably should have heard the other side of the story from those who were not restrained from gambling until the smart they felt proved to them the enormity of the evil Ramlall had committed in winning their money from them.

The Honorable Mr. Scott here interrupted Mr. Frere, and said:—

"I beg your Excellency's permission to say a few words in explanation of that which has just fallen from Mr. Frere, and which may otherwise mislead the Council. I ask this, because, with the exception of my Honorable friend Mr. Rustomjee Jamssetjee Jejeebhoy, I am probably the only member of the Council now present who knows the facts of the case.

"It has been the custom of the shroffs to nominate a committee of their number to decide authoritatively as to the price ruling on the settling day, and for some time this decision was given pretty honestly, and in conformity with the price of cotton in the market, whether that had been unduly influenced or not. Last year, however, a band of very powerful shroffs stood to win heavily on a fall in prices; they relied, I believe—and my friend Mr. Rustomjee Jamssetjee Jejeebhoy supports me in this—on the assurance of their astrologers that on settling day the price of Dhollera cotton would be Rs. 160 per candy—it turned out to be Rs. 240, and after five successive nights of stormy discussion, this committee of shroffs staggered their constituents and the public by declaring the price to be Rs. 180; they had gone too far, and I believe no settlement, or one only to a slight extent, took place; this was what I referred to when I said their own code of honour had hitherto failed them."

The Honorable Mr. FRERE thanked Mr. Scott for the explanation, and added:—they had the assertion but no proof that time-bargains had led to the commission of crime, and that it had the effect of causing great fluctuations in trade, while the only evidence they had was the other way. When the object of the Bill was not to put a stop to gambling, but only to keep the suits out of the courts, he thought he was justified in asking for proof of the position taken up by the promoters of the Bill, and in calling upon them to show how, so long as they allow people to gamble as much as they like, they would prevent the crimes which they said were concomitant on gambling in time-bargains; or how, so long as the gambling continues, they expect to heal the diseases they find in the legitimate market, and until that proof was given, he would certainly vote against proceeding with the Bill. In conclusion, he called upon the Council not to be in too great haste and pass the Bill that day, lest, as they had only that morning received opinions from the Chamber of Commerce, and were promised further opinions hereafter, they should first pass the Bill and after that have to consider the opinions of the Chamber of Commerce.

The Honorable Mr ANDERSON said .—

“I, Sir, would also speak on this motion. It was my desire, as it was that of my Honorable friend Mr. Scott, to have addressed the Council at the last meeting, after the speech of His Excellency the Commander-in-Chief. Your other most urgent engagements, Sir, rendered necessary an early adjournment of the Council, and we were deprived of the opportunity of endeavouring to diminish the mischief which His Excellency’s observations, in our opinion, were calculated to create. I greatly deplore the fact, I believe that the majority of this Council greatly deplores that His Excellency should have been able to indulge in much vehement assertion, in many strong reflections on his opponents, should have been able to extend the sanction of his high position and great ability to practices which we deem to be of great detriment to the public interests, and with the exception of the very few hurried observations which my Honorable friend Mr. Westropp was able to thrust in before the adjournment, that His Excellency’s speech should have remained for several days without an answer. This circumstance, Sir, has no doubt afforded the keenest delight to the Tejwallahs and the Mundewallahs, the gamblers and the stags, of the Bombay market. It has been to them, without doubt, a matter of serene satisfaction that they should have so eminent a supporter in their attempts to evade the law, the law both of the Imperial and the Indian Legislatures; but the spectacle is one which I, and I believe this Council generally, cannot contemplate without pain. I shall not detain the Council with vain regrets. I shall address myself to His Excellency’s statements, and I trust to be able to

Mr Anderson opposes the amendment

show that in his speech there was not one argument susceptible of proof, not one conclusion deducible from the premises, not one assertion consistent with actual facts. The speech was doubtless one which would have achieved a great success in a more popular assembly. His Excellency in his anxiety to avoid Eastern models, had adopted the occidental type of eloquence, and however little his tempestuous enthusiasm may impress the educated few who sit round this Board, it would probably have exercised a remarkable influence on the ingenuous race which inhabits the great republic of the West. It would probably have induced sympathising multitudes to abandon all prudence and all policy to the winds, and to follow their temerarious leader to whatever extremity he might wish to hurry them. As I listened to His Excellency's sonorous periods, I thought of another great soldier, whose career was sketched nearly eighteen hundred years ago by an immortal pen, and it seemed to me that although we had not weighed our Hannibal, he had expended himself, and that *fias declamatio* was the result. His Excellency commenced with a statement that he knew very little about the matter under discussion. I will not dwell on this, however inconsistent I may deem the admitted zero of the knowledge with the obvious boiling heat of the advocacy. His Excellency sought for information, but he could only get opinions. He had the opinion of Sir Matthew Sausse, of Sir Joseph Arnould, of Mr. Couch, of Mr. Westropp, of Mr. Scott, of Mr. McIlwraith, of Mr. Gavin Steel, but he did not want opinions, he wanted facts. One might almost suppose that His Excellency regarded a fact as a material substance estimable by Avoirdupoise. Does His Excellency really believe that Sir Joseph Arnould and Mr. Couch have evolved the opinions they have expressed from the depths of their inward consciousness; that they have adopted the arachnean process of spinning conclusions from their own bowels; or are those opinions, as I contend, the result of a large induction of facts; do they constitute the evidence of experts? The Honorable Mr. Frere has suggested that the Judges wished to abridge their own labours; but this is a view I cannot condescend to discuss. His Excellency calls for a Commission; but what could a commission do but examine witnesses and thus collect opinions? The eminent men who sit on the Original side of the High Court, including our late colleague who has recently so worthily received his promotion, form the best Commission which could be devised. They have continually to deal with the evil against which this Bill is directed, and as Commissioners of the Insolvent Court, they have had ample opportunity of observing how substantial that evil is. To call the conclusions of such men mere opinions, is to mistake the uses of language. I might say the same of the views of the gentlemen the representatives of the great houses of Ritchie Steuart and Co., Nicol and Co., and Grey and Co., confessedly



among the leaders of the mercantile profession in Bombay, who have advocated this Bill. But when we come to what I should have thought all would admit to be solid facts, the statement of Mr. Kelly that he had issued forty or fifty notices in a day, on one occasion three hundred and fifty notices in two or three days, and to the agreement of the sixty shroffs—how does His Excellency meet these obstacles? By the simple announcement that he cannot understand them. As a rhetorical feat, this statement may have merit. It is extremely difficult to deal with such evolutions and convolutions, and I am afraid that the supporters of the Bill can only oppose to His Excellency's lubricity the Johnsonian dictum, "That we have found him a reason, and that we are not bound to find him an understanding." But I now advance to what I presume is the centre of His Excellency's position, that the provisions of this Bill are at variance with the principles of free trade and with the spirit of modern legislation. I am certainly most unwilling that any act of mine should be in opposition to free trade, a cause associated with so many illustrious memories and so many immortal names, and I must repudiate in the strongest terms which the laws of debate will permit, the assumption that there is any real connection between free trade and gambling contracts. I shall not weary the Council with a dissertation on Political Economy. I would invite its consideration to a few facts, and to the conclusion to be drawn from those facts. The present Bill is an attempt to vindicate and to give that complete action to Act XXI. of 1848 which its authors contemplated. Act XXI. of 1848 in effect extended to India those provisions of the 8th and 9th of Victoria, Cap. 109, which related to wagers. That Act was passed in 1845. I beg the particular attention of the Council to that date. In the previous year 1844, the same Parliament passed the 7th and 8th of Victoria, Cap. 24, which abolished the offences of forestalling, regrating, and engrossing. These practices had been prohibited by severe penalties under the Athenian laws and by the *Lex Julia de Annonâ* of the Roman law. They were prohibited by a series of English statutes commencing from the reign of Henry III and they were offences at the common law. By an Act of George III. the latter statutes against these practices were repealed, but the more ancient statutes remained, and they were still offences at the common law. In 1844 all the statutes against these practices, practices against which Sir W. Blackstone had written, were repealed, and the offences were abolished on the simple but most sufficient ground, that the statutes were in *restraint of trade*. In 1846 the same Parliament repealed the corn laws. Now I would ask, whether any one versed in the political literature of England, will contend that if there had been anything in the Wagering Act in restraint of real free trade, it would have been passed by that very Parliament which the year before abolished the offences of forestalling and

regrating, and the year after consummated the great victory of Free Trade by the repeal of the corn laws? The year 1845 was the year of the agony of the discussion, it was the year in which Lord John Russell announced his renunciation of a fixed duty, which he had preferred to a graduated scale and declared himself in favour of a total repeal; it was the year when the Legislature was in the very throes of that great birth which was witnessed in the next Session. The law of 1845 is still upon the statute book, it is a modern Act. It might have been supposed from His Excellency's speech that we were discussing "wager of battle," a most ancient form of appeal only abolished in 1819 after the celebrated case of *Ashford vs. Thornton*. I repeat that the Wagering Act is a modern Act, and that there is nothing in more recent legislation at variance with it. If there be, let the Act be named. On the contrary, the spirit of this Act of 1845 has been maintained. By the Bankrupt Consolidation Act of 1849 a bankrupt is not allowed his certificate who has lost £20 in one day or £200 in one year by wagering. In 1853 by what is commonly called Cockburn's Act, the law was rendered still more stringent, and it is a clause in that Act which has been imported into the present Bill and constitutes the part to which Sir Joseph Arnould has objected. To that I shall hereafter advert. The only statute which by any ingenuity can be construed as opposed to the spirit of the Wagering Act, is the Act of 1860 for repealing Sir John Barnard's Act. On that I will say a few words. I have observed that Sir John Barnard has been spoken of in terms of something like contempt. Whoever does so cannot be a real student of history. Sir John Barnard was a man of the greatest consideration in his day. How highly his character and ability were esteemed may be gathered from Speaker Onslow's remarks. He was listened to with respect in a senate which included such statesmen as Walpole, and Pulteny, and Sir William Wyndham, and Sir William Yonge. Lord Stanhope speaks of him as the model of a British merchant. His Act which was passed in 1734 contained various pains and penalties against stock-jobbing, it was a product of the same feeling which a few years before had enacted the tremendous measures against the South Sea Directors and the Bubble Companies. The Act was made perpetual a few years afterwards; and remained for nearly 130 years on the statute book, when having become inoperative, and because it contained pains and penalties, it was repealed. But I would beg the Council to mark that when it was repealed, the present Attorney General, Sir W. Atherton, expressly stated that time-bargains on the Stock Exchange would be dealt with under the Wagering Act."

Sir W. MANSFIELD.—“Did any body else in that debate express the same opinion?”

Mr. ANDERSON.—“I really cannot undertake to say. Probably after

the Attorney General, or as he then was, the Solicitor General, had delivered an opinion on a dry point of law, no one thought it necessary to express the same opinion. It is sufficient for my purpose, that the present Attorney General held that there was nothing in the repeal of Sir John Barnard's Act inconsistent with the Wagering Act, and I confidently contend that I have shown that there is nothing in that Wagering Act which can be pronounced inconsistent with the spirit of modern legislation.

“I would now recall the attention of the Council to the fact, that the principal question under discussion is, whether parties having made wagers, shall be permitted directly or indirectly to enforce them in a Court of Law? His Excellency the Commander-in-Chief regards the refusal of this permission as a pain and penalty. Let us inquire how this question has been regarded by other high authorities. The Council is aware that previously to the statute of 1845, actions could be maintained under the common law of England on wagers. In Scotland it was different, the Judges declined to try actions on gambling contracts or “*sponsiones ludicræ*.” But looking only to England, it is not uninteresting to observe how the Judges regarded such actions. I will pass over what may be termed the extreme cases, such as the wager as to whether a player having touched a man at backgammon, was compelled to move it, in which action Chief Justice Holt called in the groom porter, and decided according to his opinion, or Lord Ellenborough's refusal to try an action regarding a wager on a man of cocks, or Lord Tenterden's refusal to try a similar action relating to the prowess of the dog “Billy.” I pass over these extreme cases, and will take first the opinion of Lord Mansfield, as delivered in the well known case of *Da Costa vs Jones*. It is the judgment principally relied on for the assertion that wagers, excepting—*first*, when the interests and feelings of third parties are affected, *secondly*, when decency is outraged; *thirdly*, when public policy is affected—are maintainable at the common law. Lord Mansfield held that wagers could be so maintained. He rejected the claim in the particular instance, because decency would have been outraged by the trial,—(the case related to the sex of the Chevalier D'Eon)—but he distinctly stated his lament that wagers were not void as gambling contracts. I recommend that opinion to the consideration of the Honorable Mr. Frere, who has expressed an opposite view.”

MR. FRERE.—“I beg the Honorable Member's pardon. I have not done so. What I say is, put down gaming and wagering, but as long as you do not do so, do not shut your courts against actions on wagers.”

