



Masabhai Narayan
11/2/1886

P R O C E E D I N G S

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

1866.

VOLUME V.

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

*Abstract of the Proceedings of the Council of the Governor of Bombay assembled
for the purpose of making Laws and Regulations under the provisions of
“ the Indian Councils’ Act, 1861.”*

The Council met at Bombay on Friday the 19th January 1866, at 11 A. M.

P R E S E N T :

His Excellency Sir H. B. E. FRERE, *K.C.B.*, Governor of Bombay, *presiding.*

His Excellency Lieutenant-General Sir R. NAPIER, *K.C.B.*

The Honorable B. H. ELLIS.

The Honorable C. J. ERSKINE.

The Honorable RUSTOMJEE JAMSETJEE JEJEEBHOY.

The Honorable MADHÓWROW VITTUL VINCHOORKUR.

The Honorable PREMABHAI HEMABHAI.

The Honorable Lieutenant-Colonel W. F. MARRIOTT.

The Honorable G. FOGGO.

The Honorable A. J. HUNTER.

Affirmation of Office, &c.
taken by Mr. Hunter.

The Honorable Mr. A. J. Hunter took the usual affirmation
of Office and declaration of Allegiance to Her Majesty.

Papers presented to the Council.

The following papers were presented to the Council :—

1. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the Useless Records Bill.

2. Letter from the Government of India sanctioning the introduction of the Poisons Bill.

I L P

3. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the Bill to extend Act XX. of 1863 to Canara.

4. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the Sind Local Taxation Bill.

The Council proceeded to consider the Bills and Orders of the day :

The Honorable Mr. ERSKINE, in moving the second reading of "the Bill declaratory of the constitution of the Courts of Civil and Criminal Judicature, and of the Courts of Revenue in the Province of Sind," said that this Bill was introduced into this Council nearly two years ago, and after the first reading it was referred to a Select Committee, who had reported upon it in detail. The further progress of the Bill was, however, arrested, owing to a discussion which arose in regard to the establishment of a Recorder's Court at Kurrachee, and since the last meeting of the Council an intimation had been received from the Government of India that that measure would not be proceeded with for the present. There was no reason, therefore, for further delaying the progress of this Bill. The considerations which rendered its introduction necessary had already been explained to the Council, and he would now therefore move that it be read a second time. In assenting to this motion the Council would affirm the principle of the Bill. Some alterations in the details would, however, be necessary, and he proposed, if the Council had no objection, to refer the Bill again to a Select Committee, who should make an early report upon it.

The Bill read a second time, and referred a second time to a Select Committee.

The Bill was read a second time, and, on the motion of the Honorable Mr. ERSKINE, referred to a Select Committee, composed of—

The Honorable Mr. ELLIS,

The Honorable the ACTING ADVOCATE GENERAL, and

The Mover, with instructions to report at the next meeting of the Council.

The Honorable Mr. ELLIS, in moving the second reading of "the Bill for the prevention of Gambling in certain places in the Presidency of Bombay," said that it would be in the recollection of the Council that a Bill had been introduced by their late colleague, Mr. Jugonath Sunkersett, having for its object the prevention of gambling in the whole of the Presidency of Bombay ; but as, on reference to the Government of India, it appeared that that authority disapproved of the extension to the whole Presidency of a law which was originally applicable to the Presidency town only, the idea of passing an Act for the prevention of gambling throughout the Presidency was abandoned, and, as he (Mr. Ellis) thought, very properly abandoned. He thought there was a great deal of force in the objections which were taken to the general extension of the Act. In the Presidency towns all the power of an intelligent public opinion could be brought to bear on the working of the Act, and it could be worked by agencies which were not available in the Mofussil ; and accordingly at a meeting of the Council held last year, after he (Mr. Ellis) had been entrusted with the charge of the Bill on the lamented death of their late colleague, it was referred to a Select

Committee with a view to its amendment in accordance with the wishes of the Government of India. The amended Bill, which it was now proposed to read a second time, was an entirely new Bill. Even its title had been altered, for while the title of the former Bill indicated that it was a Bill for the abolition of gambling in the whole of the Presidency, the title of the present Bill made it clear that it was a Bill for the abolition of gambling in certain places only in the Presidency.

And he thought it had been framed in a manner which would commend itself to the approval of the Council. They had had the good fortune to have on the Committee the Advocate General, Mr. White, who had not only given them the benefit of his opinion and judgment, but had taken the greatest pains in tracing up to the times of Henry VIII. and the most remote English Statutes the origin of gaming laws in England, and the means that were taken to repress gambling when it became obnoxious to public morality, and a reprehensible offence. After referring to all these Statutes, the Select Committee had drafted the Bill in its present form, and it would be seen that it included two classes of offences. The latter part of the Bill referred to gaming in the public streets, where it had a bad influence on many persons besides those who took part in it. In the Bill power was given to the police to apprehend persons found gaming in the public streets. The other class of offences it was more difficult to deal with, for in regard to them they had to intrude on the privacy of houses, and to give power to the police to enter houses which were suspected of being used for the purposes of gaming. It was necessary to be very cautious in giving such powers to the police, who are everywhere a zealous class of public servants, and in India are sometimes said to be a little too zealous. It was necessary in giving such powers to the police to be careful to temper them by provisions to ensure as far as possible that the police would not unnecessarily cause grievous annoyance to respectable people. The result of the Committee's deliberations was such, he hoped, as would be approved by the Council. They had guarded against an inexperienced Officer taking upon himself to enter houses or search private rooms, by providing that in every such case a warrant must be given by a Magistrate or a Superintendent of Police invested with the full powers of a Magistrate, and it was made incumbent upon such Officer to satisfy himself by reasonable enquiries that there were sufficient grounds for supposing that the house to be entered was a house kept for gaming purposes. The parts of the Presidency to which it was proposed to restrict the operation of the Act were—*first*, large towns containing not less than 5,000 inhabitants, and having a resident Magistrate. The Committee had estimated the force of public opinion in a town by the number of inhabitants it contained. Such a method furnished of course only a rough gauge, but it appeared to be the only one practicable, for it could not be enacted in the Bill that where there were so many English schools, or where there were so many people who could read and write, there only the Act should take effect. *Secondly*, it was desirable that the Act should have effect in the neighbourhood of railway stations. The necessity for this was made very apparent in the neighbourhood of Bombay. The Council was aware that in Bombay the Police Act made gambling punishable. The consequence was that persons who were disposed to gamble, and found they could not do so in Bombay, went to the nearest railway station, and there set up a gambling house. A row of such gambling houses had been established at Coorla, and to these gamblers resorted, to the great annoyance of all respectable

people. It was not merely that gambling was carried on, but quarrels and disturbances broke out, and thefts were committed to make up for losses which had been incurred, and one consequence of this was that respectable persons who were accustomed to go in second class carriages, to Cochin frequently got their pockets picked by gamblers, and were now unwilling to travel by rail. The nuisance had become so great that it was quite time to put it down, and a petition had already been presented to Government, signed by several influential native gentlemen, praying that this nuisance be suppressed. It was not confined, however, to the neighbourhood of Bombay, and his honorable colleague Mr. Premabhai Hemabhai could tell the Council that at Ahmedabad it had become so formidable that the inhabitants there were as anxious for legislation as the residents of Bombay and its vicinity. It had been suggested by his honorable colleague Mr. Erskine that a provision should be inserted in the Bill to prevent the possibility of its being pleaded in any case that a town did not contain 5,000 inhabitants. It would obviously be very inconvenient to comply with a demand for a census, and a clause would therefore be inserted to the effect that a declaration of Government that a town contained 5,000 inhabitants, and that the Act applied to such town, would be sufficient evidence that it was a town to which the Act lawfully applied, the Government of course being bound to make sufficient enquiry before applying the Act. The Committee had some difficulty in settling the area around a railway station within which gambling should be a punishable offence. When the Council considered the Bill in detail, this point would be discussed. He (Mr. Ellis) would only suggest in conclusion that the Council should compare the Bill as it now stood with the Bill originally introduced, and they would see how entirely its provisions were altered. His honorable colleague Mr. Rustomjee had had very serious doubts as to the propriety of extending the Bill in its original form to the Mofussil, but since the Bill had been amended it had received his full support. He (Mr. Ellis) mentioned this to show that the Bill was not the same as that to which so many objections had been expressed when it was introduced.

The Bill read a second time. The Bill was then read a second time.

On the motion of the Honorable Mr. ELLIS, the Bill "to divest Courts of Revenue of jurisdiction in certain cases, and to vest such jurisdiction in the Courts of Civil Justice in the Bombay Presidency," was read a third time, and passed with certain amendments.

third time and passed with the following amendments:—

(1.) In line 7 of Section V. the words "under any law for the time being in force" were inserted after the word "same."

(2.) The following Section was inserted after Section VII. :—

"It shall be lawful for the Pleaders engaged in the Revenue Courts in any original suits or appeals which may be pending in the said Courts at the time when this Act comes into operation to plead and act in the said original suits and appeals in the Civil Courts to which the said original suits and appeals shall be transferred under Section VII. of this Act, although the said Pleaders may not have been authorized under any law now existing to plead or act in the said Civil Courts."

(3.) In the last Section the word "ordinary" was inserted before the word "original."

On the motion of the Honorable Mr. ELLIS, the "Bill to extend the provisions of (Bombay Act I. of 1865 to the Province of Sind" was read a third time and passed with the addition of the following words to Section III:—"in that Province, and further from time to time to vary, alter, or revoke any orders passed under this Section."

The Sind Survey and Settlement Bill read a third time, and passed with amendment.

The Honorable Mr. FOGGO, in moving the first reading of "the Bill to consolidate and amend the laws relating to the levy of Port-dues in the Ports of the Bombay Presidency," said: "Sir,—This Bill is introduced to give effect to some suggestions of Mr. George Inverarity, late Commissioner of Customs, and its object is to place all the Ports of the Presidency, except Bombay, on the same footing as regards Port-dues, and in particular to exempt coasting steamers from payment of Port-dues more than once a month, and at more ports than one in the same group during that period, instead of being as at present required to pay at all Ports they may touch at during the same month. That requirement prevents these steamers calling at minor Ports on the coast, as the Port-dues, when they do, so frequently exceed the amount of freight and passage money realized. To effect this object, the Bill proposes:—

Mr. Foggo moves the first reading of the Port-dues Consolidation Bill.

I. To repeal the three Acts under which Port-dues of the Presidency are at present levied, viz. Act IX. of 1858 (for levy of Port-dues in certain ports within the limits of the Gulf of Cambay), Act XV. of 1861 (for the levy of Port-dues in the ports of the Concan), Act VII. of 1862 (for the levy of Port-dues in the ports of the North Canara Districts).

II. To divide the Ports into two groups, viz., the Northern group, to comprise the ports enumerated in Schedule A, and the Southern group, comprising the ports in Schedule B, and to levy Port-dues at an uniform rate, subject to certain exceptions named in the Bill.

It is proposed also to add another clause in Committee providing for the investment in Government paper of the accumulated Port funds, which amount now, I understand, to some two lacs of rupees. I now move the first reading of this Bill."

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

The Bill was read a first time, and referred to a Select Committee composed of—

The Honorable the ACTING ADVOCATE GENERAL,

The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY,

The Honorable Mr. HUNTER, and

The Mover, with instructions to report at the first meeting of Council after the 20th of February.

The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY, in moving the first reading of "A Bill to regulate and restrict the sale of Poisons in the Bombay Presidency," said—"Sir, Since this subject was last before the Council the Bill and Statement of Objects and Reasons have been translated and circulated.* I now move the first reading of the

Mr. Rustomjee Jamsetjee Jejeebhoy moves the first reading of the Poisons Bill.

Bill. The member (Mr. Cassels) who first proposed to introduce the Bill stated enough to

show the importance of the subject and the desirability of having the existing law amended. I will not detain the Council except to make a very few remarks. There is no necessity to dwell on the dreadful nature of the crime of poisoning; it is the worst kind of murder, and has always been looked upon with horror. Indeed, I have read that many years ago in England there was a special punishment for the crime of poisoning. It was, that the person proved guilty should be boiled to death, and persons have actually suffered this dreadful punishment. It is a well known fact that the most deadly poisons are sold freely and without any restraint in the bazaar by persons who are almost entirely ignorant of the properties of the articles sold. No enquiry is made as to the purpose for which the poison is required—whether it is wanted for murder, or for medicinal purposes, or for use in trade or business, is all the same to the seller. He asks no questions. It may be one anna's or one rupee's worth that he sells. All he cares for is to get paid for what he sells, and he would as soon let a mere boy have a quantity of deadly poison (very likely not knowing its property) as he would to a skilled medical man. This is not a proper state of things, and I think it should be remedied. The sale of arsenic is a particularly dangerous trade. Arsenic, I believe, is tasteless as well as colourless, and can be administered in almost any kind of food without the person taking it detecting its presence. Then the symptoms of poisoning very much resemble cholera, and I am told that instances have been known to occur in Bombay of persons being treated for cholera when beyond all doubt they were suffering from the effects of taking poison. This is, I believe, well known, I am sorry to say, to many persons, as a medical gentleman of experience has informed me that there is more poisoning by arsenic when cholera is prevailing than at any other time. He states that cases have been brought under his notice of persons being taken to the hospital said to have been attacked by cholera, when there is no question that they had been poisoned. In England it was thought necessary so long ago as in 1851 to put some check on the sale of arsenic, so as to prevent not only intentional poisoning but poisoning by accident. The English Act, from which the present Bill is mainly taken, provided for arsenic being coloured before it was sold. The same provision is inserted in this Bill. If these precautionary measures are necessary in England, I need hardly say how much more necessary they must be in India. Look at the class of persons who sell poisons in the bazaar here. They are much more ignorant than those who trade in such articles in England. I am told that the principal retail dealers in poisons in England are chemists and druggists, most of whom are persons of education and respectability. But here the sellers, I may say, are all uneducated people. Then, again, look at the much smaller chance there is of a poisoner being detected in Bombay than in England. In this country decomposition takes place much sooner after death than it does in England, so that in most cases it would be perfectly impossible to detect any traces of poison even two days after death, whereas in cold climates there are numerous instances on record of persons having been proved to have been poisoned, by the examination of their bodies months and even years after death, and the murderers convicted and punished. The Bill has been submitted by me to several gentlemen, including amongst them Government officers of experience, for their opinion, and they have favoured me with valuable suggestions, which will be laid before the Select Committee, and can then be appropriately considered. To those gentlemen I take this opportunity of tendering my grateful acknowledgments. I will now conclude by moving that the Bill be read a first time.⁵

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

The Bill was read a first time, and referred to a Select Committee composed of—

The Honorable Mr. ERSKINE,
 The Honorable Mr. FOGGO,
 The Honorable the ACTING ADVOCATE GENERAL,
 And the Mover, with instructions to report at the first meeting of Council after the 20th of February.

When the question was put, His Excellency Sir ROBERT NAPIER, in giving his support to the Bill presented by the Honorable Mr. Rustomjee, begged to express his satisfaction at being again associated in the business of the State with His Excellency Sir Bartle Frere and the Honorable Mr. Erskine, and also at having an opportunity of giving his humble support to the Honorable Council of this Presidency in the course of progress for which it had been so distinguished, more especially since His Excellency had been at the head of this Government.

His Excellency the PRESIDENT adjourned the Council.

H. BIRDWOOD,
 Under-Secretary to Government.

Bombay, 19th January 1866.

Abstract of the Proceedings of the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations under the Provisions of "the INDIAN Councils Act 1861."

The Council met in Bombay, on Tuesday, the 6th March 1866, at 11 A. M.

PRESENT;

His Excellency Sir H. B. E. FRERE, K.C.B., Governor of Bombay, *presiding*.

The Honorable B. H. ELLIS.

The Honorable C. J. ERSKINE.

The Honorable J. S. WHITE (Acting Advocate General).

The Honorable Lieutenant Colonel W. F. MARRIOTT.

The Honorable A. J. HUNTER.

The Honorable RUSTOMJEE JAMSETJEE JEJEEBHOY.

The Honorable MUNGULDASS NUTHOOBHOY.

Affirmations of office, &c., taken by Mr. Rustomjee Jamsetjee and Mr. Munguldass Nuthoobhoy.

The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY and the Honorable Mr. MUNGULDASS

NUTHOOBHOY took the usual affirmation of office and declaration of allegiance to Her Majesty.

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

1. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the Sind Survey Bill.

2. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the Revenue Courts Bill.

The Gambling Bill considered in detail. The Council proceeded to consider in detail "the Bill for the Prevention of Gambling in certain places in the Presidency of Bombay."

On the question that Section I. stand part of the Bill, the Honorable Mr. Ellis said that the distance from Railway Stations within which the Act was to be operative had been left blank in the Bill as amended by the Select Committee. There had been some difference of opinion among the members on that point. The second Clause of the first Section provided that the Act should be in force "in all Railway Station-houses beyond the local limits of the Ordinary Original Jurisdiction of the High Court of Judicature at Bombay, and in all places surrounding such Station-houses and being not more than ——— distant from any part of such Station-houses respectively." Some of the Committee thought it was well to restrict the action of the police as much as possible, and others thought that it would be necessary, in order that the Act should be operative, to make it as inconvenient as possible for intending gamblers to carry on their trade. The question of the exact extent of the Act's operation was left to be determined by the Council. He himself would propose that the area about Railway Stations within which the Act should be operative should be that traced by a radius of three miles, which would not be by any means excessive. In a few years it would barely include the houses which will have sprung up near many Railway Stations. Houses were already being built, and population was increasing in the neighbourhood of many Stations, so that the population of such places would often equal that of towns to which the Act could be extended. If the area of the Act's operation

were made too small, people would evade the Act by simply going to places beyond the prescribed area, and there setting up gambling houses. The greater the distance the more difficult this would be.

The Honorable Mr. WHITE thought that a radius of two miles would be sufficient for all purposes. The Council would observe that this was an Act not extended to the whole Presidency, but to certain portions of it only, and there were special reasons for so restricting the Act's operation. The Bill selected places which had 5,000 inhabitants; it also selected Railway Stations and a certain distance around Railway Stations. It appeared to him that a radius of two miles would be quite sufficient to cause that inconvenience to gamblers which the Act intended. At the same time in view of the circumstances which rendered a restricted operation of the Act advisable, the Council ought not to extend the Act further than was absolutely necessary. The only object of extending it a little beyond Railway Stations, as far as he knew, was that persons might not go immediately outside a Railway Station and there set up a gambling house. This object could be accomplished by extending the Act to places within two miles of Railway Stations, and he proposed therefore that the blank in the 25th line of the first Section be filled up by the words "two miles." The reason for fixing a certain distance around Railway Stations within which the Act was to be in force, was not because the population within such an area might soon be expected to be equal to that of towns to which the Act might be extended, but it was feared that people would go by Rail from large towns to some small Stations and there gamble. If they could not gamble within a distance of two miles from such Station they would be deterred from going to such Stations, and the object in view would be fully attained.

The Honorable Mr. ERSKINE saw no objection to making the distance three miles. A radius of three miles would not, except at large towns, which were separately provided for, impose liabilities under the Bill on a much greater number of local residents than a radius of two miles, while it would increase the difficulty of gambling near a Railway Station. He agreed therefore with Mr. ELLIS.

The Honorable Mr. HUNTER thought that two miles was too small a radius. He agreed with Mr. ELLIS.

The Honorable Mr. MUNGULDASS thought three miles too small a distance. There were several gambling establishments near Bombay, and the largest, he understood, was at Coorla. The object of the Bill was to put down the nuisance caused by the persons who frequented these houses. He had heard several times of people being robbed and assaulted in the train by gamblers. Now if the suppression of such a nuisance was the object in view, the restriction of the Act to places within three miles' distance from Railway Stations would render the law nugatory, as people would have no difficulty whatever in going by horse conveyance from the Coorla Station to some place three miles off where the law would be inoperative. He proposed therefore that the radius referred to in Section I. be five miles.

The Honorable Mr. WHITE and the Honorable Mr. MUNGULDASS did not press their amendments, and Mr. ELLIS' proposal was adopted, the words "three miles" being inserted in line 25 of Section I. before the word "distant."

The following Section was inserted after Section I. :—

"II. The Governor in Council may, by an order made in pursuance of Section I. of this Act, fix the date from which the provisions of this Act shall apply to any city or town ;

and the production of a *Bombay Government Gazette*, containing an order purporting to be made by the Governor in Council applying the provisions of this Act to any city or town shall be sufficient proof that such city or town is one to which this Act may lawfully be and has lawfully and duly been applied in pursuance of Section I. thereof: Provided that the Governor in Council may by any subsequent order or orders cancel or vary any previous order, and the *Bombay Government Gazette* containing such subsequent order or orders shall be sufficient proof that such prior order has been cancelled or varied, as the case may be."

The following alterations were also made :—

- (1.) In line 10 of Section II. the word "by" was substituted for the word "for."
- (2.) In lines 7 and 8 of Section IV. the words "District Superintendent of Police or Assistant Superintendent" were substituted for the words "Superintendent of Police of a District."
- (3.) In line 5 of Section VII. the words "Sections III. and IV." were substituted for the words "Sections I. and II."
- (4.) In lines 2, 3 and 9 of Section VIII. the word "unlawful" was omitted.
- (5.) In line 3 of Section IX. the words "Sections III. and IV." were substituted for the words "Sections I. and II."
- (6.) In line 3 of Section X. the words "playing for money or other valuable thing" were substituted for the word "gaming"; and in line 18 the word "fifty" was substituted for the word "twenty."
- (7.) In line 7 of Section XII. the words "jurisdiction under the Code of Criminal Procedure" were substituted for the words "ordinary jurisdiction."

The Honorable Mr. WHITE moved that the following words be added to Section XII :—

" Provided that in all cases of conviction under this Act by a Magistrate of a District or other officer exercising the powers of a Magistrate of a District, an appeal shall lie to the Court of Session to which such Officer or Magistrate shall be subordinate; and in all cases of conviction by an Officer exercising powers less than those of a Magistrate of a District, an appeal shall lie to the Magistrate of the District."

He (Mr. WHITE) thought that every person convicted under the Act should have the right of appeal. The offences punishable under the Act were new to the law of this Presidency, and some difficulty would no doubt be felt by some of the subordinate Courts in the Mofussil in disposing of cases under the Act. It was very important that no innocent persons should suffer from the inexperience or ignorance of the subordinate Courts, and the best protection for the public would be found in the enactment of such a proviso as he had moved.

The Honorable Mr. ELLIS said that there was no reason why a gambler should have greater protection than a man convicted of assault. He (Mr. Ellis) would leave the powers of Magistrates exactly as they were under the Criminal Procedure Code. It would only create confusion to alter the Code as proposed by Mr. White. It must not be forgotten, besides, that the Code did not leave convicts altogether without the power to appeal. It was only in trifling cases, in which a slight punishment was inflicted, that there was no appeal under the Code. In practice therefore no more real protection would be given by the proposed clause than was already provided by the existing law.

The Honorable Mr. ERSKINE, the Honorable Mr. HUNTER, and the Honorable Mr. MUNGULDASS NUTHOOBHOY concurred with Mr. ELLIS.

The Honorable Mr. WHITE withdrew his motion.

On the motion of the Honorable Mr. ELLIS the following Section was added after Section XIII. :—

“ The words ‘ common gaming house’ shall be taken to mean any house, room, or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning or keeping such house, room or place, whether by way of charge for the use of the instrument of gaming, or of the house, room, or place, or otherwise howsoever.”

The Bill read a third time and passed.

On the motion of the Honorable Mr. ELLIS the Bill was read a third time and passed.

Mr. White moves the third reading of the Court of Petty Sessions Bill.

The Honorable Mr. WHITE moved the third reading of “ the Bill for enlarging the Court of Petty Sessions at Bombay, and as regards the trial of certain offences, modifying its constitution. ”

The Honorable Mr. ELLIS moved that the following words be omitted from lines 6, 7 and 8 of Section II. :— “ Of whom one shall be a European, and the other a Native of India not born of European parents. ” He moved the omission of these words, because he considered it inexpedient to restrict by legislation the composition of the Court of Petty Sessions. He thought it was admitted as desirable that one of the Justices sitting in that Court should be a European and the other a Native, but there might be cases when, it being absolutely illegal for the constitution of the Court to be otherwise, such an enactment would cause great inconvenience, and he thought it therefore a matter much better left to practice than to be settled by legislative enactment. There was really no reason why two Natives should not sit together, if a necessity arose, although in practice it would be no doubt better that one Member of the Court should be a European and the other a Native. He at all events should be sorry to see a law passed which would imply that two Natives sitting together would not constitute a competent Court. If it was felt that one member of a Court should be a European it would be open to the Justices to make a bye-law that one of the Justices summoned to be a member of a Court of Petty Sessions should be a European and the other a Native.

The Honorable Mr. WHITE said that the words as they now stood by which the Court was to consist of two Justices, one of them a European, and the other a Native of India not born of European parents, were taken from the rule, ordinance, and regulation constituting the Court of Petty Sessions. This rule was now in force, and under it the Court must consist of three members, one a Police Magistrate, one a European Justice, and the other a Native of India not born of European parents. There was a proviso also for dispensing in cases of emergency with the attendance of a Police Magistrate and substituting another Justice, but it was indispensable under the existing rule that one should be a Native of India and the other a European. That rule was passed very shortly after the power to appoint Native Justices was conferred in 1832 upon the local Government. Previously only British-born subjects could be appointed Justices by the local Government. The alterations in the Law relating to the appointment of Justices was made in 1832, and the rule to which he had referred was passed in 1834. In framing this Bill the object was not to introduce any radical change in the constitution of the Court of Petty Sessions, but merely to get rid of the

third member, viz. the Magistrate of Police, and it was for that reason that he had introduced the words that now appeared in Section II. Originally, he had made the words to run thus: "that the Court should consist of two Justices of the Peace, one of whom should be a European," and had left out all reference as to who the other should be; but he complied with a request made to him by some Native gentlemen to introduce the words which were now in the Bill, as it was said, that, unless that was done, there would be no guarantee that a Native of India would sit as a member of a Court of Petty Sessions. Now, he thought, there was a reason why they should provide that one of the Justices should be a European and the other a Native, if it were only this, that the Native Justices ought to exercise some of the functions belonging to their station. But, in addition to that, he thought that it would be a more satisfactory Court for the trial of offences if one of the Justices should be chosen from one of the larger sections of the Bombay community, and the other from the other section. He did not agree with his honourable friend that it was inexpedient to limit or to define the constitution of the Court. He might add that he did not wish to introduce any restrictive words which would prevent any Justice from sitting in the Court. It might be said that "Natives of India not born of European parents," would exclude some Justices already appointed, because they were neither Natives of India nor born of European parents, and he was therefore perfectly willing to alter the clause to the extent of providing that the Court should be constituted of two Justices, "of whom one should be a European and the other not a European," words which he thought would take in all the Justices. It had been suggested to him to use the words "a European *British subject* and the other not a European;" but he thought such an enactment was unnecessary, as none but British subjects could be appointed Justices of the Peace.