MR. ANDERSON.—“That view does not appear to me consistent with Lord Mansfield's opinion, but it is a view which only requires to be stated,

it does not demand an answer. I proceed with my review, and I would draw the attention of the Council to the celebrated case of *Good vs. Elliott*.

“This was the case in which that consummate Judge, Mr. Justice Buller, stood alone against his three colleagues in an attempt to show that actions should not be maintained on wagers. The case related to a wager as to whether Susan Tye had bought a waggon of David Coleman. Sir Francis Buller argued—*1st*, that the wager was void at common law as relating to the affairs of a third party, *2nd*, that it was void by the Statute 14, George III, Cap. 48. He was over-ruled on both points; but his three colleagues, Lord Kenyon, Mr. Justice Ashurst, and Mr. Justice Grose, all concurred in considering it would be better if wagers could be declared void at law. It is universally admitted, that Sir F. Buller’s argument on the common law in effect narrowed the list of wagers on which actions could be maintained, and with respect to his view as to the intent of the 14 George III, Cap. 48, I would submit a brief remark. That statute was without doubt directed against wagering policies of insurances, and Sir F. Buller’s colleagues relegated the operation of the measure to such policies. But it cannot be concealed that the language of the statute is very wide. It provided that no insurance should be made on the life of any person, “or on any other event” wherein the person for whose use or benefit or on whose account such policy should be made should have no interest, *or by way of gaming or wagering*. There is a case in the books which appears to have been plainly decided in accordance with Sir F. Buller’s view of this statute. The case is *Patterson vs. Powell* (9th Bingham), in which an agreement on payment of £40 to receive £100 if Brazilian shares reached a certain price on a certain day, signed by several persons, each for himself, was declared void as a wagering policy. After the expression of Mr. Justice Buller’s opinion, Judges were in the constant habit of evading the rule that actions could be maintained on wagers, some declined to try such actions as frivolous, others, and this practice was admitted to be allowable, placed them at the bottom of the list, and tried all other actions before them, but the favourite device was to pronounce the subject matter of the wager to be adverse to public policy. At length in 1844, a Committee of the House of Commons, of which Lord Palmerston was Chairman, recommended that the law of England relating to actions on wagers should be assimilated to the law of Scotland, and in accordance with the views of that Committee the Act of 1845 was passed. I now come to *Ram Lall’s case*, on the decision of which two millions sterling depended. On the ground that the law of 1845 had not been extended to India, Sir E. Perry delivered his opinion in favour of *Ram Lall*. His judgment is an admirable example of the high judicial faculty of holding fast to the plain question of law, unmoved and unembarrassed by specious appeals founded on considerations

of public policy on the one hand and of morals on the other. But in holding that actions could be maintained on wagers, this distinguished Judge made the following remark.—

“It is, I think, to be deplored that the common law has taken this course, and I have always regretted that the fine judicial arguments which Mr Justice Buller brought forward in *Good vs. Elliot*, against the validity of wagers generally, were not allowed to prevail, and that the Judges are compelled as a general rule to devote the public time, and to lend all the powerful machinery of Courts of Justice, to the enforcement of the contracts of mere gamblers.”

“Sir David Pollock, the Chief Justice, took a different view, and the decision of the Court being against Ram Lall, an appeal was preferred to the Queen in Council. Lord Campbell, in delivering the judgment of the Privy Council, made the following remark.—

“I regret to say that we are bound to consider the common law of England to be, that an action may be maintained on the wager, although the parties had no previous interest in the question on which it is laid, if it be not against the interests or feelings of third persons, and does not lead to indecent evidence, and is not contrary to public policy. I look with concern and almost with shame on the subterfuges and contrivances and evasions to which Judges in England long resorted in struggling against this rule, and I rejoice that it is at last constitutionally abrogated by the Legislature, an event which probably would have happened much sooner, without the abortive attempt to accomplish the object by judicial decision.”

“Now, the noble Lord, when he made these remarks, was Chancellor of the Duchy of Lancaster in a Free Trade administration. He died the year before last, Lord Chancellor in another Free Trade administration. In a subsequent part of the judgment of the Privy Council, the same noble Lord made the following remark, to which I would request attention—

“It is for the Legislative Council at Calcutta to consider how far it may be conducive to the benefit of our Indian Empire to introduce into it the provisions of the Statute 8 and 9, Victoria, Cap. 109.”

“On that suggestion, and in compliance with the petition alluded to by my Honorable friend Mr. Scott, a petition from the leading European and Native mercantile firms in Bombay, the Legislative Council of India passed Act XXI. of 1848, the provisions of which we are endeavouring to vindicate by the present Bill.

“Another action of Ram Lall’s came before the Court in Bombay, and

Sir E. Perry, being then Chief Justice, gave judgment for Ram Lall. The Puisne Justice, Sir W. Yardley, dissented, on the ground that Ram Lall's acts constituted fraud. In the course of Sir W. Yardley's opinion, I find the following expressions:—

“ I think it a sufficient misfortune that Courts of Justice ever recognized contracts of hazard entered into neither for the benefit of commerce nor for the purpose of providing in some measure against the uncertainty of life, or against the destruction of property by fire, but I know not any principle of law or morals which calls upon us to give effect to practices and contrivances such as those resorted to by the plaintiffs in this action.”

“ Another appeal was preferred to the Queen in Council, and the judgment of Sir E. Perry was confirmed, but in delivering the decision of the Privy Council, the Right Honorable Baron Parke (now Lord Wensleydale) stated that their Lordships disapproved of these wagering transactions, “ which happily are now put an end to.” The Privy Council by these words gave the sanction of its approval to Act XXI. of 1848.

“ I have thus endeavoured to show that there has been a remarkable harmony of opinion among the highest Judicial authorities as to the inadvisability of permitting actions to be maintained on wagers, and this harmony of opinion is entirely opposed to the views expressed by His Excellency the Commander-in-Chief.

“ His Excellency has honoured with some sarcastic notice a few remarks which I submitted to the Council on the first reading of the Bill in opposition to his views. I am quite prepared to defend the statements which I made on the former occasion, but I am unwilling to detain the Council on a matter which may be deemed merely personal. My explanation will therefore be brief. My argument was in answer to His Excellency's views, that modern legislation did not deal with immorality. I coincided to some extent with this view, but I stated, that there was always an exception when immorality was obviously detrimental to public interests and public order. I instanced the suppression of lotteries, of gaming-houses, and notorious night-houses. On lotteries I shall touch immediately, and to gaming-houses His Excellency did not advert. On the third point His Excellency has condescended on a misapprehension. He states, that “ with a happy audacity” I said that the Legislature interfered with prostitution. \*I really said precisely the reverse. I said the State shrunk from interference with prostitution, but that it did suppress night-houses, because this brought immorality to a point detrimental to public order and the public interests. But enough on that subject. I proceed to lotteries. His Excellency placed his assertion in opposition to mine, but I think the very facts which he stated, and which he read out of that formidable book, the *Encyclopaedia*

*Britannica*, will show that I was right. I stated that lotteries were discontinued because they were demoralizing; His Excellency stated they were discontinued because they were not deemed a proper mode of raising a revenue.

HIS EXCELLENCY SIR W. MANSFIELD —“ I added that it was held to be a wrong thing to excite the people to gambling for such a public purpose ”

MR ANDERSON —“ That seems to me equivalent to saying that lotteries were held to be demoralizing. His Excellency admits that private lotteries were suppressed in Queen Anne’s reign as public nuisances, and he states that the people never after that evinced a desire for private lotteries.”

SIR W. MANSFIELD.—“ I said that they never in any way entered into the habits of the people.”

MR ANDERSON —“ I accept the correction. The question then is, did they or did they not enter into the habits of the people? I assert the affirmative of that proposition. But I would first remark, that while it is true private lotteries were declared public nuisances in Queen Anne’s reign, a fact quite on my side, public lotteries were declared public nuisances by the 11th and 12th of William III Cap. 17, and all grants, patents, and licenses given in connection with such lotteries pronounced contrary to law. It has hence always been necessary to have the sanction of an Act of Parliament for a lottery. But there was an Act in George the 2nd’s reign against private lotteries, and in 1778 in the reign of George III an Act was passed, making all lottery office keepers take out a license and fining them £50 if they sold under a sixteenth of a ticket. This last fact shows how strong was the passion of the poorer classes for lotteries, whether public or private. In 1802, the private lotteries called “little goes” were suppressed under very severe penalties. In 1808, a committee reported strongly against lotteries as a ruinous mode of filling the Exchequer. But ruinous to what, to whom? Not to the Exchequer, for never was a revenue raised more easily. The free cities of Hamburgh and Frankfort to this day have lotteries on far more favourable terms to speculators than the English lotteries, and they clear ten per cent of the total sum subscribed. Not ruinous to the Exchequer but ruinous to the people. In 1826 the last State lottery was drawn, but in 1832 and 1833 three lotteries, called the Glasgow Improvement Lotteries, were sanctioned through misapprehension by Act of Parliament. This fact is impressed on my memory, because I was a boy at school at the time, and had a share in two-sixteenths, which produced shares in two blanks. Finally, the law had to be directed within the last few years against racing sweeps, a species of lottery which had become extensively

popular. I think then, I may contend without arrogance, that I was entirely right in my views as to lotteries, and that His Excellency was by consequence entirely wrong.

“Then with reference to the “Qui tam” actions and the Running Rein case. I explained at the last meeting, that stakes can, but that bets cannot, be recovered by action. It is a matter of very small importance, but His Excellency was mistaken in supposing that the “Qui tam” actions arose out of, or were connected with, the Running Rein case. His Excellency will find an Act passed in March 1844, staying process against the defendants in those actions for three months or until the close of the session. On the other hand it is well known, that the Derby is never run until the end of May, and that it was the fact of Running Rein coming in first in that race, which led to the trial of Wood *vs.* Peel.

“I am now led by His Excellency’s remarks to Sir J. Arnould’s objection to a part of this Bill. It is impossible for me, who remember that gentleman’s brilliant University career, and who know him as the author of one of the few really scientific Law Treatises produced by English Lawyers, to speak without deep and unfeigned respect of any opinion he may express, and I am glad to think, that even if the clause to which he objects be struck out, the Bill will still be a good Bill. But I do not think, I need hardly say with great submission, for I do not regard it as an enviable position to be opposed to an able and accomplished Judge, that I can quite concur in his argument. It is put with considerable point, that to allow a man to recover by process of law money which he has lost by a wager, is to permit a man who has committed one immorality to commit another. But as a question of morals, if a contract be illegal or void as in the matter under discussion, it can be no greater immorality for A to recover what he has lost, than for B to keep what he has gained. There can, as a question of morals, be no real distinction between permitting A not to pay what he has lost, or permitting him to get back his deposit from C the holder of the stakes, and permitting him to recover from B the winner of the bet. As a question of law, I believe the maxim to be this, the contract being illegal or void, it is a case of “*par delictum,*” and when the fault is thus equal, the law says “*potior conditio possidentis,*” let him who has, keep. If A has not paid, let him not pay. If B has received, let him keep. I remember a decision of Lord Ellenborough’s in *Palyart vs. Leckie*, alluded to in *Chitty on Contracts*, which supports this view. But it is evident here that the law adopts this course simply because it offers the easiest solution, and not because morality is at all affected. The real questions are—1st, Are certain practices opposed to the public interests? 2nd, Should the Legislature discourage them? If it be assumed that these questions are answered in the affirmative, I contend it is the duty



of the Legislature to take care that the discouragement is efficient. If, to give the loser the right of recovering from the gainer of the wager would operate as the most complete deterrent from the practices, I should not be scared from enacting such a provision by the phantom of a second immorality. There is a provision of this kind in Cockburn's Act, and the Imperial Legislature would never, I think, be deterred from efficient action by objections which partake in some measure of a sentimental character