The Honorable Mr. **ERSKINE** considered it safer to adhere to the present wording of the Bill, as it was not now proposed to remodel entirely the Court of Petty Sessions, but to increase its usefulness by enlarging its jurisdiction. The Court in the exercise of its new jurisdiction would in reality be a Court constituted under the existing law. It was desirable therefore to adhere to the wording of the existing law, otherwise Justices sitting under the new Act might be unable to act under the previous laws. At the same time no doubt, such a modification as that proposed by Mr. Ellis would be an improvement in the constitution of the Court if it could be made applicable in all cases.

The Honorable Mr. **HUNTER** concurred with Mr. **ERSKINE**.

The Honorable Lieutenant Colonel **MARRIOTT** thought there was a certain informality and impropriety in taking the opportunity in passing a subsidiary Act to remedy a supposed defect in the original constitution of the Court of Petty Sessions. Moreover any such remedy that could now be applied could only be of a partial character, and would therefore be incomplete. It would be better therefore to attempt no such remedy, but to adhere to the primary intention of the Bill.

The Honorable Mr. **MUNGULDASS** believed that the object of the Bill was to relieve the Police Magistrates of the labour of trying Municipal cases. As the Police Magistrates were not at present able to do all the work that devolved upon them, it was very necessary that the Court of Petty Sessions should have power to dispose of Municipal cases, but he did not see the least necessity for altering the constitution of the Court by reducing the number of its members. Under the present constitution of the Court, if

the Magistrate found himself unable to attend, another Justice could sit for him. But if the Court was to consist of two Justices, what was to be the decision in a case if the two disagreed? If there were three the majority would carry the point. The Bill had been discussed at a meeting of the Justices, and if he remembered rightly the majority held the views he had now expressed. As to the particular question that had just been discussed, he thought it was necessary to leave the matter as it was. He believed, however, that the time would come when two European Justices or two Native Justices would form a perfectly satisfactory Court. At present however this could scarcely be said. All Europeans did not possess that knowledge of the people of this country, and of their customs, and of their language which was so necessary to an officer presiding over a tribunal that was to dispose of offences against the Municipal Act; on the other hand, in the present state of education amongst the Natives, a deficiency in their knowledge of English, and also in their notions of independence, made most of the Native Justices—though of course there were exceptions—unfit to discharge in a perfectly satisfactory manner the duties of a Judge of a Court of Petty Sessions.

The Honorable Mr. ELLIS said that so far as the spirit of his amendment was concerned, the majority of the Council seemed to agree with him, that the removal of all restrictions in the constitution of the Court was a principle which the Council ought to affirm. But it was apparent that even if his amendment were carried, the constitution of the Court in exercising jurisdiction, except under the proposed Act, would remain as it was, and that some confusion would arise from the difference in the constitution of the Court in the exercise of its two jurisdictions. He was prepared with the consent of the rest of the Council, therefore to withdraw his amendment,—not from a doubt of the correctness of the principle it affirmed, but simply because it would go such a very little way to cure a radical defect in the constitution of the Court.

The Honorable Mr. MUNGULDASS inquired if under the proposed Act there would be any objection to three Justices sitting together to dispose of Municipal cases.

The Honorable Mr. WHITE replied that the Bill in no way altered the constitution of the present Court. The objections taken by Mr. Munguldass arose from a misconception of the machinery of the new Court. As the Court at present existed it was composed of three members, one a Magistrate, one a Native Justice, and one a European. In cases of emergency the Magistrate might be dispensed with, and a third Justice called in. In point of fact, however, that had never been done: the Court waited till the Magistrate had leisure, and it might wait several weeks before he had leisure. This Act did not in the slightest way interfere with the power of the old Court to deal with Municipal offences. On the contrary, the first Section empowered it to do so. If the Justices pleased they might still have a Court consisting of a Magistrate and two Justices: the only variation in practice was that sanctioned in the 2nd Clause, which was merely an enabling clause, and which provided that, if the Justices did not wish to go through the old cumbrous process, if it was troublesome for three of them to come together, two should be sufficient. That was the whole scope of the Act. There was a proviso also that if the two Justices differed in opinion, and either of them wished it, they might reconstitute the Court by calling in a third Justice. If the Justices were enamoured of their existing Court of Petty Sessions, by all means let them have Municipal offences brought before them when there were three Justices sitting. The Bill however gave them a more convenient way of disposing of cases if they chose to avail themselves of it. The main object of the Bill was to relieve the Magistrates of Police from a

pressure of work, which was felt at the time when the Bill was introduced, though not to the same extent now.

The Honorable Mr. ELLIS then withdrew his amendment. The Council divided on the motion for the third reading of the Bill.

Ayes—6.

The Honorable Mr. White.
The Honorable Mr. Rustomjee Jamsetjee
Jejeebhoy.
The Honorable Mr. Erskine.
The Honorable Mr Hunter.
The Honorable Lieut. Colonel Marriott.
The Honorable Mr. Ellis.

Noes—1.

The Honorable Mr. Munguldass Nuthoobhoy.

The Bill read a third time and passed.

The Bill was accordingly read a third time and passed.

The Honorable Mr. WHITE moved for leave to introduce "A Bill to limit the liability of a son and grandson of a deceased Hindoo for the debts of his ancestor, and of a second husband of a Hindoo widow for the debts of her deceased husband." With regard to the position in which the heir of a deceased person having assets ought to stand,

Leave given to Mr. White to bring in the Hindoo Heirs' Bill.

it was quite clear what common justice required: it was that, where a person died leaving debts unpaid, those debts should be paid to the extent of the property which he left. To do less than that was of course to defraud the creditor of the funds which he had a right to look for the payment of the money due to him. To do more was really to pay the debts of one person with the money of another. Now the law in the Mofussil as applied to Hindoos of this Presidency was in a very singular condition with regard to this subject. According to that law, if a Hindoo died without leaving a farthing of property, but still leaving a son or grandson, that son or grandson was liable for the whole of his debts. But the singularity of the law did not rest there. If a man died leaving no property at all, but leaving a wife, and if that widow was married again, her second husband had to pay the whole of the debts of the first. Now, those were liabilities irrespective of any property left by the deceased. The son and grandson were liable by virtue of their relationship; and the reason why they were held liable arose, as far as he could gather, from some mystic notion of a family continuing its life from father to son, of its having some sort of corporate capacity quite unknown to our law, but which was consistent with the ancient institutions of some countries, and of which a very interesting account was to be found in Maine's *Ancient Law*. With regard to the liability of the second husband for the debts of the first, that liability, like the other, was independent of assets. No property need come to the second husband; but the liability, so far as he could find a reason for it, appeared to be based upon the circumstance that the wife was viewed as a portion of the property of the deceased, so that any one marrying the widow was regarded as taking possession of a portion of the property of the deceased, and thereby incurring an obligation to pay his debts. The position of the heir who received assets was not much better, for the same law laid it down that if an heir got however small a portion of the property of the deceased, he was liable for the whole of the debts of the deceased. Now

that law proved a great hardship to all persons who came under its influence, and it operated very much to the detriment of the people of the country. A number of innocent people were saddled with the payment of debts which they had had no hand in contracting, and which they had often no means of paying; and the result was that many cases had occurred in the Mofussil in which sons and grandsons had been imprisoned simply because they were related to men who had contracted debts. This state of things had long been felt as a reproach to the Mofussil, and several times endeavours had been made to amend the law. This was not the first time that the matter had come before the Council; Mr. Justice Westropp, he believed, was the first to bring the matter before the notice of the Council, and it had also engaged the attention of the Honorable Mr. Frere while he was framing the Insolvent Bill, which contained a clause to remedy the evil. But that Bill had been delayed, and it was doubtful if it would be proceeded with. It therefore became necessary to introduce an independent measure which would meet the case. The law was, he thought, one which it was peculiarly within the province of this Council to deal with, and for the reason that it was an exceptional law in its extent. The region of India over which it prevailed appeared, so far as he could ascertain, to be the Mofussil of this Presidency. It did not prevail in Bengal or Madras; it was founded upon certain texts in the Hindoo law books which in those Presidencies had been considered as importing merely a religious obligation, but which the Mofussil Courts in this Presidency had interpreted as involving a civil obligation. Furthermore, this law did not prevail throughout the whole of this Presidency; it never had prevailed in the town and island of Bombay, *i. e.* within the local limits of the jurisdiction of the late Supreme Court and the present High Court. The Council would see, therefore, that the law which prevailed in the Mofussil was really unique; it was based upon a construction of certain texts of Hindoo law, which had never been put upon those texts in other parts of India; and he (Mr. White) found that the Judges of the Mofussil Courts where this curious law was enforced, always based their judgment upon the opinion of the *Shastrees*. As an illustration he would cite a case which came before the Sudder Court in 1858, and in which a decree was given for Rs. 4-15-3 with all costs. The sum was small, but the only reason given by the presiding Judges for their decision was that the law officer was of opinion that the money was due. So he took it that there really had never been any discussion in the Mofussil Courts of the Hindoo texts, no comparison of them one with another, and no reference to decisions that had been given in Madras or Bengal. It was solely upon the opinion of *Shastrees* that this doctrine had prevailed; and it seemed to him that to pass a decree upon the opinion of a Hindoo law officer was very like passing a decree on the opinion of Counsel. With regard to the law about the right of a creditor to recover from the man who had married the widow of the original debtor, he had been unable to find that any case of that kind had ever occurred in the Supreme Court. But though the law appeared upon very slender ground to have been adopted in the Mofussil, still it had been adopted by the late Sudder Court, and had governed the decisions of Mofussil Courts in this Presidency; and it was necessary to resort to legislation to remove the anomaly and introduce a system with regard to debts of the deceased husband, which would correspond with natural equity and with the practice in other parts of India. The Bill which he had framed carried out these objects in this way:—First of all, it put an end to the personal liability of a son and grandson for the debts of his deceased father or grandfather. Then, it put an end to the liability of a second

husband for the debts of the first husband. With regard to the law affecting an heir who received assets, it made him liable for such assets as he had received as the representative and not as the heir of the deceased. He was to be personally liable only for such debts as he had received, and not duly applied. He had mentioned that the matter had already been before the Council in another shape, and he thought it was now nearly three years since the attention of the Council was first invited to this long needed reform. It was a matter which he thought should be no longer delayed, and one perfectly within the scope of the powers of the Council, limited as those powers were, and he therefore moved for leave to introduce the Bill he had framed. In conclusion he mentioned that the principle of the measure had been assented to, not merely by European members of the Select Committee who reported on Mr. Frere's Insolvency Bill, but by Mr. Premabhai Hemabhai, and the late Mr. Juggonath Sunkersett, gentlemen who were both competent to deal with the matter and to consider it from a Hindoo point of view.

Leave was given to the Honorable Mr. WHITE to introduce the Bill.

The Honorable Mr. WHITE moved for leave to introduce "A Bill to shorten the language used in Acts of Council, and to enact, once for all, clauses containing definitions of such terms as usually require to be defined." The object of the Bill was, he said, to assist and aid the Council in the framing and wording of Bills. His attention was first drawn to the subject in the course of an argument in Court upon an Act of the Government of India by which it was made imperative that an application to set aside a certain award should be made within three months. In the case that was being tried three calendar months had not elapsed, but three lunar months had from the date of the award, and the question was, whether it was to calendar or lunar months that the Act referred? The word month happened to be used only once in the Act, and there was no context, and it therefore fell under the ordinary construction of law, that months meant lunar months, and the party making the application was out of time and lost his remedy. The popular meaning of the word month is of course calendar month. Nobody ever thinks or talks of lunar months, except astronomers and lawyers. There was an English Act of the character of that which he now proposed; its definitions were very useful, and a similar Act would, he thought, be very useful in this Presidency. Accordingly he had framed the Bill which he now asked leave to introduce. The first clause of it contained definitions of a few simple words in common use, such as "number," "gender," "person," "month," "year," and so on. That there was a practical necessity for this he could prove to the Council by referring to its previous Acts. The Council had been now legislating for four years, and 36 Acts had been passed in the course of that time. Amongst the interpretation clauses in those Acts "number" and "gender" were defined no fewer than nine times. Now if the interpretation was valuable, it would be well to enact it once for all. The word "Magistrate" had been defined four times, "person" three times, "Civil Court" twice. In regard to the important word "month" he found it only once defined, and in one Act in which terms of punishment were limited by months there was no definition of what "month" was. In the Cotton Frauds Act there was power to imprison for twelve months. He had no doubt that the intention of the Legislature was to give power to imprison for a twelvemonth or one year; but the legal construction to be put on the words would be twelve lunar months, or about eleven calendar months, and if a prisoner was not released from confinement at the end of eleven calendar months or thereabouts, in other words at the end

of twelve lunar months, he would have ground for an action of false imprisonment. The effect of the Bill which he now asked leave to introduce would be to shorten Acts of Council, and not only shorten them, but obviate the inconvenience arising from the omission of definitions where definitions were important, and there would be also greater uniformity. The first clause contained definitions, and in that respect it was just like the English Act. The second and third clauses were also transcribed from the English Act. The 4th, 5th and 6th clauses were merely clauses having the same object to shorten and facilitate the machinery of legislation. The last two clauses were merely clauses to extend to the Acts of this Council the provisions of the Indian Evidence Act. By the Indian Evidence Act all Courts of Justice were bound to take judicial notice of the Acts of the Government of India. The Act did not apply to the Acts of this Council, because when the Act was passed in 1855, this Council had no existence. The clause, therefore, simply put the Acts of the Council on the same footing as the Acts of the Government of India. When the Bill should come before a Select Committee, the Committee could determine what words of a general character it was useful to define, and they could also determine whether the general definitions proposed by the Bill were proper definitions or not.

Leave was given to the Honorable Mr. White to introduce the Bill.

Time for receiving the Reports of the Select Committees on the Sind Courts Bill, Poisons Bill, and Port Dues Bill extended.

On the motion of the Honorable Mr. ERSKINE, the time for receiving the reports of the Select Committee on the Sind Courts Bill was extended till the first Meeting of the Council after the 19th instant.

On the motion of the Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY the time for receiving the report of the Select Committee on the Poisons Bill was extended till the first meeting of the Council after the 19th instant.

On the motion of the Honorable Mr. HUNTER, the time for receiving the report of the Select Committee on the Port Dues Bill was extended till the next meeting of the Council.

His Excellency the PRESIDENT adjourned the Council.

H. BIRDWOOD,

Under-Secretary to Government.

Bombay, 6th March 1866.

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

The Council met in Bombay on Wednesday the 21st March 1866, at 11 A.M.

PRESENT :

His Excellency Sir H. B. E. FRERE, K.C.B., K.S.I., Governor of Bombay, *presiding.*

The Honorable B. H. ELLIS.

The Honorable C. J. ERSKINE.

The Honorable J. S. WHITE.

The Honorable MUNGULDASS NUTHOOBHOY.

The Honorable A. J. HUNTER.

The Honorable Colonel W. F. MARRIOTT.

The Honorable Mr. A. J. HUNTER and the Honorable Colonel W. F. MARRIOTT took Affirmations of office, &c., taken the usual affirmation of office and declaration of allegiance to Her Majesty.

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

- (1) The second report of the Select Committee on the Insolvency Bill.
- (2) The second report of the Select Committee on the Sind Courts Bill.

The Honorable Colonel MARRIOTT, in presenting the second report of the Select Committee on the Insolvency Bill, said that when, on the departure of the Honorable Mr. Frere last year, he took charge of this Bill, it was supposed to be so nearly complete that after a few modifications in its details it would only be necessary that some one should take the formal charge of it and carry it through its further stages to a foregone conclusion in its favour. The history of the Bill was this. A Court for the relief of Insolvent Debtors had been in operation in Sind for some time. This Court, however, was no longer in existence, as doubts had been entertained as to the validity of its proceedings, the Court having been held to have no legal status. Its establishment, however, was believed to have been followed by very excellent results, and representations had been made by several Civil Officers that the establishment of similar Courts in the Regulation Districts of the Presidency would be followed by similar results. For these reasons this Bill was introduced by Mr. Frere. It was carefully revised by a Select Committee, over which Mr. Frere presided, and in the proceedings of which the late Advocate General, Mr. Lewis, took part. It was then sent to the Governor General, as the Select Committee were of opinion that some of its provisions required the previous sanction of the Governor General to their enactment. In returning the Bill the Governor General pointed out two defects in it. One was the absence of provision for the payment of the appointments to be constituted under the proposed Act, and the other the introduction into the Bill of a Section imposing certain duties on the High Court of Judicature, a Section which it was not competent to the local Council to enact. The first objection might be easily met by a slight

modification of Section XXV. of the amended Bill ; but the objection as regards the powers of this Government to impose duties on the High Court was one which could not so easily be met. At the time when this objection was made, there was reason to believe that before long the Letters Patent constituting the High Court would be modified so as to enable the Council to legislate in matters affecting the High Court. The Council now knew that whatever intention there might have been in that direction it had for the present been abandoned. The objection had therefore its full force. The delay which had ensued in consequence had led him (Colonel Marriott) to think that there were grounds for hesitating in proceeding with the Bill. On reviewing the English Bankruptcy Laws it appeared to him, that the very principles of legislation for insolvent debtors were still very uncertain ; and he observed in the Speech from the Throne at the opening of last session of Parliament, an intimation of the intention of the Home Government to revise the Bankruptcy Law in England. Considering that the present Bill was framed very much in accordance with English precedent, there was good reason for delaying further legislation at present. The Council would observe that the Select Committee had been reduced to two members. His honorable colleague, Mr. White, quite agreed with him that any such Insolvency Law, if passed, should be passed by the Council of the Governor General of India. Mr. White conceived this objection to be absolute as regards the further progress of the Bill. He (Colonel Marriott) was not prepared, however, to go so far as that. He thought that even if the Council of the Governor General should refuse to pass an Insolvency Act, either for the whole of India or this Presidency, still this Council should reserve to itself the power of proceeding with the present Bill. He thought, however, that the further progress of the Bill should be suspended pending a reference to the Governor General, or if the Council preferred, he would move the appointment of additional members to the Select Committee, and a further reference of the Bill to a Committee sufficiently numerous to enable a report to be made by a majority. He should be glad, according to the sense of the Council, to give notice of such a motion now ; or if His Excellency the President thought it necessary, and should see fit, to suspend the orders, he would make the motion at once. He hoped the Council would arrive at some definite intention in the matter at the present meeting, as he might not be able, in consequence of his absence from Bombay, to be present at the next meeting.

The Honorable Mr. WHITE said that the objections to the Bill pointed out by the Government of India had led the Select Committee to take into consideration the whole scope of the measure, and Colonel Marriott and himself had arrived at the opinion that if the Bill was passed at all it should be passed by the Government of India. The Council of the Government of India alone, in his opinion, had the power of investing the High Court with that jurisdiction over the subordinate Insolvent Courts which it was absolutely necessary it should have if the measure was to be effective. Both the members of the Select Committee were agreed that this was really an imperial measure, a measure for the Government of India to undertake. In other respects the two members of the Committee were not agreed. They did not agree in the first point to be considered, viz., the necessity of an Insolvency Bill for the Mofussil being passed at all. It appeared to him (Mr. White) that the Code of Civil Procedure contained a number of valuable enactments which obviated the necessity of a measure of this description for the Mofussil. The first object of passing any such measure

was to prevent a debtor who had no means from pining away in prison for an indefinite length of time. Now the Code appeared to him to afford a very satisfactory means of dealing with that evil, so far as it was an evil ; for it provided, in the first place, that no debtor should be imprisoned under a decree for a longer period than two years. In that respect the Code copied the old regulations, which, if he remembered right, specified a limit to the term of imprisonment for debt. But the Code also provided that if a man was in confinement under a decree for debt he might at any time apply for his discharge upon coming forward and disclosing what property he had, and giving it up to his creditors. But it went still further than that, for it enabled a man who had only been arrested under an execution for debt to require himself the moment he was arrested to be brought before the Court ; and if he satisfied the Court that he had no present means of paying his debts he was entitled to call upon his creditor to show cause why he should not be released from custody. Of course if he had any property he could only be released on giving it up. It seemed to him that the Code of Civil Procedure, which was passed with the knowledge that there was no Insolvency Law in the Mofussil, did certainly mitigate, if it did not altogether remove, any evils which arose from the power that the law gave to a creditor to imprison his debtor. The only object, therefore, of passing an Insolvency Bill was to enable the debtor, before a decree was obtained against him, before a writ was issued, and before he was taken into custody, to come forward voluntarily and apply to the Court for relief from his embarrassments, and from prospective imprisonment, upon giving up his property. It had been truly stated that the first principles of insolvency law had been much sifted of late in England. There was a very strong opinion prevailing at home that the legislature had gone too far in reference to the subject of insolvency and bankruptcy ; and that some of the provisions of the existing law were not calculated to secure the interests of creditors or the well-being of society. Experience had shown that there were no adequate provisions in the Act of which the present Bill was a copy (for it was copied from 11 and 12 Vic., Cap. 21, the Act which applied to this and the other Presidency towns,) to prevent fraudulent transfers by bankrupts before they took the benefit of the Act, or to prevent the concealment of property. It was a very common practice in Bombay for persons to denude themselves entirely of any property before they appealed to the Court. When, by means of assignments and conveyances and preferences of all sorts, they had not a shadow of property to divide amongst their creditors, and nothing remained but a benefit to themselves by going to the Court, then they went to the Court. And again, with regard to the fraudulent concealment of property, such concealments were unfortunately too common, and yet the Court was almost powerless to prevent them. It entirely rested with a creditor whether he would come forward and oppose the discharge of the insolvent. There was no encouragement offered to such a creditor by the Court, and it was very difficult for him to bring forward proof of the concealment of any property. If he came with a weak case, it was dismissed, and he had to pay the costs, and perhaps did not meet with much favour from the Court, whose time he had wasted in a futile attempt to show that the petitioner had not disclosed some of his property. Certainly his (Mr. White's) experience had tended to show that the moment a man got his discharge from the Court he started in life afresh, apparently in a more ostentatious way than ever. He recollected more than one case in which a man took the benefit of the Act and in a few days after was seen driving a dog-cart and one of the finest horses in the island, and, not content with that, he appeared soon after in a mail phaeton with a couple of costly horses. The

growing feeling was, as he had said, that the Insolvency Law had operated most favourably for fraudulent debtors and most unfavourably for creditors. On general grounds, applicable both in England and this place, as well as on special grounds peculiarly applicable here, he had very great doubts whether there should be any Insolvency Bill passed for this Presidency. But if there was to be one he had no doubt, and he thought his honorable friend agreed with him, that it should be passed by the Governor General in Council. A measure passed by this Council, in which they had no power of subjecting District Courts to the control of the Supreme Court or the High Court of Appeal, a measure under which they had no power to pay the officials whose offices were created by it, which they had no power to extend beyond this Presidency, and in which they had no power to give relief with regard to liabilities beyond this Presidency, was a measure which, he thought, would be so very ineffective, would give so little relief, and would cause so much embarrassment in regard to the liabilities of the insolvent in other Presidencies, that it would not be worth the pains of passing it. There was this inconsistency, amongst others, in the present measure—the insolvent in his schedule was to notice all liabilities, whether in Madras, the Punjab, Calcutta, or elsewhere, and the Bill professed to relieve him from all the liabilities in the schedule, but this could not be done. Then the power inserted in the Bill to stay all suits against the insolvent would be utterly unavailing to prevent proceedings against him in the other Presidencies. He would have the benefit of the Act in this Presidency, and would be treated as solvent in the other Presidencies. Again, the vesting order under which the whole of the property of a debtor is to be transferred from the insolvent to the Official Assignee, could not take effect in regard to property in the other Presidencies. The Council should recollect that the only measure they had in India was the 11 and 12 Vic., Cap. 21, not, they would observe, an Act passed by the Government of India, but by the British Parliament. To make it effective it was thought necessary that the vesting order should operate every where within the Queen's dominions. Under this Act, when a man had entered all his liabilities in his schedule, it was only necessary for one Court to dispose of the case; and thus the embarrassment caused by different jurisdictions was prevented. It was remarkable that they should find that the aid of the Imperial Parliament was invoked for the purpose of passing an efficient measure for the Presidency towns. Now, he thought the aid of the Imperial Parliament might be dispensed with, perhaps, for the Mofussil; still the fact that it was invoked for the Presidency towns was a reason, he thought, why this Bill, if passed, should be passed by the Government of India. His honorable colleague (Colonel Marriott) was of opinion that there should be a second reference to the Government of India, and that the further proceedings in regard to the Bill should be postponed until that second reference was replied to. He (Mr. White) was unable to concur in that recommendation, for he could not see what was the object of the proposed reference, what was the point to be referred to the Governor General of India, or what was to be the result of that reference. It appeared to him that it would amount to a blank reference, and that it was tantamount to asking for a little more delay. If there was a possibility of the Government of India passing a measure for all India, he would not object to a reference; but it appeared to him that that Government would not entertain such a measure, and that, therefore, the only object of the reference could be to ascertain whether the Government of India would not pass an Insolvency Act for the Presidency of Bombay. He (Mr. White) had no hope

that such a proposal would be complied with, and he would recommend that the Bill be withdrawn.

The Honorable Mr. ERSKINE agreed generally with Colonel Marriott. Both the members of Committee appeared to be agreed so far as to consider it advisable that if legislation did take place it should take place, if possible, in the Council of the Governor General; and he understood they were also agreed that any delay in disposing of the Bill would be rather advantageous than otherwise, as it would enable the Council to have the benefit of the discussions that would probably take place this year in England. The question was whether a recommendation should be made to the Governor General to pass this Bill, either for the whole of India or for this Presidency; or whether the papers should merely be submitted to the Government of India in order that they might exercise their discretion in the matter. He was prepared to support a proposal that the Government of India should be invited to reconsider the decision which they had adopted some years ago, and to pass an enactment on this subject. If they refused, this Council could then proceed with the Bill. He would not withdraw it; but would await the result of the reference to the Government of India.