“ His Excellency the Commander-in-Chief has stated, that the operations of these bazaar bettors are what merchants must be prepared to encounter, and that no restrictions should be placed upon them by the law. He has also enunciated some theories as to demand in Liverpool and supply in Bombay. I am relieved from the necessity of examining His Excellency's views on these points by the speech of my Honorable friend Mr. Scott, who has stated with far greater clearness, precision, and authority than I could contribute to the discussion, much that I should have liked to have said. I shall therefore content myself with the statement of my belief, a belief shared in, I imagine, by every merchant in Bombay, that the wagers we wish to discourage do interfere with the legitimate operation of supply and demand. I further believe, that this Bill will not affect *boná fide* contracts for future actual delivery. Our late colleague Mr. Westropp has stated, that during all his experience, he had never known a *boná fide* agreement pronounced by the Judges to be a gambling contract. He called on the Honorable Mr. Premabhai to state whether he had ever known such an instance, and that gentleman, who is the most skilled witness on the subject in Bombay, admitted that he never had. But His Excellency ventilated a doctrine on which I would wish to submit a few words. He stated that the difficulties and puzzles arising from these transactions, which the law has sought to discourage, are what merchants must deal with, that the clever man succeeds and that the stupid man is ruined. I really do not know to what extremity such a doctrine might lead us. His Excellency's energy would, I believe, drive a coach and six through the statute of Frauds. Those wagers have been declared void by the Legislatures of England and India, but His Excellency says, let them flourish, to prohibit them is to interfere with free trade. If the law is not to interfere to the prejudice of clever men, I would invite attention to the case of the King *vs.* De Berenger. It is always a painful case to allude to on account of the suffering it caused to the heroic Cochrane. But while I firmly believe in the innocence of Lord Cochrane, I am equally convinced of the guilt, I ought to say the wisdom, of Mr. Cochrane Johnstone. What did Mr. Cochrane Johnstone do? He bought heavily into certain Stocks. What did De Berenger do? He went to Dover, put on a red coat, star, and

cocked hat, and called himself Colonel De Bourg. He gave out that Napoleon had been killed by the Cossacks, that the Allies are marching on Paris, and that there would be peace in a few days. The news was sent by express to London. Numbers believed the narrative. The Stocks rose. Cochrane Johnstone sold out, and made a good thing of it. But what of that? He was only a clever man. The gentlemen on the Stock Exchange, who became virtuous with their losses, were simply stupid men. But if some who steer by the old lights, were to urge, "But in this case there was falsehood," then would come from the gentleman opposite that urbane "argumentum ad hominem" which has been so frequently employed in these discussions. "Does any one mean to assert that he has never taken advantage of some absurd rumour current in the bazaar, that he has never shaken his head about the news from America, that he has in no way ever contributed to the 'suppressio veri.' Why this squeamishness about De Berenger?" I am tempted by His Excellency's admiration of cleverness to offer another illustration. It is well known that audiences of different nations regard plays from different standpoints. In the tragedy of Othello, as Macaulay remarks, the sympathies of an Italian audience are with Iago, those of an English audience with Othello. When the same play is acted before an American audience, the moral deduced is the extreme impolicy of marriages between members of different races. So if the Merchant of Venice were played before His Excellency, the principle asserted in the play would, in his opinion, be the inviolability of wagering policies. Indeed, if there were an appeal to His Excellency, I make no doubt he would treat Portia's decision as a mere evasion. He would tell Antonio, "you are simply a stupid man, and the Hebrew gentleman is a clever man, you must abide by the terms of the agreement, and the decision of the Court below is reversed."

"But His Excellency after arguing that to prevent the evasion of the law would be to interfere with commercial morality, proceeded to lay aggressive hands upon Justinian. In his long speech there was nothing so astounding as this. His Excellency has spoken of my happy audacity, but I really must be permitted to designate as infelicitous temerity, the courage which quotes Justinian in favour of gambling contracts. I should have as soon expected to hear Moses quoted in favour of Polytheism, or Mahomet in favour of Monogamy, or John Calvin in favour of Mariolatry, or John Wesley in favour of Horse-racing. I should be ashamed to parade before the Council any mere "Fourth Form" learning, and I will only allude by a word to certain passages in the "miles gloriosus" of Plautus, in the second Philippic of Cicero, and to the "seu malis vetita legibus alea" of Horace. But to come to Justinian himself, there

are laws against gambling both in the Digest and the Code, and in one of the novels there are constitutions to the following effect, that a loser could recover money lost in gambling from the gainer, that his heirs could recover from the gainer or the heirs of the gainer, within thirty years, that if the loser or his heirs did not choose to come forward, the Pater or Defensor of the Town could recover from the gainer or the heirs of the gainer, and lay out the money for the benefit of the Town. Whatever then Justinian meant by "*Suum cuique tribuere*" quoted by His Excellency, he could not possibly mean anything in favour of gambling contracts. I really think His Excellency should spare us these "purple patches," he should recollect that he is addressing scholars, and if he must have a Latin quotation, I would commend to him a very familiar one which he will find in the Eton Grammar, "*Vir bonus est quis? Qui consulta patrum, qui leges juraque servat*"—only that perhaps it would not be exactly in favour of his views.

"I have now finished my comments on His Excellency's speech. I have detained the Council much too long. I am glad therefore to leave unsaid much which I had intended to submit on the mercantile side of the question, and am perfectly content to leave that part of the case where it has been left by the very able speech of my Honorable friend Mr. Scott. I have therefore addressed myself chiefly to the question in its legal aspect. I take my stand on the impregnable position so well assumed by Sir Joseph Arnould, that it is not expedient that the machinery of our courts should be set in motion for the enforcement of gambling contracts. I have endeavoured to show that there has been a remarkable harmony of skilled opinion on this point. I have endeavoured to show that there is nothing in this Bill at variance with the principles of free trade or the spirit of modern legislation. But I will go further than this. It is our duty as legislators to protect the material interests of the inhabitants of this country, but it is also our duty to take care that we do not sanction by our approbation a low moral standard of conduct. Holding these views, I heard with sorrow the sordid doctrine regarding cleverness enunciated by one member of the Government, with the approbation apparently of another member of the Government. I should myself be very reluctant when a large body of enlightened native gentlemen has petitioned the Legislature of India to discourage what they deemed pernicious practices, and when the Legislature has in compliance with that petition framed a law, I should be very reluctant to permit that law to be evaded with impunity. But such is the question presented to us. The present Bill has been opposed with excessive vehemence and intensity by one who occupies a high and important position, and who brings to that position very various attainments, and great force of character.

I may consider His Excellency's address to be deficient in real knowledge of the subject, but it would be disingenuous, it would be idle in me to deny that his objections are urged with great point, vigour and subtlety, and that to any measure which may evoke his antipathy, he is a most formidable antagonist. He has not only opposed this measure at every turn with unsparing activity, but he has succeeded in arraying against it a large portion of the public Press. I trust I never shall exhibit the miserable affectation of pretending to be indifferent to the strictures of the Press. I hold on that subject the same opinion which Johnson held regarding belief in ghosts—"They who deny it with their lips, confess it by their fears." But on the other hand, I should be utterly unworthy of that honour which I prize most highly, and which I owe solely to the kindness of our President, the honour of a seat in this assembly, if I were basely to shrink from the advocacy of what I believe to be a wholesome measure, because an able officer had opposed it, and an able press had endeavoured to write it down. And if I know anything of that great service to which it is my privilege to belong, if I have rightly appreciated the intelligence, and the public spirit of the independent members of this Council, I am confident that whenever His Excellency the Commander-in-Chief, with that "proud precipitance of soul" which is his characteristic, dashes into headlong opposition to a practical and useful measure, there never will be wanting men prepared to confront him in the debate, and to control him in the division.

The Honorable Mr. ROBERTSON said that he should content himself with voting in support of the motion that the first Section stand part of the Bill.

Mr Jugonnath Sunkersett is in favour of the Bill if it is amended

The Honorable Mr. JUGONNATH SUNKERSETT said :—

"Mr. President,—As I was unable, much to my regret, to be present at the last meeting of the Council, when some interesting discussion took place in connection with the Wagers' Bill, I should like to say a few words on the subject on the present occasion, though, after having heard so many able speeches from my Honorable colleagues, it would, I fear, appear presumptuous in me to indulge in any comments. Nevertheless, as a member of this Honorable Council, I cannot refrain from giving utterance to my views on so important a Bill as that under notice, and would therefore crave your Excellency's permission to make a few observations.

"I think it is desirable to check, if possible, the evil which, it is admitted on all hands, exists of gambling or wagering in time-bargains, but I doubt if the Bill proposed will have the effect of doing so. As I understand the

law to be now, it is entirely a question of honour between the parties, whether the wager shall be paid or not, because the losing party cannot legally be compelled to pay the money directly, and if he chooses to give his shroff or banker a notice not to do so, the banker cannot be compelled to pay it for him, nor would he be at liberty if he chose to do so after notice, and the loser may recover the money deposited from the shroff or banker. It is a fact well known to the native mercantile community, that more than a year ago certain native banking houses in Bombay were great sufferers by time-bargains. They held on for a time, with a view to evade payment, if possible, knowing that they could not by law be compelled to pay. But they soon found that their mercantile credit was in consequence seriously and injuriously affected. So in order to uphold their credit, they were compelled to make the payment. They look upon it as a debt of honour, and for their own credit, they are obliged to pay. Such being the case, I do not think that any law will avail in checking the evil. Surely if such is the state of the law, and gambling is still carried on, the promoters of this Bill must be more than ordinarily sanguine, if they think the measure now proposed will put an end to such gambling. I, for one, believe that this Act will only call forth a little more ingenuity in the native mind, and that a scheme will very soon after its passing be found for evading the new law, as successfully as the old law was evaded.

“The time-bargainers can easily find means of preventing its being called a time-bargain by making false purchases of opium, cotton, or other goods of merchandize from some friends or others, to make it appear as a *bonâ fide* transaction, and thus the goods may pass into as many as ten hands, and yet in the end it is nothing more than a time-bargain.

“It is most difficult to tell when a contract is a time-bargain, and when it is not. Many time-bargains are couched in precisely the same terms as *bonâ fide* contracts for the sale and purchase of goods, and the principal danger and difficulty in carrying out the stringent proviso of this Act will be found, I apprehend, in ascertaining whether the contract before the court was or was not a time-bargain. The word time-bargain used in the original draft is, I see, changed in the amended Bill into wager, gambling, and contract, intended to abide a particular event, yet, I think the scope is nothing more than to prevent time-bargains in fact.

“Where a question only affects the actual parties to the contract, as is the case under the existing law, it is not of so great importance; but when third parties are to be bound by it, I think there should be no doubt whatever as to whether the transaction came within the definition of a time-bargain or not.

“Money may be paid by a banker under the express direction of his principal without his knowing or having reason to know that the contract

of which the money is paid is a time-bargain ; but as the law will stand, if this act is passed, should it afterwards be found that the contract was really a time-bargain, the banker will have to refund with full costs what he paid innocently.

“ If I am wrong in this view, I shall be corrected ; but as I read it, the 7th Section of the Act will go as far as this. At all events the addition of the word “ knowingly ” would remove all doubt in the matter.

“ I think it should be clearly understood, that before a person is made liable to repay any money in this way, it should be proved not only that the transaction on account of which the money was paid was a time-bargain, but that he knew that it was a time-bargain at the time when he paid the money.

“ As I said before, I am anxious to give my support to a measure of the kind, because I think gambling in time-bargains is carried on to a large extent, and that the practice ought to be discouraged. Whether it is possible to check the practice by legislation, or whether it is expedient to make the attempt to do so, is a question on which I will not enter now. But I cannot, after well considering the matter, come to any other conclusion than that the Bill now proposed, as it stands, may not have the desired effect. However, if some amendment were made by which it should be provided that only persons who acted with a full knowledge that they were infringing the law, were made responsible, I should not object to the Bill being passed.”

The Honorable Mr. RUSTOMJEE JAMSETJEE said that he entirely concurred in the remarks made by the Honorable Mr. Jugonnath Sunkersett.