The Honorable Mr. ELLIS said that, as he understood the report of the Select Committee, Colonel Marriott wished the Bill to be passed either by the Government of India or by this Council, whereas Mr. White thought an Insolvency Law altogether unnecessary. That, therefore, was the first point which the Council should consider. He (Mr. Ellis) believed that the chief object of the promoters of this Bill would be obtained by the passing of another Bill, which Mr. White had introduced—the Hindoo Heirs Bill. He approved of the proposition to withdraw the Insolvency Bill for the present, and to leave any further action till the Council had seen the result of the discussions in England. The Hindoo Heirs Bill would do much to remove existing evils, and it appeared also that a large measure of relief was afforded by the provisions of the Code of Civil Procedure which had been referred to by Mr. White.

His Excellency the PRESIDENT thought some special Insolvency Law was required, and the Bill on which the Select Committee had reported seemed to be well adapted to this Presidency. It appeared, however, that a reference must be made to the Government of India, and he (the President) approved of the course proposed by Mr. Erskine, of asking the Government of India whether they were now prepared to take up the question, and whether they would deal with it for the whole of India, the Council reserving power, if necessary, to proceed with some Bill of this kind, however maimed and imperfect it might be. He quite agreed with Mr. Ellis as to the value of Mr. White's Bill for dealing with certain liabilities of the heirs of deceased Hindoos, but that Bill would only partly supply the need which existed for a comprehensive measure. If any Member did not approve of the course proposed by the Honorable Mr. Erskine, it would be open to him at the next meeting to make a motion in reference to the report of the Select Committee, suggesting some other course for the adoption of the Council.

The Honorable Colonel MARRIOTT said that Mr. White had attributed to him more positive opinions on one point than he held. He shared all Mr. White's doubts, but not his positive conclusions. He was not absolutely of opinion that an Insolvency Act should be

passed for this Presidency; but it seemed to him that the Council had not sufficient evidence, on the one hand, against the considerations advanced by Mr. White, nor, on the other, to establish the opinion that they should gain by the Bill nothing worth the trouble of passing it. Mr. White had also remarked that he (Colonel Marriott) thought that this Bill must be passed by the Council of the Governor General. That remark expressed rather more than he was prepared to assert. He had endeavoured to express the opinion that the subject should be referred to the Government of India, and if the Government of India refused to entertain the Bill this Council should reserve to itself the power of proceeding with it.

The Honorable Mr. **ERSKINE** moved, in the absence of the Honorable Mr. Rustomjee, that the time for presenting the Report of the Select Committee on the Poisons Bill be extended till the next meeting.

Time for receiving the Report of the Select Committee on the Poisons Bill extended.

Carried.

The Honorable Mr. **WHITE** moved the first reading of the Hindoo Heirs Bill, and expressed a hope that the measure would be passed as speedily as possible. Since he had introduced the Bill he had found that the Honorable Mr. Westropp, when a Member of this Council, had, so far back as July 1863, put a question to Mr. Frere, who then had charge of the Insolvency Bill, whether the Insolvency Bill would limit the liability of sons and grandsons of Hindoos for the debts of their deceased ancestors. Mr. Frere replied that the Insolvency Bill contained some Sections amending the law of debtor and creditor, but that these could be more conveniently discussed when the measure came before the Council. The present Bill, as the Honorable Mr. Ellis had remarked, would in some degree dispense with the necessity of an Insolvency Bill, and considering how long the subject of the present Bill had been before the Council, he (Mr. White) thought that its disposal should not be delayed any longer.

The Hindoo Heirs Bill read a first time.

The Bill referred to a Select Committee. The Bill was read a first time, and on the motion of the Honorable Mr. **WHITE**, referred to a Select Committee composed of—

The Honorable Mr. **ERSKINE**,
The Honorable Mr. **MUNGULDASS NATHOOBHOY**, and
The Mover,

with instructions to present their Report at the next meeting. The Committee was also instructed to decide whether the Report should be translated before it was presented, and, if so, into what native languages.

The General Clauses Bill read a first time. On the motion of the Honorable Mr. **WHITE**, the General Clauses Bill was read a first time, and referred to a Select Committee composed of—

The Honorable Mr. **ELLIS**,
The Honorable Mr. **ERSKINE**, and
The Mover,

with instructions to present their Report at the next meeting. It was also agreed that the Report of the Select Committee should not be translated into any native language.

The Honorable Mr. ELLIS asked for a suspension of the standing orders to enable him to move the first reading of the Bill to repeal Section 10 of Regulation XVI. of 1827, by which officers on the establishment of a Collector were prohibited from performing duties other than those of an appointment on the establishment of a Collector or Zilla Magistrate. It had been found that the best mode of carrying out the Registration Act was through the Collector and the officers of his establishment, and Government had sanctioned a scheme under which the subordinate officers in Collectors' offices were to be appointed Deputy Registrars. It was to enable them to take upon themselves such duties, or any duties which the Government might see fit to intrust them with, that the repeal of Section 10 of Regulation XVI. was now proposed.

Bill to repeal Section 10 of Regulation XVI. of 1827 read a first and second time, and considered in detail and read a third time, and passed.

His Excellency the PRESIDENT suspended Rule 16 of the Rules for the conduct of business at meetings of the Council, and, on the motion of the Honorable Mr. Ellis, the Bill was read a first and second time.

The Bill was then considered in detail, and in line 15 of Section 2 the following words were substituted for the words "such duties": "duties other than those of an appointment on the establishment of a Collector or Zilla Magistrate."

The Bill was then read a third time and passed.

Time for receiving the Report of the Select Committee on the Port Dues Bill extended. Mr. Ellis appointed a member of the Committee.

On the motion of the Honorable Mr. HUNTER, the time for receiving the Report of the Select Committee on the Port Dues Bill was extended till the next meeting, and the Honorable Mr. Ellis was appointed a member of the Committee.

His Excellency the PRESIDENT adjourned the Council.

H. BIRDWOOD,

Under-Secretary to Government.

Bombay, 21st March 1866.

Abstract of the Proceedings of the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations under the provisions of "the INDIAN Councils' Act, 1861."

The Council met in Bombay on Wednesday, the 11th April 1866, at 11 A.M.

P R E S E N T.

His Excellency SIR H. B. E. FRERE, *K.C.B., K.S.I.*, Governor of Bombay, *presiding.*

The Honorable B. H. ELLIS.

The Honorable C. J. ERSKINE.

The Honorable the ADVOCATE GENERAL.

The Honorable J. S. WHITE.

The Honorable RUSTOMJEE JAMSETJEE JEJEEBHOY.

The Honorable SHREENIVAS RAOJEE ROW SAHEB PUNT PRUTINIDHEE.

The Honorable MUNGULDASS NUTHOOBHOY.

The Honorable A. J. HUNTER.

The Honorable G. FOGGO.

Affirmations of Office, &c., taken by the Advocate General, Shreenivas Raojee Row Sahab Punt Prutinidhee, and Mr. Foggo.

The Honorable the ADVOCATE GENERAL, the Honorable SHREENIVAS RAOJEE ROW SAHEB PUNT PRUTINIDHEE and the Honorable GEORGE FOGGO took the usual affirmation of office and declaration of allegiance to Her Majesty.

Papers presented to the Council.

The following papers were presented to the Council:—

1. Report of the Select Committee on the Port Dues Bill.
2. Report of the Select Committee on the Poisons Bill.
3. Report of the Select Committee on the Hindoo Heirs Bill.
4. Report of the Select Committee on the Bombay General Clauses Bill.
5. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the Gambling Bill.
6. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the Court of Petty Sessions Bill.

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

On the motion of the Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY the Poisons Bill was read a second time, and considered in detail.

The following alterations were made:—

- (1.) In Section II. the words "unless there be something in the subject or context repugnant to such construction" were omitted in lines 4, 5 and 6, and the following words were inserted after line 6:—"The word 'month' shall mean calendar month according to the British Calendar."

In the same Section, lines 7, 8, 9 and 10 were omitted, in order to insert at the end of the Section the following words:—"The word 'person' shall, unless there be something in the subject or context repugnant to such construction, include any association or body of persons, whether incorporated or not."

- (2.) In Section V. line 13, the words "an ordinary or" were omitted.
- (3.) In Section IX. the following words were added at the end of the Section:—"within the local limits of the jurisdiction of the officer granting such license."
- (4.) In line 14 of Section X. the words "the balance remaining shall be paid, as to the Collector may seem fit" were inserted after the word "limits;" the words "some municipal or local fund of the District for" were substituted for the words "the local fund of the District;" and the words "fund and district" and "respectively" in lines 19 and 20 were omitted.

After Section X. had been amended, the Honorable Mr. ELLIS moved that the words "town, village or" be inserted in line 3 of Schedule B before the word "District." The object of this amendment was to enable the Collector to grant licenses for towns or villages as well as for Districts. In the larger Collectorates there were large towns at great distances from the head-quarters of the Collectorate, and if in these towns licenses could be granted for the town only, the arrangement would be a convenient one, especially for Police regulations, and this was the practice under the old law.

The Honorable Mr. WHITE explained that such an arrangement was not contemplated by the framers of the Bill, the provisions of which were based on the understanding that licenses would run throughout an entire District. Several of the Sections would have to be recast if the amendment was adopted.

The Council divided.

Ayes—4.

The Honorable Mr. ELLIS.
The Honorable Mr. RUSTOMJEE.
The Honorable Mr. MUNGULDASS.
The Honorable the PUNT PRUTINIDHEE.

Noes—5.

The Honorable the ADVOCATE GENERAL.
The Honorable Mr. WHITE.
The Honorable Mr. ERSKINE.
The Honorable Mr. HUNTER.
The Honorable Mr. FOGGO.

The amendment was therefore lost.

In Section XVI., line 1, the word "poison" was substituted for the word "poisons."

On the motion of the Honorable the ADVOCATE GENERAL the words "one who the seller in good faith believes is below the age of eighteen years" were substituted for the words "person other than a person of full age" in lines 2 and 3 of Section XVI.

In reference to Schedule A, the Honorable Mr. MUNGULDASS NUTHOOBHOY asked why some well-known poisons, such as antimony, opium, &c., had been omitted from the Schedule, and why some little-known poisons were inserted, and poisons with which people never committed suicide or murder, such as henbane and corrosive sublimate, which were extensively used, particularly by the poorer classes of Natives, both externally and internally, for various disorders.

The Honorable Mr. WHITE said that the Committee, on examining the Schedule as it originally stood, found that some of the articles set down as poisons were not poisons at all. The Committee had taken the evidence of an experienced gentleman of the medical profession and of a gentleman connected with a European firm, which transacted an extensive business as chemists and druggists in this Presidency, on the subject of the poisons enumerated in the Schedule, and on the advice of these gentlemen many substances set down as poisons had been removed from the Schedule, which had accordingly been considerably

abridged. In regard to many substances which were no doubt poisons, it was found that they were very largely used for domestic purposes, or purposes of agriculture, or in the arts. Largely as they were used for these purposes, the evidence before the Committee showed that the substances were not selected by poisoners or persons who wished to commit suicide, nor was it shown that accidents arose from their being mistaken for innocuous drugs. The Honorable Member who had now drawn attention to the Schedule had alluded to the omission of antimony; but antimony was not used for poisonous purposes, while on the other hand it was largely used for domestic purposes. It was a drug used by Native women for giving a supposed fascination to the eyes. It would be intolerable to require that, in the case of every sale of this drug, the purchaser should furnish the seller with the particulars required by the Act.

The Honorable Mr. **ERSKINE** thought that as the Schedule had been settled after consulting professional authorities, it would not be prudent to make alterations except on good evidence.

The Honorable Mr. **MUNGULDASS NUTHOOBHAY** said that he had not asked the question with any desire to have the list of poisons increased, but to have the list reduced. However, as the Committee had acted on scientific advice, he would not press any amendment of the Schedule.

The following amendments were made in Schedule B:—

In the title, after the words “form of” the words “ordinary (*or special, as the case may be*)” were inserted, and after the word “substances” the words “(to be in English or a Vernacular language).”

In line 1 after the word “hereby” the following words were introduced:—“grant an ordinary (*or special, as the case may be*)”; and after the word “license” the word “to.”

In Schedule C the following words were added to the title “(to be in English or a Vernacular language).”

The Bill read a third time and passed. On the motion of the Honorable Mr. **RUSTOMJEE JAMSETJEE** the Bill was read a third time and passed.

The Sind Courts' Bill considered in detail. On the motion of the Honorable Mr. **ERSKINE** the Sind Courts' Bill was considered in detail.

In Section X, line 9, the words “acting under the general control of the Governor General of India in Council” were inserted after the word “Council.”

The Bill read a third time and passed. On the motion of the Honorable Mr. **ERSKINE** the Bill was read a third time and passed.

The Port Dues Bill read a second time and considered in detail. On the motion of the Honorable Mr. **FOGGO** the Port Dues Bill was read a second time.

His Excellency the **PRESIDENT** then suspended Rule 26 of the Council Rules, and the Bill was considered in detail.

In the fifth line of the preamble the following words were inserted after “Bombay,” “and the ports of the Province of Sind,” and the same words were inserted after the word “Bombay” in the third line of Section II.

The Honorable Mr. **ELLIS** explained, with reference to the provision in Section II. for the division of the Ports in the Bombay Presidency into two groups, that these groups would

not include the Port of Bombay or the Ports in Sind. The Committee had suggested that some ports in the neighbourhood of Bombay should be included within the limits of the Port of Bombay. If this view were carried out, the law relating to these Ports would be repealed by the present Bill, and simultaneously with the submission of the Bill for His Excellency the Viceroy's assent an application would be made to the Government of India to sanction the proposed extension of the Port of Bombay; a notification would be issued simultaneously with the publication of the Act, and from the date of such notification the Ports lying between the northern and southern groups would be included within the limits of the Port of Bombay.