Sir W. Mansfield  
replies in support  
of his amendment

His Excellency Sir WILLIAM MANSFIELD said—“ Sir, I will now, with the permission of the Council, reply to the speeches that have been made by the Honorable members who have opposed the amendment which I have had the honour to move. The Honorable Mr. Anderson began his speech by saying that he had wished to have answered the remarks made by me at the last meeting of the Council. As we all know, he was prevented from speaking on that occasion by an event which called for the attendance of the Honorable members at another place. But though the Honorable Mr. Anderson did not reply to me on that occasion, and expresses his regret at the delay, it seems to me that that regret must be in some measure tempered in his mind by the opportunity it has afforded him for long labour and preparation. I think that no one who has listened, as I have, for more than an hour to the attack which he has been pleased to make on me, and on those who are on my side of the question, can doubt that. I

say, that no one who has done this, will for a moment suppose that the Honorable gentleman has not sought to make good use of the time that has elapsed between the last meeting and the present, in ransacking all the means that were available to him for the purpose of intensifying the attack with which he has favoured me. It must have been my misfortune at the last meeting of this Council to have said something which has called down the wrath of my Honorable friend; but if I did, I think the Council will agree with me in thinking that he has repaid me in full measure for any offence of which I may unconsciously have been guilty. For my part, my Honorable friend's volubility, the manner in which he has introduced irrelevant matter and discursive anecdotes having nothing to do with the question before us, has reminded me of nothing else than of Mrs. Quickly's description of Falstaff's diseases, and I think on examination we shall find that his eloquence was fired by personal feelings only, and so far as the argument in the present case was concerned, it has left the debate where it found it, for I cannot recall that from the beginning of his speech to the end of it, my Honorable friend ever once spoke on the merits of the question, or attempted to refute what had been said against the Bill as being erroneous in principle. He has tumbled over many obsolete Acts of Parliament and judgments, but without touching the real question before us. It was no doubt more convenient for him to make a personal attack than to speak to the Bill. But whether he was justified in taking up our time in this manner, is for the Council to judge. The most prominent part of the Honorable Mr. Anderson's speech was that in which he arrayed against me the opinions of great lawyers of the present and of past ages. But we must not allow ourselves to be misled by what any lawyers, however great, may have thought or said. It is most unsafe to quote juridical opinions in considering any legislative measures. It is seldom that the purely legal view can be reconciled with the political view. For nothing is more certain than that great Judges have not as a rule been good law-makers. The exceptions to the rule are very few, and must be sought so far back as the reign of Queen Elizabeth, when it is true that a great lawyer was also foremost in the van of legislators. In modern times, if we except Lord Mansfield, perhaps the only lawyer who took a leading part in general administration was Mr. Perceval. I may be charged perhaps with inapt illustrations, and I may be subject again to such criticism as I have this day met with, but seeing how few the instances have been in which men trained and in great practice as lawyers have exercised a beneficial influence on the laws of their country, or owing to previous education have been able to take enlarged views of reform and administration, I do think that it is trifling with the good sense of the Council to refer it to the opinion of Judges, as has been done by the Honorable gentleman, as if

we were to be absolutely bound by them, while our judgment remains unconvinced. But I have been charged with quoting Justinian in support of time-bargains. I say that my quotation from Blackstone which contained the line from Justinian was completely misapprehended, and therefore misrepresented by the Honorable Mr. Anderson. I quoted Blackstone not because the quotation immediately affected time-bargains, but because the words I quoted expressed in a simple manner and on the greatest authority that first principle of natural law that every one is entitled to to receive his own. It was because I thought that Mr. Westropp's Bill, if it became law, would infringe that first principle of natural law, and would prevent some persons from receiving their own, that I pointed out that it was in violation of the first principles that should always guide those who are engaged in the responsible duty of legislation. And if by quoting the appropriate words of Blackstone that were ready to my hand in support of my argument, I laid myself open to the charge of having been guilty of an act of "infelicitous temerity," I am not sorry for it, but sorry only for those who have brought such a charge. If my infelicitous temerity drives me to protect any class of my fellow-subjects who may have no other advocate to plead their cause, and are about to be injured by attempts at class legislation, then all I can say is, that I thank God for the quality. Again I say, at the risk of repeating myself, that the proposed Bill is not only contrary to first principles, but to the whole tenor of modern legislation. I have before said that it is of the same kind as the usury and sumptuary laws, which the enlightened legislatures of modern Europe have swept from their statute books. This was once faintly denied, but the denial cannot be maintained. The result of the old usury laws was to prevent money from receiving its proper value, and their object was to prohibit the payment of inordinate interest; but it was at length found that they were a very great inconvenience and they were abolished, and it came to be understood that they had been a measure of great oppression, and had actually increased instead of diminishing the amount of interest on money lent, and so it would in time be with the present Bill if it were ever to become law. Every one admits that Act XXI. of 1848 is a dead letter; and the Honorable Mr. Jugonnath Sunkersett even goes further and says that "Legislate as you may, you cannot prevent time-bargains." If the present Bill were passed it would soon be found that it would place such restrictions on legitimate speculation that traders would find it necessary to evade its provisions in order to trade at all. At present commission agents take two kinds of commission. There is the commission *del credere*, which covers all risks, and there is the ordinary commission which covers ordinary risks. It was found very convenient to have this distinction; but if the proposed Bill becomes law the shroff in all cases will have to run extraordinary risks,



and therefore to charge enormous *del credere* commission to cover the risks, whatever may be the character of the time-bargains, legitimate or otherwise. For in every case the shroff will be the scape-goat either of the winner or loser of the time-bargain. It will be vain to hope to keep up such a system. The attempt to do so can only be pronounced as Quixotic. It is not to be supposed that the community at large will stand quietly by while the Legislature is engaged in persecuting a particular class when the community at large knows no evil. It is not to be wondered at that this class should have received a large amount of abuse from another class. There never have been successful merchants or bankers who have not been abused as a class, but then the abuse has generally come from the public. The case is now very different, and I hope, therefore, that if this Council divides upon my motion, Honorable members will remember that we are asked to legislate, not on behalf of the public, who have no grievance that require redressing at our hands, who have made no complaint whatever, but that we are asked to defend one class of merchants from another.

“ And we must remember too that all the evidence that has been furnished to this Council has been that of persons in whose interest the present Bill was framed; that is, of persons who wished to avoid the difficulties that were a part of their profession, and who will be said to be jealous of the success that had crowned the efforts of others which may interfere with their profits. I have been at some pains to supply the want of information displayed in the Report of the Select Committee, and to supplement that Report by some facts on which the Council may rely. I am happy to be able now to read to you some evidence on the other side. It has been given by a sagacious and experienced native servant of Government in the Revenue Department. I am delighted to call attention to the great powers of research shown in this evidence, and to the effective manner in which the connection is traced between the legitimate operations of trade and those transactions about which the discussion has been raised. Thus we see in this evidence a soundness of view and a care for the real principles of economical science, which I would strongly recommend to the attention of my two Honorable friends opposite.

“ It will be found moreover, that in the opinion of large classes the exercise of undue influence is by no means confined to the abused shroffs. I had a conversation with this native gentleman yesterday, and the following are the notes that I took down in writing while he spoke :—

“ Time-bargains immediately affect trade in a most important manner, and this effect begins with the grower.

“ Thus as soon as or even before the crop of cotton begins to appear, the first buyer of cotton visits the land. He forms his notions

as to what the cotton will be worth on a given distant date. So does the grower.

- “ The first data are thus acquired for sales and time-bargains, the latter forming a most important and real trading feature in the former. To interfere therefore with the time-bargains will interfere with the early arrangements made with the grower, who requires security against risk and must have ready money. By means of an initiative time-bargain before the crop is gathered, the grower is able to grasp the advantage of the market without risk.
- “ This is the more strongly shown by the fact that sales have been made frequently by the ryot, even before the crop was sown, or the land prepared. This occurs both to the wealthy landholder and the poor ryot.
- “ A true time-bargain is made by him, viz. on a given day to deliver the cotton grown on his farm at a place, say Dhollera, for a given sum. The time-bargain therefore depends on accidents of season, the due housing of the crop, the change of the prices.
- “ If the ryot performs his part of the contract the risk falls on the buyer, the ryot having profited by the early circumstances of the favourable market. Thus the legitimate time-bargain is immediately favourable to the improvement of the country.
- “ Thus we have here had time-bargain the first.
- “ The second time-bargain will include delivery at a distant place from the local merchant, who we will say has gathered his cotton together at Dhollera. He now makes time-bargain the second with the merchant at Bombay, who must pay for the further risk of delivery, travelling, fluctuation of price.
- “ The bargain must be a speculative one, as its operation extends over several months. A price settled months before is to be given on delivery irrespectively of all chances or risks.
- “ Here we have time-bargain the second, all on account of the same parcels of cotton.
- “ The Bombay merchant then holds his cotton which is either on the journey or in his warehouse. He either exports himself, or makes time-bargains for delivery at certain dates to those engaged in the export trade, which he may consider most profitable to himself.
- “ The seller for delivery in such time-bargains is satisfied with certainty. The buyer takes the risk of rise or fall in the market. Therefore, the grower and the small agent or petty intermediate

- merchant are guarded against uncertainty, while the capitalist runs the risk; but makes large profits according to his risk.
- ‘ All time-bargains depend as regards frequency on the value and extreme demand for commodities. At one time there were more time-bargains in opium, now, owing to cotton having become so valuable, and owing to the fluctuation of price in Liverpool and New York, cotton is more a source of time-bargains than opium. But in fact time bargains take place in every description of commodity which may either be exported or imported. It is absurd to say that time-bargains cause the prices of cotton to rise. Prices depend on value as fixed by the distant markets where the commodity is demanded.
- “ If time-bargains are injurious to trade in cotton, how is it that everywhere in the Presidency, the breadth of cotton is so immensely increased, as for instance in Kattywar where this year three times the amount of cotton has been sown as compared with last year.
- “ The system of time-bargains is the machinery with which small traders are able to meet the competition and enormous pressure of the great capitalist. Owing to the high profits gained in cotton, every one wishes to have a share. The time-bargains make the little people who deal in cotton to have fair play. Without them the great exporting capitalists would have it all their own way, and would influence the market according to their own ends. In considering this question it is most important to discriminate between the private interests of the expecting merchant, and those of the growers, the agents and the petty merchants, who carry on the local trade of supply.
- ‘ The latter complain of the tremendous pressure put on them by the exporting firms. The petty sellers have no correspondents in England, and they are compelled to sell to the firms established in Bombay, and often at enormous loss. Thus it is known that on the same day, cotton of the same description has been sold by two parties, by one for 13*d.* a pound, by the other for 19*d.* a pound. It is to meet the pressure which causes such results, and consequently loss, that time-bargains are of so much use.
- ‘ The risk of awaiting the final results of sales at Liverpool is such that the majority of people prefer to make their time-bargains and so save themselves.
- ‘ We hear time-bargains abused, but in fact every contract for delivery at remote dates is a time-bargain. Thus the Commissariat makes a time-bargain when it gets a contractor to under-

take to furnish produce which is not yet grown for a term of years, and therefore to run all the risk of the season. This is clearly demonstrated in a time of high prices, when the contractor either has to buy produce for the Commisariat to complete his contract at a great loss to himself, or to pay a heavy fine to Government in compensation for non-execution of contract.

“It is therefore impossible to do away with time-bargains such as have been described, and which enter into every sort of trade, and it would be difficult if not impossible to discriminate between such legitimate time-bargains and those of a mainly gambling character.

“The soucars are indeed alarmed, and expect the most serious interference in all operations of exchange if the Bill be passed. They consider there will be no end to the attempts at fraud, and the numberless vexatious suits which will be the consequence. The business of the lawyer will be very much increased. If time-bargains are abolished to prevent gambling, legitimate trade will also be hindered. If they are prevented merely to stop operations on account, the result will be that much cotton will be kept in hand, not for the purpose of the market, but to represent transactions which may and will cause the cotton to be delivered to a dozen different parties on the same day.

“There is no doubt many purely gambling time-bargains take place, but they cannot be separated from the legitimate ones.”

(Sir William Mansfield accompanied the reading of this paper with a running commentary, showing the urgent necessity of not trampling on the ryot, and of not sacrificing the smaller traders to the power of the large capitalists, and also drawing marked attention to the fears of the native bankers as respects interference with exchange, and the increase the Bill will give to litigation instead of diminishing it as expected by the Judges.)

His Excellency continued—“I have given this evidence which I have collected myself. Now I will read you some perfectly independent evidence which strangely corroborates the opinion of the native gentleman in the Revenue Department, the more especially as the letter I quote is clearly the work of an enlightened British merchant. I allude to a letter signed “Alpha” which appeared in the *Times of India* of the 5th September, and I say that the coincidence is the more important, because it is impossible that the gentleman whose opinion I have just given can have had any communication with “Alpha” on the subject, while the points

taken by the two authorities are different. I will only add that I have not the slightest idea who "Alpha" is, but that he also has fairly tried to fill up the lacunæ of the Report of the Select Committee. His letter is as follows :—

*"To the Editor of the Times of India.*

"Sir,— Although the Select Committee have not thought proper to take into account the views and opinions of the natives, I have had the curiosity to inquire of several of them what they thought of the Bill. One was a wealthy and respectable Parsee merchant. I asked him what he thought of the Bill, he stated he thought it decidedly bad and mischievous. He replied by stating a case which applied to transactions of his own, where such a Bill would interfere with what he considered legitimate trade. On one occasion, being desirous to operate in cotton and ship to Liverpool, he was deterred from doing so, thinking the business too risky—*too near gambling* considering the immense change in price that might take place before his cotton arrived, but the thought struck him that he might reduce the risk, *the gambling element*, by making use of time-bargains. He reasoned this way :— "Cotton is so high now in Bombay, that a rise in Liverpool is not likely to cause a more than corresponding fall here. If I enter into a time-bargain here at the same time as I ship to Liverpool, I am likely to secure a profit by the transaction, and if I don't make a profit, my loss will not be overwhelming. If anything happens to the Liverpool market, I lose on my shipments, but if my reasoning, as shown above, is correct, I gain somewhat more on my time-bargain. If, on the contrary, the Liverpool market is higher when my cotton arrives, I gain on my shipments and lose somewhat less on my time-bargains, but if the sircar put down time-bargaining, I shall be compelled either to ship cotton with more risk than I am inclined to take, or else to go out of the market altogether." I said to him then, "But you might sell actual cotton for future delivery instead of in the form of time-bargain," to which he replied, "How can I sell cotton for actual delivery at a certain date unless I went into the market at that date, and obtained it first? and if, instead of doing that, I agree to give the party to whom I sell, the money necessary to do that himself, does it not come to the same thing?" I could not deny his argument.

"The second native I consulted was a rich cotton dealer. I asked his opinion of the Bill. He also highly disapproved of it. He said, "The sahib loq say that time-bargains make high prices,

I am a dealer in cotton ; how can I wish anything that makes high prices done away with ?” But I said, “irrespective of that, can you show that trade would be interfered with by suppressing time-bargains ?” “Truly yes,” he replied, “take my own case. I have plenty cotton up-country, bought at a high price, but which cannot get to Bombay till after the rains. I cannot afford to take the risk of what may happen in the market during six months on my own head, and I sell cotton in a time-bargain for November, thus securing the profit now ruling and lessening my risk.” “But,” said I, “could you not gain the same end by selling a part of your cotton to arrive for actual shipment, supposing time-bargains were done away with ?” To which he replied, “The sahib must be laughing at me. How can I get as much money for my cotton in that way ? The bales come here in the end of October, and if I was obliged to sell them to an actual shipper to England, he could only give me such a price as he could afford, taking into account the chance of the American war ending before the cotton was sold in Liverpool, say next March ; whereas a time-bargain could give me such a price as he could afford, taking into account the chance of the war ending before November, the due date of the contract. The sahib must see that by the latter plan I would get a much better price, and thus I protect myself against heavy loss, for if, when my cotton arrives, the price is higher than when I sold, I have to pay a balance to the party I sold to, but I have the benefit in the increased value of my cotton when it comes to market ; but if the price is lower, then the balance handed to me by the party I sold to, indemnifies me for the fall in value of my cotton. For this reason, sahib, I think that if the Government do away with time-bargains, they will interfere with my trade. I do not enter into time-bargains for the purpose of gambling, but in order to reduce the risk there is in trading in cotton at present.”

“The third and last native I consulted, was an intelligent, highly-educated native engaged in the export trade. His opinion also was unfavourable to the Bill. He said, “No doubt if time-bargains were abolished, I and others who ship cotton would get it on better terms,—at least so long as the real tendency of the market is upwards ; but I do not think it fair to the producer and dealer in cotton that Government should step in, and deprive them by law of one-half of their customers, thus compelling them to sell the other half on their own terms. If time-bargains are suppressed, as the Government appear to desire, it is virtually a suppression of all

trade in cotton which has not for its ultimate object the shipment of cotton to England. No man can then buy cotton in Bombay on speculation with the purpose of selling it again, without the ridiculous restriction that he is to go through the trouble and expense of receiving and re-delivering the cotton. If he compromises the transaction by receiving, or paying, the difference, he has saved the expense and trouble, but Government says he is to have no security that his bargain shall be carried out. For is not this exactly descriptive of a time-bargain? Now there are a great many people desirous to trade in cotton when such profits are going, but not speculative to risk a venture in the article when the risk has to endure till the cotton is sold in Liverpool, but who are willing to buy cotton in Bombay for re-sale at a certain fixed date not so far off. But as there is no consumption in Bombay, such transactions must be speculative,—that is, the purchase must be intended to be re-sold, and if the buyer and seller agree to save the expense of delivery and re-delivery by paying over the balance in cash, why should the Government step in to prevent them? Such a transaction comes clearly within the limits of trade, and falls clearly beyond the limits of State interference. If Government makes such compromises illegal, it must make all compromises in mercantile transactions illegal also, which would lead to a pretty state of things." What could I say in reply?

"I have thus endeavoured to supplement to a certain extent the Committee's Report, by giving a glimpse at native ideas of the Bill. I think it must be admitted there is some reason in what they urge, and some proof that time-bargains are not pure gambling.

"In conclusion, let me beg of the members of the Legislative Council to lay to heart the remarks of Lord Palmerston, who ought to know something about these matters, when arguing the other day against Government interference with tenant right in Ireland—a question certainly less directly connected with trade than time-bargains in produce in Bombay. He says, "How can the Government increase and promote the prosperity of a country? Not by forcible legislation—not by interfering in the transactions of men. The object of Government ought to be to remove obstacles, to remove freedom from industry, to give security to life and property, to leave buyer and seller, the hirer and letter to settle their own bargains, unshackled by law and uninterfered with by the Executive." These remarks were loudly applauded by the British Senate; they are golden words and singularly appropriate to the case of the threatened Bill.

ALPHA."

Now this evidence is particularly valuable, for "Alpha," who is evidently possessed of great practical knowledge, admits that certain time-bargains are gambling transactions. The Honorable gentleman who is so fond of racing analogies will admit that both as described by the native evidence and by that of the British merchant, these bargains come under the designation of "a hedge." They are continually used to correct the excessive risks caused by extraordinary fluctuations of the market, and the very gambling character of the legitimate trade. This letter and the conversation I had with my friend confirm me in the idea which I have all along entertained, that if time-bargains were abolished it would be only the great export firms that would be benefitted. There is also a fear that many of the poor cultivators in the interior would be ruined, or at all events terribly crippled, if the proposed Bill were to become the law of the land, and rigorously enforced. I think moreover that after what it has now heard, the Council will feel satisfied that more evidence on both sides is required before fresh legislation would be justifiable. The evidence already given to the Council by the promoters of the Bill, is, as I have before remarked, of an eminently unsatisfactory character. We have been told for instance that Mr. Kelly's letter disclosed an alarming state of things. But what does this letter disclose? why that *at one of the fixed times* mentioned in the agreement signed by the 60 shroffs, Mr. Kelly issued a large number of notices. Mr. Kelly's notices were evidently not normal but exceptional, because of the price of cotton having been declared by the shroffs to be lower than could be justified by the state of the market at a particular date. He does not issue that same number of notices every day, but he issues them once and only at the suit of the interested parties to meet a most unusual contingency; and therefore it is perfectly absurd to put forward this letter, as being in any way an index as to the real state of the case in regard to the frequency of time-bargains. The argument based on Mr. Kelly's letter is illusory and leads to an erroneous conclusion, and no opinions given on the faith of his letter can hold water for an instant. Again, it is very generally said in native society, that it is strange that English merchants only have been asked their opinion about time-bargains. This is said freely in the native press, and I have been reminded of it by native gentlemen. I ask, whether to an outsider the fact that only Englishmen have been consulted is not calculated to bear the appearance which it undoubtedly does to many of the members of the native society. There is all the more reasons therefore why my amendment should be adopted by the Council; for I would appeal to the Council as composed of English gentlemen and native gentlemen of the highest honour, whether it is not demanded by common justice that the shroffs should be allowed to speak, if only in their own defence. But now to recur to another point I have been taunted over and over again both here and elsewhere, and



again today, by the Honorable gentleman with inconsistency, because I have not moved for the repeal of Act XXI. of 1848. But the persons who assert that I have been inconsistent, are those who have failed in their own arguments. There is no device more common in rhetoric than to charge an antagonist with inconsistency for not following some course of action which was really quite independent of the point at issue, for not doing something which is quite foreign to his purpose. I am right in calling the taunt that has been used a mere rhetorical device. But the mischief attached to such assertions is that while they can be easily met by the person who is attacked, the public, which has not time to weigh arguments, sometimes allows itself to believe that there is some truth in the assertions so repeatedly brought forward. These assertions are accordingly repeated as they have been repeated in the present instance *usque ad nauseam*. I think it only right therefore to maintain that whatever may be the opinions of Judges and other persons as to the necessity of rendering Act XXI of 1848 an effective Act, I have a perfect right to declare my own opinion with respect to this Bill actually before us without any regard to that which it is said to amend. What have I to do with Act XXI. of 1848? It is a piece of old lumber, a corpse. "Is it a corpse set up for show, galvanized at times to go?" The Act XXI has doubtless failed in its object. It is defunct. Therefore it is a fallacy to say that this new Bill is to supplement what is really a dead thing

"The Bill is in fact an entirely new measure containing a principle new and strange to Act XXI. That principle, as Sir Joseph Arnould says, sanctions a double immorality. I say, therefore, it is entirely vain to refer me to Act XXI. when my business is to defeat the Bill before the Council on account of its unusual and mischievous character. I am not to be frightened out of my resolve by all the mere opinions that may be marshalled against me. And besides, how am I to know that the opinions of the Judges of the High Court are really against me after all? Mr Justice Couch is very guarded in what he says. Sir Joseph Arnould may almost be said to be on my side of the argument; and from the silence of Sir Mathew Sausse, I am entitled to presume, that although he thinks legislation necessary, he has not spoken out, because he really disapproves of the Bill as it stands. We certainly have a right to know the opinion of the Honorable Chief Justice on that part of the Bill objected to by Sir Joseph Arnould. The Honorable Mr. Anderson gave us many quotations from judgments delivered in various Courts of law in favour of his view of the present question. But I can also refer to the Bench of the late Supreme Court of Bombay, which lays down very positively that the practice of entering into time-bargains is sanctioned according to Hindoo Law

"This opinion was recorded by the late Supreme Court so lately as 1862. It is surely too much to expect that Hindoos, whose present system

and habits date from a period older by several centuries than the Christian era, in fact the most conservative of nations, will suddenly change their old practice in regard to time-bargains, when their own law, which they believe to have a divine origin, did not discourage such contracts. •

“ Now, this opinion of the late Supreme Court that I have alluded to, shows very clearly that the practices with which we have rashly attempted to intermeddle, are part and parcel of the habits of the people, of a people too that has shown itself to be the most conservative on the face of the globe. We should surely pause before we destroy at one blow a system that has flourished, and with profit too to the poorer classes, for the last 2,000 years. The very failure of Act XXI. of 1848 shows us that fresh legislation in the same direction will do no good. We should look at the present question as legislators, not as lawyers. We should attempt before arriving at any conclusion to grasp all the circumstances that should influence our decision. It is not sufficient to consider whether that Act XXI. can be rendered effective. But will it do any good, not to one class, but to the whole community, to be affected by the new law, which is meant to infuse a new vitality into Act XXI ? I am convinced that if Mr. Westropp had been brought up and lately acting as an administrator and not as a lawyer, he would not have made the mistake of attempting to pass the present measure. So convinced am I of his thorough and searching impartiality, that I feel sure that if he could have had the information which would have enabled him to take a more extended view of the whole question, if he could have seen the other side of the shield, he would not have been so zealous in the matter as he has been. As a lawyer he had been brought into contact not only with the worst side of human nature, but with the immediate effects of certain gambling transactions. He has exaggerated ideas in consequence of the iniquity of the shroff, and he did what seemed to him his best to root out this iniquity. But had he enjoyed a wider field of view, he would have learned to look on the question in a more liberal spirit. He would have seen how injuriously his Bill would affect the poor ryots in the Mofussil, who have no one to speak for them : and his love of justice and fair dealing are so genuine and deep-seated in his nature, that it is not to be doubted that he would never have introduced this unhappy measure. But to turn to another matter. The Honorable Mr. Anderson has thought fit to defend himself to-day, with regard to the possible influence of the Press on him. • But it was quite unnecessary for him either to defend himself or the honorable service to which he belongs in such a particular. I trust that I have in nothing that I have said allowed any personal considerations to have weight with me. What I have sincerely wished to do has been to give my help to every proposal that is fitted either to improve the morals or protect the liberties of my fellow-subjects, and to resist measures, which, like the

one before us, have a contrary tendency. I must say that I was startled when I was charged with stating what was not the case when I said that the present Bill was at variance with the course of modern legislation. The Honorable Mr Anderson's argument was that a similar measure was passed by the British Parliament in A.D. 1845, and that too by a Parliament which had shown itself in the years A.D. 1844 and 1846 to be a very liberal Parliament, and by no means behind the spirit of the age. But the Council must remember that in 1846 the parties in England underwent a great change under the guidance of Sir Robert Peel, in short, conversion. Because the Parliament of 1846 was a converted Parliament, it was not to be concluded that that Parliament did not act under pressure. There is no doubt that the great change in our ideas, on all subjects connected with liberal measures in respect of trade and so forth, have taken place since then. Much of the old leaven remained and had to be got rid of. As for instance, we saw in the opposition made by the shipping interest, headed by Mr Lindsay, to the repeal of the navigation laws. As a matter of fact the English measure of the 7th and 8th Victoria belonged altogether to the old law, and I will content myself with simply stating this as a fact, and will not further reply to the taunts which have been levelled at me for reminding my opponents that they had the political economists against them. I will only say this, that if such a measure as the present is contrary to the doctrine of the political economists, when it is viewed only in such a light as may have been furnished them by the state of society at home, what would it be if viewed from the point of Indian society. We all know that in Paris, or in London, or in New York, a man's actions are shrouded by the very crowd in which he lives. He may do anything he likes. He may gamble up to the very roots of his hair, and no one know anything about it. But here, on the contrary, things are very different. Men live in glass cases. We all of us know more or less what our neighbours are about. Now, I should like to know in this matter of time-bargains, who is guiltless? Who is guiltless of going beyond the legitimate operations of trade, as it is called? Where are you to define trade and gambling in these days of banks and shares, of old land companies and new land companies, of speculations of all sorts in which we see great fortunes made in a very short time? Who is there that resists the temptation?