The Honorable Mr. ERSKINE thought that perhaps the limits of the Port of Bombay might be fixed by the local Government under Section X. of Act VI. of 1863. If so, a reference to the Government of India would not be required.

The Honorable Mr. ELLIS thought a reference required to the Government of India under Act XXII. of 1855. Act VI. only gave the local Government power to declare the limits of Ports for the purposes of the shipment and landing of goods.

The following alterations were made in Section V.—

After the word "pay" in the line 1 the words "port dues" were inserted.

After the word "port" in the line 2 the words "more than once within thirty days" were inserted.

After the word "steamer" in line 3 the words "having paid port dues at any port" were inserted.

The words "port dues again at the same or at any other" were substituted for the words "at any" in line 5.

The words "within thirty days" were substituted for the words "any port dues chargeable under this Act" in lines 6, 7 and 8.

In reference to Section VII. the Honorable Mr. FOGGO said that the Commissioner of Customs had recommended that power should be given to Government for the permanent investment of the balances of Port Funds that might remain after payment of the expenses described in Section XLIV. of Act XXII. of 1855. But the Committee thought it objectionable to invest these balances permanently. The balances ought to be spent in improving harbours; but there was no objection to the temporary investment of balances according to the discretion of Government, and provision had been made in the Bill to allow this.

The consideration of the Schedules was deferred till the next meeting of the Council.

The Hindoo Heirs' Bill read a second time. On the motion of the Honorable Mr. WHITE, the Hindoo Heirs' Bill was read a second time.

The Bombay General Clauses Bill read a second time. On the motion of the Honorable Mr. WHITE, the Bombay General Clauses Bill was read a second time.

On the application of the Honorable Mr. ERSKINE His Excellency the PRESIDENT suspended Rule 16 of the Council Rules in order that a Bill "to amend the law relating to certain Declarations of Office in the Bombay Presidency" might be read a first time. This Bill had been introduced by publication in the *Government Gazette* under the orders of His Excellency the Governor, and its object was sufficiently explained by the statement of objects and reasons

which had been published with it. The Bill would amend the law relating to declarations of office made by Judicial Officers and Magistrates in this Presidency; but it would not apply within the limits of the ordinary local jurisdiction of the High Court nor to Courts of Small Causes. The object of the Bill was simply to remove an inconvenience which had been felt in the working of the present law. At present every Officer appointed to preside over a Court as a Judge or Magistrate was not merely obliged to make a declaration of office, but was obliged to make it in presence of a particular Officer; and the rules on this subject were not uniform. In some cases the law required that Officers, appointed to offices the duties of which were very similar, should make declarations before different persons, and in one instance, at least, an Officer when appointed to perform a duty temporarily was obliged to make the declaration in one way, and when appointed to perform the same duty permanently was obliged to make it in another way. Originally this Bill had been framed so as to provide that Officers making declarations under it should make them in all cases in the chief Court of the District. It was found, however, that such a provision might give rise to many of the inconveniences, and perhaps occasionally to some of the irregularities incidental to the present system; and the Bill had, therefore, been introduced in its present form.

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

The Bill was read a first time.

On the motion of the Honorable Mr ERSKINE the Bill was
read a second time and considered in detail.

In line 6 of the preamble the words "local limits of the ordinary original civil jurisdiction of the High Court of Judicature at" were substituted for the words "city of;" and in Section II. line 7 the same substitution was made.

In Schedule B, line 3, the words "perform all the duties thereof" were substituted for the words "administer the law," and in line 4 the second "and" was omitted and the following words were added to the Schedule;—"and without directly or indirectly deriving any advantage or emolument from my Office except such as is or shall be authorized by Government."

His Excellency the PRESIDENT adjourned the Council to Wednesday, the 18th instant, at 11 A. M.

H. BIRDWOOD,
Under-Secretary to Government.

Bombay, 11th April 1866.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "the Indian Councils' Act, 1861."

The Council met in Bombay on Wednesday the 18th April 1866 at 11 A.M.

PRESENT:

His Excellency Sir H. B. E. FRERE, *K.C.B., K.S.I.*, Governor of Bombay, *presiding.*

His Excellency Lieutenant-General Sir R. NAPIER, *K.C.B.*

The Honorable B. H. ELLIS.

The Honorable C. J. ERSKINE.

The Honorable the ADVOCATE GENERAL.

The Honorable J. S. WHITE.

The Honorable SHREENIVAS RAOJEE ROWSAHEB PUNT PRUTINIDHI.

The Honorable MUNGULDASS NUTHOOBHOY.

The Honorable A. J. HUNTER.

The Honorable G. FOGGO.

The Council considered the Hindoo Heirs' Bill in detail.

The Honorable the ADVOCATE GENERAL asked whether Section II. would not interfere with the rule as to the liability of an Executor *de son tort*.

The Hindoo Heirs' Bill considered in detail.

The Honorable Mr. WHITE explained that the object of this Section was to amend the existing Hindoo Law, as applied in the Mofussil, under which an heir when he obtained possession of however small an amount of property of his deceased ancestor became liable for the whole of that ancestor's debts. For instance, if he took possession of a house of the value of Rupees 500, he might be liable for debts to the amount of Rupees 5,000. To prevent that injustice this clause provided that the heir's liability should only be co-extensive with the amount of the property of the deceased which came into his hands, or which was received by his agent. If, however, he misappropriated any part of the property he received—if, instead of applying it to the debts of the testator or ancestor, he applied it to his own purposes, he would be liable to the extent of the property which he misapplied. For instance, in the case he had put, if the heir had applied the whole value of the house to his own uses instead of to the debts of his ancestor, he would be liable to pay debts to the extent of Rupees 500. The Section was not intended, in any degree, to limit or interfere with the liability which is known to English law as the liability of an Executor in his own wrong. The rule in regard to that liability was that an unauthorized person who intermeddled with the goods of a testator, or did any other act relating to the office of Executor, became liable to the same demands from the creditors of the deceased as if he had been regularly appointed, his liability, however, being limited, as in the case of a lawful executor, to the amount of assets received. That liability would not be touched or interfered with by this Section which related only to the liability of a son, or grandson, or heir of a deceased Hindoo, who has authority by law to take possession of the property of the deceased without probate or grant of letters of administration.

In Section II. line 9 the word "so" was inserted between the words "having" and "received."

In reference to Section III. the Honorable the ADVOCATE GENERAL asked whether in the 8th line the words "or heir" should not be inserted after the word "grandson."

The Honorable Mr. WHITE said that the third Section of the Bill dealt with two liabilities—the liability which sprang from the simple circumstance of relationship, and the liability which was grounded on the receipt of assets by an heir. By the Hindoo law, as administered by the Zillah Courts in this Presidency, a Hindoo son or grandson is liable for the debts of his father or grandfather, and the liability arises from the mere fact of his being son or grandson, although he inherits no estate at all. The father or grandfather may have died paupers, but if they had incurred debt the son and grandson were liable for their debts,—a state of things to which there was no parallel in any other civilized country. This liability was based merely on relationship. A son was liable for his father's debts to the extent of principal and interest, and the grandson was liable for the debts of his grandfather to the extent of the principal. This liability did not, however, extend to other heirs, who were only liable when in possession of assets. The first provision in Section III. related to the liability by virtue of relationship, the second to the liability by virtue of the receipt of assets, a liability which extended to the whole debts of the testator, irrespective of the amount of assets received. The object of the second provision in the Section was therefore to redress that evil by making the liability commensurate with the assets. Those were the two cases the Council had to deal with—a liability by virtue of relationship, and a liability by virtue of the possession of a small portion of assets; and in both of these cases it was intended that in pending suits where judgment had not been pronounced, and therefore no decree given in favour of the creditor, no decree should be given except such a one as he would get under the law of the Presidency towns, namely, a decree to the extent of assets. To make the meaning of the Section clearer he (Mr. White) would move the following amendment:—

That the words from the word "Hindoo" in line 4 to the word "his" in line 8 be omitted, and the following words substituted:—"from the son or grandson of such deceased Hindoo, merely by reason of the defendant being such son or grandson, or from the son, grandson, or heir of such deceased Hindoo merely by reason of the defendant."

The motion was agreed to and the Section amended accordingly.

In Section IV. the words "by reason of such marriage" were substituted for the words "from the circumstance of his having contracted such marriage," in lines 3, 4, 5, and 6.

In Section VII. line 5 the words "could or" were inserted between the words "which" and "might."

The following new Section was added at the end of the Bill:—

"IX. This Act may be cited for all purposes as 'the Bombay Hindoo Heirs' Relief Act, 1866.'"

The Honorable Mr. ERSKINE said that before the Bill was read a third time and passed he wished to make a few observations which had reference not so much to any provision of the Bill itself, as to some remarks made by Mr. White when moving for leave to introduce it. It had not seemed desirable to refer to the subject on the occasion of the first reading of the Bill, because there was no difference of opinion between Mr. White and himself, either as

to its principle or as to its details; and he had wished also to assure himself as to some of the facts, in regard to which the Registrar of the High Court had been good enough to give him information. It might now be appropriate to revert to the subject, because the remarks of his honorable and learned friend had left an impression on the mind of more than one member of the Council, and probably on the minds of other persons, that the doctrine of the liability of a son and grandson for the debts of a deceased ancestor which had been recognized in the interior of this Presidency, rested mainly on a narrow interpretation of certain texts of Hindoo Law, which had been more wisely, as well as more liberally interpreted in all other parts of India; that these narrow constructions emanated from the Shastrees of the Zilla Courts, and had been perhaps too easily accepted by the Judges of those Courts; and that, in enforcing the law, as thus interpreted, a good deal of severity had been exercised, and a good many persons had been imprisoned. He (Mr. Erskine) had no wish to ask the Council to enter upon the wide and vexed question of what was the orthodox opinion of ancient Hindoo lawyers as to the liability of sons or grandsons. There were one or two conclusions, however, which seemed to be very clear. It was very clear that the doctrine which had been prevalent in this Presidency was not alien to, or incongruous with, the ancient Hindoo system, one marked feature of which was the doctrine of a community of interests and responsibilities among the members of an undivided family and the uninterrupted continuity of life in the family. It was very clear also that, whatever might have been the ancient doctrine, whether the obligation was then held to be a legal obligation or merely a religious obligation, at all events the period at which the modern doctrine, as it might be called, became decidedly predominant, at which it began so to prevail as gradually to expel the rival doctrine from our Courts, was nearly coincident with the period at which the minds of jurists and scholars of the West began to be applied to the study of the legal systems of the East; the time, for instance, of Sir W. Jones in Bengal and Sir T. Strange in Madras. It was clear moreover as regards the southern provinces of India, that the adoption by the Provincial Courts of this modern doctrine was facilitated by a purely technical ruling of law at a long subsequent period, when it was held by the Sudder Court at Madras that, although the Provincial Courts in that Presidency were bound by the strict rules of Hindoo law in cases of inheritance, they were not bound in the same way in cases of contract; and that a case in which no assets were taken by the son, might be considered as one of contract and not of inheritance. In this Presidency however the law to be applied was the law of the defendant, and in applying it the Judge was to receive the opinion of the law officer in aid of his own judgment. If enquiry were made, it would be found, he believed, that the opinions of the Law Officers of the Courts on this side of India had not been received by the Judges as in themselves sufficient and ultimate authorities on these points; but that they had been really received as reasonable expositions of the texts of those books of law which had come to be recognised as authorities. It would also be found that, although there might be cases in which decrees had been executed against the person of a son, these were exceptional cases, and had not the authority of the superior Appellate Court. But although he (Mr. Erskine) thought it right to make these remarks in order to correct any misapprehension which might have existed, he entirely concurred with his honorable friend, that whether the amount of hardship had been a little more or a little less, there had been a great deal of hardship; and, what was of more importance, a great deal that had come to be felt by the people themselves as a hardship. This result might be due in some degree to the fact that when a rule of law of

this kind was adopted by our Courts it was rigidly applied to every case which seemed to fall under it; but it was also due to the growth among the people of a real desire for more independent individual freedom of action. That was a desire which there had been every disposition to encourage; and accordingly, as they had been reminded, this question had been more than once submitted to the consideration of the Council. Mr. Justice Westropp, when a member of the Council, had intended to take action in the matter, and Mr. Frere had also introduced some clauses into the Insolvency Bill with the object of giving the desired relief. Neither Mr. Westropp nor Mr. Frere however had been able to carry a measure to completion; and it had remained to Mr. White to accomplish the task, he hoped, in an amended form, especially with regard to the prudent reservation that one of the most important Sections should have no retrospective effect. Should this Bill now pass, as he trusted it would with the general approval of the Council, his honorable and learned friend would always derive satisfaction from the thought that it would relieve many an honest man of a burden which would otherwise have pressed upon him through life, and which he ought not rightly to have been called upon to bear. It must also be satisfactory to the Council to feel that in dealing with this question they had the aid of one who was so competent to advise them on any measure, the purpose of which was to bring the law as administered in the Mofussil more into harmony with the law as administered in the Island of Bombay; and who he might add, had already, as the list of business for the day might serve to show, devoted so much of his valuable time to the practical business of the Council.

The Honorable Mr. MUNGULDASS NUTHOOBHoy concurred with the Honorable Mr. Erskine in all that he had said. When the Bill was in Committee he had made enquiries regarding it from many educated Hindoo gentlemen, and from all other Hindoos whose opinion in such a matter he considered worth having. No one to whom he had an opportunity of speaking had expressed any disapproval of it. On the contrary, there were some who wished a much more extensive change in the present law by still further dissolving the artificial ties which bound together the members of a Hindoo family in a community of interest; but it was not thought prudent by the Committee to go further in this direction at present.

The Honorable Mr. WHITE said that any commendations which the Honorable Mr. Erskine had been kind enough to bestow on him, in reference to the part which he had taken in this measure, were quite as much due to his honorable friend himself. Without Mr. Erskine's zealous and active co-operation he (Mr. White) should have had very great difficulty in presenting the Bill before the Council, and, probably, would not have succeeded in bringing it to a successful issue during the present Session. He was also indebted very much to the Honorable Mr. Munguldass Nuthoobhoy, who caused the addition to this Bill of a very important clause. No doubt the Bill would have conferred a larger benefit upon the Hindoo community if minors were in every case relieved by it from liability for debts which were incurred before they were of an age to exercise discretion. It was proposed by his honorable friend, Mr. Munguldass, that all minors should be exempted from liability; but the Committee felt that, however desirable that might be in itself, and however great a hardship the present state of the law inflicted on those who were subject to it, the Council could not safely do more at present than limit that liability in the case of debts contracted after the passing of the Act. Accordingly, the fifth clause of the Bill contained a provision by which members of a Hindoo family were not liable for debts contracted while they were under twenty-one years of age, if the same were contracted after the passing of the Act. He (Mr. White)

concurring with Mr. Munguldass that it would have been a very good thing if the Act could have been made retrospective in this respect, so as to give instantaneous relief to all persons who were minors when debts were contracted; but the Committee felt that they could not do that without undertaking a vast amount of enquiry. They would have had to communicate with all the leading members of the Hindoo community throughout this Presidency to ascertain how such a sweeping clause would operate. To have undertaken that enquiry would have occupied a great deal of time; no doubt it would have made the measure more comprehensive, but it would have resulted in the postponement of it for another year. Therefore the Committee felt themselves constrained to accept the fifth clause in the terms in which it now stood. One remark he must make in reference to the observations of his honorable friend on his left (Mr. Erskine) in regard to the old law, or rather the manner in which the old law which prevailed in the Mofussil came to be law. He readily concurred with Mr. Erskine that there had been many Judges who had sat in the Sudder Court who personally examined the Hindoo texts, but there were others who generally left the determination of the Hindoo Law to the interpretation of the Hindoo Law Officers. There was a period in which the bare opinion of the Shastrees was taken, but latterly an improved method was adopted, and the authorities on which that opinion was based were required to be put before the Court. He (Mr. White) may have gone too far in saying that the law, as it was now found to exist in the Mofussil, was entirely based upon the opinion of Shastrees, but certainly so far as the reports he had examined went, he found that, when a reference had been made to the Shastrees, the judgment was solely based upon their opinion. There might have been an examination of the texts, but, it did not appear from the reports; he was not prepared to say that the Mofussil law was not more in accordance with the old Hindoo authorities than the law which prevailed in Madras and Calcutta; all he could say was that the Judges did not seem to have heard arguments upon the different texts, nor to have instituted any comparison between the law which prevailed in Calcutta and Madras and their own law, although the law of those presidencies was entirely based upon the same Hindoo texts. In regard to what he (Mr. White) had said about persons being imprisoned under the existing law in the Mofussil, he was very glad to hear that such a practice had ceased. He understood that, owing to the hardship of the law, Zillah Courts were constantly declining to imprison; and it appeared to him that Judges had endeavoured to mitigate a portion of the hardship of the law by exempting judgment debtors from imprisonment for such debts. Still, he believed cases of imprisonment were of recent occurrence. He wished, in conclusion, to repeat how much the Council were indebted to his honorable friends Mr. Erskine and Mr. Munguldass for the assistance they had given, and for the zeal they had shown in getting the measure passed. He hoped the measure, when passed, would be of some relief to the sons and grandsons of Hindoos who had died in debt; it might not be complete relief, but he hoped it would be a partial relief. He moved that the Bill be read a third time and passed.

The Bill read a third time and passed.

The Bill was then read a third time and passed.

The Bombay General Clauses Bill considered in detail.

The General Clauses Bill was considered in detail.

In Section I., line 6, after the word "them," the following words were inserted: "unless it be otherwise provided by the Act or."

The Honorable Mr. WHITE said, in reference to the 7th Clause of Section I., that the word "Magistrate" was here defined as denoting a person exercising "all or any of the

powers of a Magistrate under the Code of Criminal Procedure." He thought it was better that the definition should not include subordinate Magistrates. He proposed, therefore, to strike out the words "all or any of" in the 32nd and 33rd lines of the Section and insert the word "full" before "powers" in the 33rd line. The question involved was merely which was the better interpretation to prevail in the absence of an express definition in any particular Act of the Council, and he thought the safer way was for the Legislature when wishing to impose Magisterial duties upon a Magistrate of a subordinate grade to make express provision on the subject.

The Honorable Mr. ELLIS preferred the definition as it stood. It was the definition given in the Code of Criminal Procedure.

The Honorable Mr. ERSKINE agreed with Mr. White. If in any Act the word Magistrate was not defined, it would certainly be safer to limit the application in the manner proposed by Mr. White, than to read the word as meaning *any* Magistrate. Moreover, it must be remembered that to the Code of Criminal Procedure there was appended a very elaborate Schedule in which the cases which were triable by the several classes of Magistrates were very carefully distinguished. In cases to which the Code applied, no inconvenience could arise from the wideness of the definition given in the Code, but it appeared to him to be more prudent, unless the Legislature chose in any case specially to extend particular powers to lower classes of Magistrates, to adhere generally to the definition proposed by Mr. White.

The Honorable the ADVOCATE GENERAL agreed with Mr. Ellis.

The Council divided on Mr. WHITE'S amendment.

Ayes—5.

The Honorable Mr. WHITE.
The Honorable Mr. ERSKINE.
The Honorable Mr. HUNTER.
The Honorable Mr. FOGGO.
His Excellency Sir ROBERT NAPIER.

Noes—4.

The Honorable the PUNT PRUTINIDHI.
The Honorable Mr. MUNGULDASS NUTHOOBHOY.
The Honorable Mr. ELLIS.
The Honorable the ADVOCATE GENERAL.

The amendment was therefore carried.

The following alterations were made :—

(1). The 9th Clause of Section I. was omitted.
(2). In Section IV., lines 13 and 14, the words "civil or criminal jurisdiction or any other jurisdiction whatsoever" were substituted for the words "civil, criminal, or other jurisdiction."

(3). In Section VI. the words "or Regulation" were omitted in lines 7 and 8, 9, 15 and 16, 21, 25, 30, 37 and 38, and 42 and 43.

In the same Section the words "of Bombay" were inserted after the word "Governor" in lines 12, 28; and 40.

In line 20 of the same Section the words "contained in" were substituted for the words "applied under."

(4). In Section VIII., lines 4 and 5, the words "civil or criminal jurisdiction or any other jurisdiction whatsoever" were substituted for the words "civil, criminal or other jurisdiction."

(5). At the end of Section X. the following words were added :—"and such Act shall be deemed to be made when and as soon as the assent thereto of the Governor General of

India has been published by the Governor of Bombay in pursuance of Section 40 of the *Indian Councils' Act, 1861.*"

The Bill read a third time and passed.

The Bill was then read a third time and passed.

The Declarations of Office Bill read a third time and passed.

On the motion of the Honorable Mr. ERSKINE, the Declarations of Office Bill was read a third time and passed with the following amendments :—

(1). In Section II, line 9, the word "make" was inserted before the word "sign," and in lines 14 and 15 the word "made" was inserted before the word "signed."

(2). In Schedule A the words "or Act" were added after the word "Regulation" in the heading of column I., and Appendix I. of Regulation II. of 1827 was entered in the Schedule.

(3). In the last line but one of Schedule B the words "*made, signed, and subscribed at—*" were substituted for the words "*signed and declared in open Court.*"

The Port Dues Bill considered in detail, (consideration of the Schedules).

The Council resumed consideration of the Port Dues Bill, the consideration of the Schedules of which had been postponed at the last meeting.

The Honorable Mr. ELLIS said that the Select Committee which had reported on the Bill had recommended the extension of the Port of Bombay so as to include a number of the smaller ports on the mainland. The object of this extension was to prevent the hardship at present felt by the owners of boats plying between these ports and the Port of Bombay: These boats could not cross the Harbour of Bombay without having to pay port dues twice, once to the Port of Bombay and once to the port on the mainland. Both the Commissioner of Customs and the Harbour Board of Bombay approved of the principle of the proposed extension of the Port of Bombay, but both thought the extension went too far, and the Harbour Board did not feel prepared to take charge of the management of so extensive a port as had been proposed in the report of the Select Committee. The Harbour Board wished to extend the Port of Bombay only so far as the opposite coast, without including the creeks which now formed parts of the smaller ports on the opposite coast. He (Mr. ELLIS) proposed to adopt these suggestions, and some new ports would also be added to each group, to complete the list as settled by the Committee. He accordingly proposed that the port of "Mutwar" be added to Schedule A after "Surat," "Golwud" after "Oomergaom," "Aliwada Nowapoor" after "Tarapoor" and "Arnalla and coast to Bassein Fort" at the close of the Schedule, Mahim being also distinguished as "Mahim (Kelvey)" and that the following ports be added to Schedule B :—"Bandora," "Versovah," "Munnoree," "Ootun," "Bassein Creek and River east of Bassein Fort," "Bhewndy Creek and River," "Callian Creek and River," "Tanna Creek and River," "Trombay," "Panwell Creek and River," "Carinja," "Rewas," "Nagotna Creek and River," "Tirakol Creek and River."

The Schedules, as amended, were substituted for the Schedules in the Bill, and the Bill was read a third time and passed.

On the application of the Honorable Mr. ERSKINE, His Excellency the President suspended Rule 16 of the Council Rules in order that a "Bill to authorize the extension of certain Acts and Regulations to territories in the Bombay Presidency not subject to the General

The Acts and Regulations Extension Bill read a first time.

Regulations" might be read a first time. In moving the first reading the Honorable Mr. Erskine said that the Bill had been already introduced by publication in accordance with an order of His Excellency the Governor; and he (Mr. Erskine) hoped it would be allowed to proceed to its further stages at the present meeting. In publishing the Bill the objects and the reasons had been stated at some length, and the Council were probably aware that provisions similar to those contained in this Bill had already been enacted for other parts of India. In fact, the Bill was mainly founded on Act I. of 1865, which had been passed by the Council of the Governor General last year, and by which powers of the kind which the Bill proposed to confer on the Governor of Bombay, or even greater powers than these, had been conferred not only on the Government of India as regards the Non-Regulation Districts immediately under their administration, but upon the Lieutenant Governors of the North Western Provinces and the Punjaub. In order to prevent any misapprehension as to the extent of the Non-Regulation Districts in this Presidency, he would say that the only territory of great extent which could be so described was the Province of Sind, and the proposed law would have hardly any application to that province, because the three great Codes, one of which contained the body of substantive Criminal Law, while the others regulated Civil and Criminal Procedure, had already been extended to Sind. A Bill to declare the constitution of Courts in Sind had also been lately passed, so that there were very few Regulations which it would be necessary to extend to that province under this Bill. There were, however, several outlying districts in the Presidency, which were differently situated, and it was necessary to give the Courts in those districts a legal status. This could be done by extending to them gradually the laws under which the Courts in the Regulation Districts were constituted.

The Honorable Mr. WHITE remarked that the General Regulations were now little more than a mere shell; there was scarcely any substantive law contained in them. The four branches of which they consisted were the civil, criminal, revenue, and military branches, and the most important parts of these laws had ceased to have operation principally by the introduction of the Codes referred to by Mr. Erskine. The only body of substantive law now left in the Regulations, was the law relating to revenue matters, the rest of the Regulations which survived related almost solely to the establishment of courts of justice. He should, himself, have very much preferred that his honorable friend had introduced into this Council a short measure empowering the Governor in Council to direct by whom the different duties and offices which were thrown upon Courts and persons by the Codes of Criminal and Civil Procedure should be administered in the Non-Regulation Districts. He thought that would have been a simpler measure, and that such a measure would prevent much confusion, for the Council would observe that by the measure which his honorable friend had introduced, while power was given to the Governor in Council to extend the Regulations to the new Non-Regulation Districts, Government was at the same time authorized to make such modifications in the machinery as the necessities of the provinces required; so that his honorable friend would extend the ruins of the Regulations to these outlying shreds of territory which had been brought under the British Government, and by the same breath give directions that all the offices and duties should be carried out by persons quite different and distinct from the old-established Zillah Magistrate and Zillah Judge, and the other officers who were named in the Regulations. In substance therefore the Government would really direct by whom the different duties conferred upon courts and officers by the new codes should be executed in those districts. Mr. Erskine, who had more

experience than himself, and who had indeed very great experience in these matters, was of opinion, however, that the more complicated method proposed by the Bill was really the safer method of dealing at present with these Non-Regulation Provinces, and he (Mr. White) bowed to his honorable friend's experience. His honorable friend certainly had a precedent in his favour in Act I. of 1865, but he (Mr. White) did not know whether the Regulations of Bengal were such a shell as those of Bombay. His great reason for not opposing the first reading of the Bill was, however the great confidence he had in Mr. Erskine's judgment and experience.