"I ask, when the Siren time-bargain trips along the Stock Exchange in her crinoline with its hoops of gold, and festooned with bank-notes, who is there that resists her charms and forbids himself from all dalliance? I ask, who is guiltless in this matter, who is able to throw a stone at his neighbour, who is there that has not a beam in his own eye when he tries to take out the mote from another's? Who is there that if precluded by position from entering into the speculations does not feel his mouth water and wish that he too

also had the opportunity! I say, Sir, that it is impossible to stop short at cotton and opium; you cannot legislate against a small class, and it would be the height of injustice to overlook the general consideration, and to direct your legislation against a small section of those who conduct trade operations. I will notice one objection which has always appeared to me ludicrous in the extreme; still it may have weight with portions of the public, and as it was referred to by my Honorable friend Mr. Frere, it is well not to pass it by. Thus I have read not without a smile in several prints, that time-bargains ought to be put down, because they add much to the business of the Courts, and that the Judges ought to be saved from the trouble caused by the additional suits which are so added to the file; in short that their convenience should be consulted in this matter.

“ Now supposing that the proposed Bill would give the Judges less to do, a by no means ascertained fact, I would ask, is that any business of ours? What have we to do with reducing the files of the High Court? No man has a greater respect than I have for the lessons which flow from the lips of the Judges. I have before said that I consider the temple of Justice to be in the largest sense the great hall of education for the people. It is for the Judges by their judgments to teach the people what is righteous, and it is again their duty to enforce that teaching by punishing crime when it is brought before them. It is not for the legislature to relieve the Judges of this duty. I must say, whenever I have seen the ludicrous statement I have noticed, I have been forcibly reminded of a passage in one of Congreve's plays, in which Millamant disposes of her lovers. She says: “ Dear me, what are lovers? when we use them up, we make more.” And so I say, when we use up our Judges, let us make more. If the number of existing Judges does not suffice for the work of the High Court, let us make more Judges, but do not let us seek artificially to reduce their work. I would not close my remarks without again referring to the surprise which was originally effected by this Bill, and to the absolute necessity of not committing ourselves to legislation, when we are without a sufficiency of facts on which to ground it, and of not admitting a principle which is contrary to our notions of honesty.

“ Thus my Honorable friend himself, Mr. Anderson, evidently doubts the propriety of admitting that principle.

“ He was obliged to apply all the strength of his subtle and powerful intellect to break down the objections he felt. Let me recommend the Honorable gentleman, when referring again to this question, to recollect the lessons of morality he learned in his childhood. I therefore call on the members of the Council to put away the notion of class legislation and to vote with me on my amendment, and to recollect that this is not merely a question of stopping gambling on an Exchange, but that it is one in which is concerned the welfare of the poor as well as the wealthy, it is one in which

are concerned the development and expansion of the country at large, and it is one in which an undue interference has been attempted with laws and customs which are 2000 years old.

The PRESIDENT said that it had not originally been his intention to take part in the debate on His Excellency Sir William Mansfield's motion; but he thought he should now do good service to the Council if he recalled to their recollection the exact position in which they stood in regard to Mr. Westropp's Bill. In the first place he must remind them that the Bill was not a Government Bill. It was introduced by their late colleague, Mr. Westropp, as a Bill which his experience at the Bar showed was necessary to enable the Courts of Justice to carry out the existing law. It had been doubted during the course of the debate whether the Chief Justice was in favour of the proposed Bill or not. He (the President) had good reason to believe that the Chief Justice considered the subject of the Bill to be one which called for the careful attention of the Legislature; they had before them proof that the other Judges on the Original side of the High Court held similar views. While on this point, he (the President) must remark with reference to what had fallen from the Honorable members who opposed the Bill, that in taking this view the Honorable Judges could have no other object than to prevent the time of Courts of Justice being taken up in deciding the disputes of gamblers. It was also patent to the Council that several of the more influential members of the mercantile community, including four members of that Council, were in favour of some legislation on the subject, though they were not agreed as to the form which such legislation should take. There could then be no doubt that the subject came before them, recommended to their consideration by the highest judicial and mercantile authorities in the country. Whether the Bill before them was such a measure as the exigencies of the case required was of course quite a different question. His Excellency Sir William Mansfield apparently denied the gambling character of time-bargains, still he (the President) thought there could be little doubt that the practice of entering into time-bargains was a gambling practice and not legitimate trading.

(Here Sir William Mansfield interrupted His Excellency and intimated that he must have been misunderstood; that the point he took was, that in practice it was quite impossible to separate the legitimate and necessary operations of trade from the gambling transactions.)

There could be no doubt from all that they had heard that Act XXI. of 1848 had been evaded. It had been objected to Mr. Westropp's Bill that while it purported to carry out Act XXI., it nowhere defined what a wagering contract was. But courts of law rarely found any practical difficulty in deciding what was a gambling transaction and what legitimate

The President recapitulates the arguments in favour of and against the Bill to amend Act XXI of 1848

trading. There was always this broad distinction between them, that whereas gambling transactions always excluded as far as possible all exercise of judgment or skill as able to control the event—it was the object of legitimate trading to obviate as far as possible the operation of mere chance, and to make the event of the transaction depend on the skill and judgment of the trader. Of course doubtful cases might arise, but there was this broad practical difference which it was never very difficult to recognize, and there could be no fear that such a Bill as was before them would interfere with legitimate trade. As to the cases dwelt on by His Excellency the Commander-in-Chief in the notes he had read them of his conversation with a native gentleman, it was sufficient to say the transactions described were not time-bargains and none of them could be in any way affected by this Bill. Then again it had been said that the Bill was opposed to the spirit of modern legislation. Now, after all that they heard today and on former occasions, he could not concur in this objection. If the Bill had enacted pains and penalties against gambling, it would perhaps have been opposed to the spirit of modern legislation, but it carefully avoided the enactment of all penalties. It said to the time-bargainers on behalf of the courts of law “we do not interfere with your bets or your bargains; but do not occupy our time in enforcing what seem to the court to be immoral transactions.”

This was the principle of the Bill as it affected the courts of law. It was a mistake therefore to say that the Bill was of the same character as the usury and sumptuary laws. But though he approved of the principle of the Bill, he thought that His Excellency Sir William Mansfield had shown very satisfactorily that the information they possessed was not sufficient to justify legislation at the present moment. If the measure had been a Government measure, he (the President) would certainly have asked for more evidence in regard to it before sanctioning its introduction into the Council. And he would now put it to His Excellency Sir William Mansfield, whether it would not be better to adjourn the discussion until more evidence could be adduced, rather than shelve the Bill for the present, at least by moving the amendment in the form in which His Excellency had moved it.

And suggests that it would be better to adjourn the discussion until more evidence could be adduced, than to shelve the Bill for the present

Sir W Mansfield has no objection to altering his amendment as suggested.

His Excellency SIR WILLIAM MANSFIELD said that he had no objection to the amendment being altered in any manner which might appear most appropriate to His Excellency the President. Sir William Mansfield added that he hoped that nothing that he had said in regard to the Judges of the High Court would be understood as implying that he did not entertain the highest respect for them

The Honorable Mr. FRERE said that he trusted it was unnecessary for him to disclaim any intention of speaking with disrespect of the Judges of

the High Court. He had himself been too many years on the Bench for it to be supposed that he could entertain anything but respect for the Judges.

The question was then put that the consideration of the Report of the Select Committee on the Bill to amend Act XXI. of 1848 be adjourned to the next meeting after 15th October 1863.

Question put that the consideration of the Report be adjourned to the next meeting after 15th Oct 1863

*Carried* .

The PRESIDENT said that it was desirable that the consideration of the Rules for regulating the conduct of business at Meetings of the Council should be adjourned until the Rules as amended by the Select Committee had been a longer time in the hands of the Honorable members.

Consideration of the Rules of the Council adjourned

This was agreed to, and the Under Secretary was also directed to have the old Rules and the revised Rules printed side by side, so that the modifications recommended by the Select Committee might be apparent at a glance.

The Honorable Mr. FRERE in moving the first reading of the Bill for the Relief of Insolvent Debtors, said :—

Mr Frere moves the first reading of the Bill for the Relief of Insolvent Debtors.

“ An Act for the Relief of Insolvent Debtors is a subject which has engaged my attention for many years. When Zilla Judge at Dharwar about 1847, I brought the subject to the notice of the Judicial Commissioner. Subsequently, when Judge at Surat in 1852, I had an opportunity of urging it upon the Judges of the Sudder Adawlut; but no action was taken in the matter until 1857, when I was myself one of the Judges of the Sudder Adawlut, and in 1860, after I had left the Court, the subject was brought to the notice of Government, who, in May 1861, asked the Judges to frame a draft Act to carry out their views.

The Judges however said that with every desire to assist in carrying out a measure so much needed, the difficulties to be encountered in framing an Act so as to adapt it to the circumstances of this country were so great, that they suggested the task should be undertaken by the Legislative Council.

“ It is much to be regretted that we had not the assistance of the Judges of the Sudder Adawlut, who are of all people the most conversant with the wants of both debtors and creditors, in drawing out the Act, but as that was not procurable, Government in July 1862, understanding that no Bill for the Relief of Insolvent Debtors would be introduced into the Council of the Governor General for making laws, drafted one founded on the Act for Relief of Insolvent Debtors in Ireland 11 and 12 Vic, chap 21, and forwarded it for the criticisms of the Judges of the Supreme Court, and the Sudder Adawlut, the Revenue Commissioners, and Judges of Surat, Tanna, Poona, and Ahmednuggur.

“ The draft was generally objected to as being too close a copy of the Act of Parliament, too verbose, and containing phraseology unknown in the Acts of the Indian Governments, and containing clauses which were objectionable. I need not detail the provisions of the first draft, nor point out wherein it differed from the present; suffice it to say, that the Bill was re-drafted into the form in which it is now presented to the Council. This draft has also been referred for the criticism of the Commissioner in Sind, the Revenue Commissioners, the Honorable Mr. Justice Forbes, and Mr. Justice Newton, Messrs. Moroba Canoba, Gopal Hurree, and Trimulrao Venkatesh; all of whom generally approve of it, but most of them have offered very valuable remarks, which I shall note hereafter, and many of which will require to be considered by the Select Committee, if this Bill be read a first time and referred to a Select Committee.

“ The Act will certainly give relief to those debtors who, having rendered themselves liable for what we consider usurious interest, find the burden of their debts overwhelming, and are prepared to make the most just and equitable arrangement in their power with their creditors, such as a ryot I lately heard of, who originally borrowed Rs. 9 and was sued on a bond for Rs. 49-8-0, being the equivalent of 9 maunds of Bajeree principal and 1 candy and 13 maunds interest, at 9 pylees for the rupee. Or another who passed a bond covenanting to pay interest at Rs. 1531 per cent. per annum. But these men certainly will not be entitled to relief merely because the interest they agree to pay was usurious. The creditor no doubt ran great risk in lending the money, and he has a right to insure himself against it; and a fraudulent debtor, or one who, knowing his inability to pay, shall have incurred debts, will be made to suffer for it; but relief will be granted, and the Act is intended more particularly to apply to the unfortunate trader, who by unforeseen circumstances must fail in his engagements; and to the creditors of an unprincipled debtor who suppresses or alienates his property with a view to defraud his creditors. So that the Bill, it is hoped, will be a benefit to creditors as well as debtors.

“ The Act as a relief to debtors accordingly provides (Section XIV.) that any person who has resided in the district 6 months and is unable to pay his debts, or any person in gaol on civil liability may petition for relief. While the creditor also who has obtained a decree against and imprisoned his debtor, provided he does not pay or adjust his debt within three weeks, may petition that his debtor be declared an insolvent and the Act be enforced against him. As may also the creditors of those who leave the jurisdiction of the court or their usual place of business or abode with the intent of defrauding their creditors, or with that design fraudulently transfer their estate or suffer it to be taken in execution or appropriated.

“ It is proposed to give the court power to remand an Insolvent to



prison as well as to discharge him, and penal clauses are introduced (XLVII and XLVIII) for the punishment of Insolvents fraudulently concealing or destroying documents, and of those who have fraudulently or maliciously contracted debts, which will, I hope, secure punishment overtaking all who attempt to obtain the benefit of the Act for fraudulent purposes. It is possible that in Committee it might appear that Section 421 of the Penal Code already provides the penalty contemplated in Section XLVII. If that be the case it might be necessary to make some modification in that Section, though I confess I do not see how it could be conveniently arranged that an offence proved before one tribunal, the Insolvent Court, should be punished by another, the Criminal Court.

“The machinery by which the Act is to be worked consists as in England of Judges or Commissioners and Official and other Assignees, the District Courts being the Insolvent Court, and if further rules are required, the High Court have power to prescribe them, provided they are not opposed to the provisions of the Act

“So much for the general outline of the Bill With regard to the details, it has been suggested that the District Judge should not necessarily be the Judge of the Insolvent Court.

“That if the Act is extended to Sind, that the Commissioner should have the power of prescribing rules for its procedure, as it is proposed the High Court should have elsewhere.

“That Official Assignees, instead of being appointed by Government, should be appointed by the Judge, and dismissed only with the sanction of Government

“It has been suggested that six months residence in the district is not sufficiently long to entitle a person to claim the benefit of the Act. That the proceedings of the Court should be on stamped paper That the Court should not be left to allow an unlimited time for filing the Petitioner's Schedule; and that a declaration should be added to Section XV that an Insolvent making a false averment is liable to punishment.

• “That Rupees 300 as the limit of the value of wearing apparel, working tools, and other necessaries of Petitioner and his family which are reserved to them, is too high, and that Rupees 50 worth would be sufficient, and that Rupees 500 is too large a debt for a man to owe to make his leaving the district, to defraud his creditors the lowest act of Bankruptcy

“It is objected against Section XXIX. that making a pension liable for debts is opposed to Act VI. of 1849, which exempts pensions from seizure by force of Law, and that in Section XLIV (which I think will require alteration in other parts) Rupees 5 should not be fixed as the maximum amount of subsistence, but that there should be a sliding scale.

“ It has also been suggested in Section XLVIII. to exempt from their discharge debtors who had borrowed money with which to pay fines inflicted on them by a Criminal Court. By paying that fine the Insolvent escaped imprisonment, and I am inclined to think that the provision would be a good one.

“ Objections have been raised to the proviso in Section LXV in allowing the Judge of the Insolvent Court to direct a decree to be passed against the Insolvent in any Civil Court in the district, and that it would be better, one thinks, that the Judge should pass the decree himself, and another that he should direct the Assignee to file a suit rather than direct a Court, which might be the Small Cause Court, over which he has no jurisdiction, to pass a decree. I prefer the clause as it stands.

“ Besides those which I have enumerated, other minor objections and suggestions of less material import have been urged on which I shall not dwell further than merely mention them, though I must express my thanks to all who, by giving their opinions and suggestions, have assisted me in introducing this Bill

‘ It is suggested that a person who has taken the benefit of the Act should not be allowed to avail himself of it again for five years, except under particular circumstances. That the Schedule should be sworn to in open Court The last clause of the Bill declaring all Regulations and Acts inconsistent with this Act to be repealed, has been objected to as a loose style of legislation The objection is supported as we all know by the Lord Chancellor in his late famous speech upon the revision of the Criminal Law in England. But the clause may be supported as most comprehensive, though I should be obliged to any one who would point out *all* the parts of Acts and Regulations which, as inconsistent with this Bill, require to be repealed.

“ That notice in the *Government Gazette* does not give sufficient publicity

“ That Schedule F which refers to a “ trader,” is inconsistent with the rest of the Act

“ That property “in expectancy ” is likely to give rise to question and difficulty.

“ These, and whether the interpretation of time in the interpretation clause, and others which I need not enumerate, are all subjects which must engage the attention of the Select Committee

“ I must not however conclude without drawing your attention to Section LXVII., which provides that no person shall be liable for the debts of his parents and others to a greater extent than the property he inherits. This clause is particularly aimed at a provision of Hindoo Law, which makes a man responsible for his father’s debts with interest, and his grandfather’s without, though he may not have inherited a sou from either. The Judges

of the Supreme Court, when the first draft was submitted to them, approved of this enactment as just in principle, but the then Judges of the Sudder doubted whether these provisions pertained to an Insolvent Law, and suggested that the Legislature should consider well before passing an enactment which would so greatly affect the money-lenders.

“ I have no doubt but that you will consider well before you pass this Section, but I am happy to think that Mr Justice Forbes and Mr Justice Newton, who have been Judges of the Sudder, approve of this draft, and Mr Justice Newton has pointed out that in Madras it has been held that even under Hindoo Law a Hindoo son is only by law liable for his father's debts to the amount of the assets, the obligation to pay all debts with interest being, in the opinion of the Sudder at Madras, as it was in Sir William Jones and Sir Edward Colebrooke's opinions, a religious and moral and not a civil obligation, and therefore one that Courts of Law cannot enforce. Without the weight of these great names the ruling appears to me so just that I have no hesitation in recommending the proposed Section for adoption.

“ It probably may, as the late Sudder Court suggested, seriously affect money-lenders, but when it is so clear that only a sentimental obligation can rest upon a son to pay his father's debts to a greater extent than the assets he received from him, and that the son in many cases derived no advantage from the debts his father incurred, though I have no wish to injure but rather hope to benefit the fair trader, I feel no compunction in suggesting that no son should be hampered by his father's debts, and that the son who has become so should be able to free himself from them, and I should be glad to think that no person seeking the benefit of this Act had a worse claim to relief than a son from so much of his father's debts as exceeded the patrimony he inherited.

“ It has been suggested by Mr Moroba Canoba that as by Hindoo Law a man marrying a widow is liable for all her former husband's debts, the provisions of Section LXVII should be extended to him. I do not feel quite so certain upon this point. Re-marriages are, I know, common among some of the Hindoos, and I was myself obliged to give a decree against the husband of a woman for her former husband's debts, but marrying a widow is not so natural a coincidence in a Hindoo's life as inheriting his father's property or debts. The question however may engage the attention of the Committee and the Council.

“ With these remarks I will move that the Bill be now read a first time ”

The question was put that the Bill for the Relief of Insolvent Debtors in the Presidency of Bombay, and for amending certain points in the Law of Debtor and Creditor, be read a first time.

*Carried*

Bill for the Relief of Insolvent Debtors in the Presidency of Bombay, read a first time

Bill referred to  
a Select Committee.

The Honorable M. FRERE moved that the Bill be referred to a Select Committee consisting of—

The Honorable the ADVOCATE GENERAL,

The Honorable Mr. SCOTT,

The Honorable Mr. JUGONNATH SUNKERSETT,

The Honorable Mr. PREMABHAI HEMABHAI.

And the Mover, with orders to report at the first sitting of Council after the 12th January next. The object in naming so distant a day being to obtain as much consideration as possible for the measure by those whom it is more likely to affect than the members of that Council.

The Motion was put and carried.

HIS Excellency SIR WILLIAM MANSFIELD said that he would not now ask leave to move the \* Resolutions of which he had given notice, as the consideration of the Rules for the conduct of business at meetings of the Council had been adjourned. He proposed however to move these Resolutions when the Report of the Select Committee on the Rules came on for consideration. Indeed, he was sorry that the subject of the Resolutions had not occurred to him before, when the Report was prepared, as in such case he would, if not objected to by the other members of that Committee, have included the matter in that Report.

The PRESIDENT adjourned the Council to Saturday the 19th September 1863, at 3 P.M.

By order of HIS Excellency the Governor in Council,

H. BIRDWOOD,  
Under Secretary to Government.

*Poona, 21st September 1863.*

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\* NOTE —The Resolutions of which notice had been given had reference to the employment of a short-hand writer to report the Proceedings of the Council

## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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 Act of Parliament, 24 and 25 Victoria, Chapter 67.

The Council met at Poona, on Saturday the 19th September 1863.

### *PRESENT.*—

His Excellency Sir H. B. E. FRERE, K.C.B., Governor of Bombay,  
Presiding.

His Excellency Sir W. R. MANSFIELD, K.C.B.,  
The Honorable Mr. W. E. FRERE,  
The Honorable Mr. J. D. INVERARITY,  
The Honorable Mr. H. L. ANDERSON,  
The Honorable Mr. JUGONNATH SUNKERSETT,  
The Honorable Mr. PREMABHAI HEMABHAI,  
The Honorable Mr. A. D. ROBERTSON.

The Council proceeded to consider the Report of the Select Committee appointed to revise the Rules for regulating the conduct of business at Meetings of the Council, held for the purpose of making Laws and Regulations under the provisions of the Statute 24 and 25 Victoria, Chapter 67

Report of the  
Select Committee  
on the Rules for  
regulating the con-  
duct of business at  
meetings of the  
Council, consider-  
ed

The UNDER-SECRETARY read the Rules as amended by the Select Committee on the 28th August 1863, and finally submitted with their Report on the 3rd September 1863.

The PRESIDENT suggested that in line 13 of Rule 1 the words "under his authority" be inserted between the words "done" and "by." The Rule would then provide that whatever was done by an Under-Secretary or Assistant Secretary would be done under the authority of the Secretary. The effect would be that there would be one person only responsible for all acts done by the Ministerial Officer of the Council. And it appeared desirable that responsibility should be fixed in this manner on some one person, and that the possibility should be prevented of the Under-Secretary giving an order on any subject at variance with any order given by the Secretary.

The Honorable Mr. FRERE observed that the Secretary already acted under authority delegated to him by the Council. To allow him therefore to delegate authority to an Under or Assistant Secretary would be to have an *imperium in imperio*, and this would be scarcely what the Council would wish to have. It would besides obstruct the rapid disposal of business and occasion other difficulties if the Under-Secretary were always required to state that he signed papers or transacted any other business under the authority of the Secretary. It would be better to consider the Under-Secretary as acting under the immediate authority of the Council, in the same manner as the Secretary would act if he personally performed those duties that were ascribed to him under the Rules. The word "Secretary" was simply used in the Rules for convenience, but it was always contemplated that the duties of a Secretary might be performed by some other officer, who while performing these duties would act under the full sanction of the Council as if he were really the Secretary.

His Excellency Sir WILLIAM MANSFIELD said that he understood the Rule in the same sense in which it had been taken by the Honorable Mr. Frere.

The PRESIDENT said that under the Honorable Mr. Frere's explanation, which seemed to be concurred in by the Council, he would not press for any alteration in the Rule.

At the suggestion of the Honorable Mr. INVERARITY, it was agreed that in the 4th line of Rule 3 the word "future" should be substituted for the word "further;" it was also agreed that in the 2nd line of Rule 5 the word "the" should be substituted for the word "any."

The PRESIDENT observed that as the word "President" was defined in Rule 1, the words "if the Governor or Ordinary Member of Council be present" were unnecessary in Rule 6. These words were accordingly omitted in lines 8 and 9 of the Rule, and in line 10 the word "the" was substituted for the word "their," and the words "of such President" inserted between the words "absence" and "the."

The Honorable Mr. FRERE remarked that in line 3 of Rule 13, Section XIX. of the Statute 24 and 25 Victoria, Chapter 67, was erroneously quoted Section XIX. of the Indian Councils' Act related to the Council of the Governor General, the 43rd Section related to this Council and ought therefore to have been quoted. The error was corrected accordingly.

The PRESIDENT said that he could not understand why any change had been made by the Select Committee in the number of times that a

Bill should be read before it could be passed. The Report did not make this point clear, and if the suggestion of the Committee were to be adopted, the Council would throw itself open to the charge of having deviated without any apparent reason, from the course followed by the other Councils. It would be difficult, he thought, to answer such a charge, and considering that it had been the object of the Council in revising the Rules to assimilate them as far as possible to the Rules of the other Councils, he could have wished that no change had been made in the procedure. He pointed out the difference in this respect between what was required for the convenience of such a body as that Council and what was suited to the British Parliament. There it was always understood that when a member moved for leave to introduce a Bill, he was at liberty to discuss the question in the most general manner, and often when leave was granted a member for the introduction of a Bill, he had not at the time any definite idea of the precise form that the measure would assume when introduced. But in this Council leave was never asked for the introduction of a Bill without a draft of the proposed measure being ready for submission to the Council, and in the case of Government measures no steps were taken in Council until after much preliminary investigation by the Executive Government. The Council had been reminded by the Secretary of State that it met for the purpose of making laws and not for the purpose of discussing generally any question which had no connection with legislation. It was for them, therefore, to decide what procedure was the best adapted to ensure the speedy and effective despatch of such business as the Council might legitimately have before it.

His Excellency Sir W. MANSFIELD said that the change in the Rules had been recommended by the Committee at the suggestion of the Honorable Mr Anderson, who would probably be better able than he to explain the reasons for the change. He (Sir W. Mansfield) would, however, only state that the effect of the new Rule, if adopted, would not be to really increase the number of discussions that would be allowable in connection with any measure, as at the first reading the statement of the mover of the Bill in support of its general provisions would be made instead of at the time when leave is asked to introduce it. Thus this statement would be made after sufficient notice had been given to put other members in a position fairly to comprehend it. In other respects the first reading would generally be a formal procedure. The advantage of the proposed plan would be this, that members would not be taken by surprise in regard to any measure proposed for their adoption. They would have time to consider all the bearings of any measure before they were irrevocably committed to an opinion in one way or other. To illustrate his remarks, he

could only refer to his position in regard to the Time-Bargains Bill. This Bill came on the Council before most of the members were aware of its character or of its objects. The old Rules were so cramped that with his views he had actually been compelled to a course which otherwise he should have avoided as inconvenient. If the Rules as amended by the Committee had been in force at the time, he would not have opposed the first reading, simply because his voting for the first reading would not have committed him in any manner to the measure, while time would have been afforded for gathering the necessary information. It would be understood also that the Report of the Select Committee often afforded very valuable information on the scope and bearing of a Bill independently of changes and consideration affecting particular Clauses. Under the new Rules there would be this advantage, that at the second reading, according to Rule 20 of the revised rules, it would be competent for Honorable members to discuss any measure as a whole in an enlightened manner, with full knowledge of all that could be said in favour of it, or against it. And it would then be in the power of the Council to accept the Bill if it approved of it, and so proceed to consider it in detail, or else, if at this stage, the Council found that the measure was objectionable, it could at once reject it without further loss of time and labour in going over a great number of Clauses. This plan had at least the merit of convenience to recommend it. It was calculated to save the Council much waste of time, for while it tended to ensure discussion after full information had been received on any point, it discouraged a hasty and premature discussion of any measure, which was more than could be said (as they knew from experience) in favour of the system in force under the existing Rules. After a full discussion on the second reading, with all the information afforded by the Report of the Select Committee, the Council having resolved itself into a Committee of the whole Council, if we are permitted the use of the term (which is very doubtful), any further discussion on the principle would, under the new rules, be unnecessary and therefore out of place. The third reading would often be a merely formal step in the procedure. It was easy to see that by this arrangement much valuable time would be saved. He (Sir W Mansfield) was not present at the meetings of the Council that were held during the last cold season; but he had heard that one measure then before the Council had been carefully matured after the Report of the Select Committee had been considered, each Clause had been carefully examined and passed, its details had been modified to a great extent, and it was on the point of receiving the final stamp of the Council's approval, when, at the eleventh hour, the whole discussion on the principle was re-opened by an Honorable member, who then only found that he could not conscientiously subscribe to the Bill as a whole. He was open to correction in what he stated, but he believed that



what he had said was the case ; and there could be no doubt that a system that permitted such a catastrophe as he had described, was not a system that was favourable to that speedy and effective despatch of business that they were all so anxious to ensure. And though the proposed system was not conformable with the procedure in the other Councils, still that, he hoped, would not be held a sufficient reason for rejecting it. At all events, if the Council determined to have only two readings of a Bill, he hoped the new Rules would be referred back to the Committee, in order that the whole of the proposed procedure under the head of " Bills" might be re-cast in accordance with the wishes of the Council.

The Honorable Mr. ANDERSON said that His Excellency the Commander-in-Chief had correctly stated the reasons for the change which the Committee had recommended. The old Rules had undoubtedly been liable to the objection that under them Honorable members might find themselves voting for a measure at an important stage of its existence without being in possession of sufficient information to enable them to give their vote in an intelligent manner. The case referred to by His Excellency sufficiently illustrated this. He (Mr Anderson) was present on the occasion referred to. He remembered that after the District Police Bill had been carefully considered in a Committee of the Council, the Honorable Mr Inverarity drew up a memorandum on it, which expressed in a most forcible manner various objections to it, and the Council postponed the consideration of the measure pending the receipt of information from the Commissioners of Police, who were requested to submit their views on the Honorable Mr Inverarity's objections. Under the old Rules Mr Inverarity had been quite in order in making his objections when he did. Indeed he would not probably have been in a position to have made them at an earlier stage. But every member must have been conscious of the serious obstruction to public business that was occasioned at the time. The Honorable Mr. Inverarity was not prepared to oppose the Bill on its first reading. He had no opportunity of moving that the Bill be rejected as a whole, until the second reading, that is, until after the Council had spent several days in considering the Bill Clause by Clause. The plan proposed by the Select Committee would effectually prevent the recurrence of this difficulty by reading every Bill a second time *before* its consideration Clause by Clause, and thus enabling a member to move the rejection of a Bill on that second reading. If the second reading were carried, the Bill would then be considered in detail, and after that would come the third reading. It would perhaps tend to explain the procedure recommended by the Committee if he instanced the position in which they at present stood in regard to Mr. Frere's Insolvency Bill. No member had opposed the motion for the first read-

ing of the Bill. But from this it was not to be understood that all the members intended to support the Bill to the end. Honorable members voted for the first reading simply because as yet they saw no ground for rejecting it. But under the present Rules, the Bill having been read a first time without opposition, there would be no opportunity of moving the rejection of the Bill, until after its numerous Clauses had been considered one by one by the Council. The Bill he believed to be an excellent one, but others might think differently. It was a very important Bill and one which no one would wish to oppose at its first stage. But if any members were opposed to it, they ought to have an opportunity of raising a debate on the principle before the measure was considered in detail. He (Mr Anderson) thought that the proposed amendment in the Rules would in the end be found to save time, although it afforded opportunity for the complete discussion of a measure.

The PRESIDENT said that he saw no objection to the present procedure on the grounds stated by Mr Anderson. There was no absolute necessity under the present Rules to postpone a discussion on the principle of the Bill, until the whole measure had been considered in detail. In the case of the Time-Bargains Bill, the fullest discussion had arisen on the question that the first Section stand part of the Bill. This being the case, it did not appear what advantages the proposed scheme would have over the present plan. The consideration of the Bill in detail by the Council provided at present exactly the same opportunity for a full discussion as the Select Committee wished to be given by their proposed second reading; and after the whole measure had been finally modified, the question usually put after all the Clauses that the Preamble stand part of the Bill, always enabled Honorable members to speak and divide on the question of principle, so that the present system did allow members to give an intelligent vote on the principle before the Bill was read a second time and passed. What he (the President) thought was, that the proposed plan had no advantages that were not possessed by the present procedure, while it would be utterly unintelligible either to the members of the other Councils or to any one accustomed to the procedure of the House of Commons.

The Honorable Mr ROBERTSON said that he approved of the proposed change in the procedure, as it would allow any Honorable member to speak to the principle of a Bill before the Council spent its time in discussing its details.

The PRESIDENT said that any Honorable member could do that now. Besides in practice there was no restriction as to when the principle should be discussed, and when the details; as a matter of fact nothing was more

common than for a speaker to object to details when professedly opposing the principle and *vice versa*, it would be quite possible (as had been done in the debate on the Time-Bargains Bill) to oppose a Bill in the fullest manner on considering a mere matter of detail.

HIS Excellency SIR W MANSFIELD said that we should discriminate between facilities afforded by purely Government Bills and those introduced by Honorable members on their own account, the Government would never bring forward any measure without having first been fully satisfied as to its necessity. But private Bills might be forced on the Council at any time without sufficiency of information, and any discussion on them might therefore be unsatisfactory and incomplete. It was not, however, desirable to make different provisions in the Rules for Government and private Bills, as it was the wish of the Secretary of State to place all the members of the Council on the same footing in regard to the introduction of the Bills. He (Sir William Mansfield) contended that the proposed plan, if adopted, would make the first real discussion on a measure a *bond fide* discussion and not a mere one-sided affair.

The Honorable Mr. INVERARITY said that under these Rules it would ordinarily take 31 or 38 days to pass a Bill through the Council.

HIS Excellency SIR WILLIAM MANSFIELD said that he did not think 31 or 38 days a preposterously long time for the consideration of an important measure.

The Honorable Mr. FRERE said that as they no longer had stated Sessions, it did not signify how long a Bill was under consideration. There was nothing to prevent several Bills from being introduced at one meeting; and meetings could be called by the President at any time of the year for the disposal of Bills.

The PRESIDENT remarked that three months was the minimum time for the consideration of a Bill by the late Legislative Council of India. He thought that it would perhaps meet the views of the Council if the following changes were made in Rule 20, that in the 3rd line the word "may" be substituted for the word "shall," that in the 4th, 5th, 6th and 7th lines the words "on that Report being presented the principle of the Bill as amended by the Select Committee may be discussed on the second reading," be omitted, and that in their place the following words be substituted; "which when ordered, shall be presented before the Bill is read a second time." These alterations were agreed to.

At the suggestion of the Honorable Mr. INVERARITY, the words "or substance" were omitted from line 2 of Rule 28.

HIS Excellency SIR W. MANSFIELD said that in line 9 of Rule 32 the words "left to right" should have been "right to left." The change was accordingly made and Sir W. Mansfield explained that the object of the Committee in proposing that the Mover of a motion should be the first to vote on it, and that the other members should vote in consecutive order from right to left was to avoid making any distinction between the members of the Executive Government and the additional members. The old Rule which required that members should vote in order of seniority was open to this objection that members of Government always voted first on every measure

On the motion of the Honorable Mr. FRERE, the words "to some future day" were substituted for the words "to the next or some other convenient day" at the close of Rule 34.

After the Rules had been amended by the Council, the Honorable Mr. FRERE said that the Select Committee had purposely avoided making any rule in regard to the time when Bills containing penal clauses should be submitted for the previous sanction of the Governor General in Council, in accordance with the recent instructions of Her Majesty's Secretary of State, as the matter was authoritatively settled in Section 43 of the Indian Councils' Act, which provided that no such Bills should even come under the consideration of the Council without the previous sanction of the Supreme Government, but he thought it would be advisable that that Section of the Act (43) should be added as a foot note to the Rule 13, that members should have no cause for overlooking it.

The Honorable Mr. ANDERSON said that it was unnecessary, as every man was bound to know the Law

The Honorable Mr. FRERE then said that he would not press his suggestion.

Sir W Mansfield withdraws his proposal for the employment of a short-hand writer to report the Proceedings of the Council

HIS Excellency SIR WILLIAM MANSFIELD then said that he would not press the Resolutions of which he had given notice, not because he did not consider the employment of a short-hand writer was required, but because he was aware that there were other objections to the proposition. He thought that there could be no harder work than having to revise one's own speeches, for in revising, it was impossible to remember all the guarding words and expressions that might have been carefully used at the time of speaking, but which would be omitted in a bald précis. So that statements not objectionable at the time when they were made are often made to assume a very offensive form when reported. He could wish that they had a short-hand writer to report their speeches under the supervision of the Under-Secretary,

whose time must of necessity be at present much taken up with preparing the Reports, when he had other work to do. But he had been informed by His Excellency the President that there were practical difficulties in the way, which could not easily be met.

The PRESIDENT said that the occasions were rare when a short-hand writer would be required. In general all that was wanted was an abstract of what was said by each speaker. Very few speakers would like to see their speeches verbally reported, and an ordinary short-hand writer who did not understand the subject under discussion would very often fail in giving the real substance of a speech. There would besides be a great practical difficulty in the way of their obtaining short-hand writers. Even in Calcutta this difficulty was felt, and though the Council of the Governor General had secured the services of a very able and competent short-hand reporter, it was still found that it was only when the speeches were on subjects with which he himself was conversant that his power of short-hand reporting obviated the necessity for members revising the reports of their own speeches whenever the subject was not familiar to him. Speakers found that it was a more satisfactory plan to revise the reports of their speeches that had been prepared by him in the ordinary manner.

The Honorable Mr. ANDERSON concurred with the President in thinking that it would be difficult to get a good short-hand reporter in India.

The Honorable Mr. ROBERTSON remarked that short-hand writing was a very difficult accomplishment to learn, and after it had been acquired, it took the writer several years to read his own writing.

Sir W. MANSFIELD added that he thought there would be no insuperable difficulties presented in a plan which should give a Clerk to the Under Secretary who should have achieved the accomplishment of short-hand writing. An addition to the wages of an ordinary Clerk would ensure this, and the Clerk, when the Council was not sitting, would do his ordinary work. In this manner at small expense his object would be accomplished, and the Under Secretary would be provided with an efficient and proper aid in the preparation of his Reports. The drawing up of the Reports would still rest with the Under Secretary, who would however be provided with the reasonable aid he did not now possess. He thought that this matter should be left to Mr. Birdwood to organize, and he trusted the subject would not be forgotten.

The PRESIDENT said that there were no Bills that were as yet ready to be placed before the Council. The Draft Survey Bill was still under the

consideration of Government, and would not probably be in a sufficiently matured state for introduction for some months. Probably the next business that they would have to take in hand would be the consideration of the Time-Bargains Bill, but as that would not be for some weeks, he would not fix any day for the next meeting.

Council adjourn-  
ed *sine die*

The PRESIDENT adjourned the Council *sine die*.

By order of His Excellency the Governor in Council,

H. BIRDWOOD,  
Under Secretary to Government.

*Poona, 24th September 1863.*