The Bill was read a first time.

The Honorable Mr. ERSKINE moved that the Bill be read a second time.

The Honorable the ADVOCATE GENERAL had not anticipated that the Bill would be passed through its stages so hurriedly, and was not prepared for the second reading of the Bill; and he was the less prepared for it after what had fallen from Mr. White.

The Honorable Mr. WHITE said that the Advocate General had misapprehended his remarks. He (Mr. White) wanted a different measure because he looked upon a measure which extended fragments of old Regulations to new territory as a retrogressive measure. He was not, however, prepared to oppose the Bill, so far as the principle was concerned, because, looking at it in the most adverse light, it struck him merely as being a roundabout way of doing what might be done in a simpler form. That was what his objection amounted to.

The Honorable Mr. ERSKINE remarked that if the Advocate General desired to discuss the principle of the Bill the present was the proper time to do so. His (Mr. Erskine's) reason for preferring to introduce it in its present shape was, first, because in doing so he followed the precedent already set by a higher authority; and, in the next place, because he was by no means sure that any simpler form of Act, proposing to deal only with certain particular branches of the administration, or portions of the machinery of administration, would be found to be adequate to meet all the various wants that might hereafter from time to time arise in connection with small patches of territory in a very uncivilized state, which might be added to this Presidency. Mr. White had presented what might be called a dissolving view of the Regulations, but he (Mr. Erskine) thought that, if the Regulations were carefully examined, it would be found that even now they contain enactments which, though not of equal importance with the great codes, were yet of great importance, and portions of which might with advantage be extended to newly acquired territories. It might, to some extent, be said that the Bill would give a larger power to this Government than had been exercised by it during the last few years; but if the Council looked at the powers which were exercised, not only at the time when the power of legislation was formerly possessed by this Government, but at the powers which had been exercised in Non-Regulation Districts by the Executive Government until the passing of the Indian Councils' Act, it would be found that this measure was anything but retrogressive. The discretionary power to be given to Government is merely that of extending a law actually in force in Regulation Districts throughout the rest of the Presidency, and of doing so with the least possible amount of alteration which would adapt it to the circumstances of the Non-Regulation territories; such alteration to be fixed before the extension of the law, and to be irrevocable save by legislation, and the whole to be publicly notified in the *Government Gazette*. The order of extension would therefore be issued with due deliberation. As the matter was one of some emergency he (Mr. Erskine) hoped the Council would not object to proceed with the Bill.

The Honorable the ADVOCATE GENERAL objected to passing a Bill without due consideration. The Bill had only been introduced on the 16th instant, and he (Mr. Bayley) had no time to consider its details, or the laws which it was proposed in Section I. to repeal.

His Excellency the PRESIDENT explained that there really was a pressing necessity for the present Bill—a necessity which had not been adverted to by Mr. Erskine. There were many outlying districts in the Presidency, some of which had only recently come under the Government of this Presidency; some of these districts had formerly formed a part of the possessions of neighbouring Native Princes. In these Districts British officers were now engaged in administering justice. These officers acted under the orders of Government and in accordance with rules which had been approved by Government, and the procedure of the Courts over which they presided was in accordance with the new Codes of Procedure in places in which these Codes were in operation. Where there was no law in force these officers acted in accordance with the spirit of the laws in force in Regulation Districts. But the courts over which these officers presided had no legal status, and one great object of empowering the Government, as it was proposed to do in the present Bill, to extend certain Regulations to Non-Regulation Districts was to enable Government to constitute these Courts in accordance with the Regulations, and if this object could be gained by the simple means of a Government order extending a Regulation, instead of by the more cumbrous process of passing a law to bring the territory under the Regulations, as had hitherto been necessary, he (the President) failed to see what objection there was to a Bill which would ensure this object. In regard to what Mr. White had said, that there was little now left of the Regulations to extend to Non-Regulation Districts, this no doubt was to a certain extent quite true; still there was the difficulty to which he (the President) had alluded, and the difficulty was really a grave one. But it could be fully met by the extension of what was left of the Regulations to the Non-Regulation Districts. There was quite enough left of the Regulations to enable Government to give a legal status to the courts in the Non-Regulation Districts which had not already a legal status in virtue of orders of Council passed previously to the coming into operation of the Indian Councils' Act, and he (the President) did not see what adequate grounds there were for the Council postponing the measure for further consideration. If the Bill had involved a new principle there might have been some reason for delay; but no new principle was involved. The Bill was in effect a progressive measure. If it had been proposed to empower Government to exclude certain districts from the Regulations, then there would be an objection to giving Government such a power. A measure giving such a power might well be called retrogressive, but he did not see how the term could be applied to a measure which proposed to empower Government to give laws to people who had hitherto lived without laws.

His Excellency SIR ROBERT NAPIER thought the power which it was proposed to confer on Government might be safely given. Government would never extend laws to Non-Regulation territories except after full consideration.

The Honorable the ADVOCATE GENERAL said that, after the explanations given by His Excellency, it appeared that there was a real necessity for the proposed Act, and he should not therefore oppose it.

The Bill read a second time
and considered in detail

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

In the Preamble, line 6, and in Section II. line 10, the words, "places within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Bombay" were substituted for the words "the City of Bombay."

In Section I. the first six lines and the first two words of line 7 were omitted.

In line 11 the words "*the Judges and*" were inserted before the word "*officers.*" In line 13 the word "is" was substituted for "are."

In Section II. line 15 the following words were inserted after the word "Council" :—
"before the date at which this Act comes into operation."

The Bill read a third time and passed. The Bill was then read a third time and passed.

His Excellency the PRESIDENT adjourned the Council.

H. BIRDWOOD,
Under-Secretary to Government.

Bombay, 18th April 1866.

Abstract of the Proceedings of the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations under the provisions of "the INDIAN Councils' Act, 1861."

The Council met at Poona, on Monday, the 13th August 1866, at 11 A.M.

P R E S E N T:

His Excellency Sir H. B. E. FRERE, K.C.B., K.S.I., Governor of Bombay, *presiding*.

His Excellency Lieutenant-General Sir R. NAPIER, K.C.B.

The Honorable B. H. ELLIS.

The Honorable C. J. ERSKINE.

The Honorable the ADVOCATE GENERAL.

The Honorable G. FOGGO.

The Honorable SHREENIVAS RAOJEE ROWSAHEB PUNT PRUTINIDHI.

The Honorable MUNGULDASS NUTHOOBHOY.

The Honorable A. J. HUNTER.

His Highness the Honorable MEER MAHOMED KHAN, TALPORE.

The Honorable FRAMJEE NUSSERWANJEE PATEL.

Affirmation of Office, &c. taken by His Highness Meer Mahomed Khan, Talpore, and Mr. Framjee Nusserwanjee.

His Highness the Honorable MEER MAHOMED KHAN and the Honorable FRAMJEE NUSSERWANJEE took the usual affirmation and declaration of allegiance to Her Majesty.

Papers presented to the Council.

The following papers were presented to the Council:—

1. Letter from the Government of India, conveying the assent of His Excellency the Viceroy to the Bill to repeal Section X. of Regulation XVI. of 1827.
2. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the declaration of Office Bill.
3. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the Bombay General Clauses Bill.
4. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the Hindoo Heirs Bill.
5. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the Bombay Port Dues Bill.
6. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the Bombay Regulations and Acts Extension Bill.
7. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the Poisons Bill.
8. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the Sind Courts Bill.

The Honorable Mr. ELLIS, in moving the first reading of the Bill to provide for the performance of quarantine in the Harbour of Bombay, observed that the necessity of a Quarantine Law for Bombay was first brought under the consideration of Government in 1864 on a report from the Surgeon of the Marine Battalion who had seen pilgrims with small-pox on them going on board a buggalow, while at the same time the dead bodies of those who had died on board of small-pox were being brought ashore. The report was forwarded by the Commissioner of Police who recommended the appointment of a Health Officer and other measures to check the spread of small-pox and infectious diseases in the City and Port. The Advocate General on being referred to, stated that the provisions of Act 6 of George IV. c. 78 were inadequate. Some further correspondence followed, but nothing was then done. The subject however was again brought prominently forward last season, when small-pox broke out on board Her Majesty's Steamer *Octavia*; and this Government then inquired whether it was the intention of the Government of India to bring forward any Quarantine Bill for the whole of India. As the Government of India stated in reply that no imperial legislation was contemplated and that the subject was one for the local legislature, the present Bill had been introduced. He (Mr. Ellis) was of opinion that many alterations would be required before the Bill as presented could become a satisfactory law, but he hoped that the Council would, by allowing the Bill to be read for the first time, with a view to its being referred to a Select Committee for revision, affirm the principle that it was desirable to legislate in order to prevent the indiscriminate admission of persons suffering from infectious diseases into the Port and City of Bombay.

Mr. Ellis moves the first reading of the Quarantine Bill.

The Honorable Mr. FOGGO said: "I have no intention, Sir, of opposing this Bill at its present stage, especially after what has been stated by the honorable member (Mr. Ellis). Such a course would be unusual. I am anxious however to take the earliest opportunity of making a few remarks on a subject of such importance and interest, both from a commercial and a social point of view. In the Statement of Objects and Reasons appended to the Bill, it is set forth that the object of this Bill is to provide a Quarantine Law for Bombay Harbour, and that it has been framed for that purpose on the model of the English Quarantine Act 6 Geo. IV. chapter 78. Now, Sir, the point to which I desire to call the attention of the Council, on this occasion, is the very great change in public opinion on this question that has taken place in Europe since the date of the passing of that Act—a period of 40 years. I am not unaware that a reaction of opinion has recently manifested itself to some extent and in certain quarters, so that even at the Camp at Aldershot a system of quarantine, if I am rightly informed, has been introduced. But, in spite of that reaction, I think, if the Council will bear with me, that I shall be able to show that a very remarkable change of opinion has taken place since the Act of Geo. IV. was passed, and does still prevail in England, not to say in Europe generally.

"Quarantine is certainly a very time-honored institution. It had its origin it would seem at Venice, in 1484. Why the period of forty days was fixed on I have not been able to discover, but some writers have thought that it may have had some superstitious connection with the forty days of Lent. It is a curious circumstance connected with quarantine, and with the doctrine of the importation of disease, on which indeed the system is founded, that from time immemorial, in the opinion of the vulgar, an epidemic pestilence has never

been looked upon as the production of the country where it rages. The inhabitants of Constantinople, for example, have always attributed the plague to vessels coming from Egypt; the Egyptians have considered it to be brought from Æthiopia, and I have no doubt, if the works of learned Æthiopians could be consulted, it would be found that they attributed it to some other country. We find the same opinion prevailing now. At a recent sitting of the Cholera Conference in Constantinople, it has been announced, that the members declared their conviction that the cholera had never been generated either in the Hedjaz or in any other country but the Indian peninsular where the disease was constant and endemic. Its importation into the Holy Cities, is, it was held, exclusively due to the Indian pilgrims, arriving in sailing ships; in the steamers—it is added—well ventilated and clean, not an instance of the epidemic had occurred. The Conference had therefore decided to recommend a rigorous quarantine upon all vessels arriving from India at the Ports of the Red Sea or the Persian Gulf. The article from which I am quoting concludes thus: The imposition of quarantine on arrivals from ports not declared infected involves a new principle; on what arguments it is founded has not been disclosed. Again, the Havannah, Vera Cruz and the seaport towns of the United States constantly accuse each other of the importation of the yellow fever during the summer months.

“ Quarantine was introduced into England in 1720 at the instance of the well known Dr. Mead, who when the great plague of 1719 was raging at Marseilles, on being consulted by Mr. Secretary Craggs, recommended its adoption, and an Act was passed and became the law of the land until repealed by the Act of George IV., the model Act before us, which was introduced with the view of relaxing the provisions of the former Act. Now, Sir, I wish prominently to bring under the consideration of the Council what took place in England on the passing of this Act of George IV. I do not know how better to ascertain the state of public opinion on any question than by consulting the Parliamentary debates. I have accordingly referred to Hansard, and I find interesting debates on the subject, both in Lords and Commons. In the House of Lords early in the session of 1826, Earl Darnley, in moving for copies of the report made to the House of Commons by the committee appointed to consider the subject, expressed the greatest alarm at the proposed alteration in, as his Lordship expressed it, the laws which had preserved the health of the country for more than a century. He stated that ships from Alexandria laden with cotton, an article peculiarly capable of conveying infection, had been lately admitted on arrival to free *pratique*. This he thought highly dangerous, although they had clean bills of health. He mentioned that, whereas under the Act of 1720 ships with foul bills of health were detained in quarantine 40 days, and with clean bills of health 15 days, it was now proposed that ships with foul bills of health should be detained in quarantine 15 days only, and those with clean bills, be admitted at once to free *pratique*. The Earl of Liverpool, the Prime Minister, in supporting the bill, said that some relaxation was required, and that these laws were not necessary in all their rigour to preserve the health of the people. In the House of Commons, during the same session, interesting debates took place, and the Council will find that even among men like Mr. Canning, Mr. Huskisson, and Mr. Charles Grant, there was a strong leaning to the quarantine system, while the arguments employed by members of lesser eminence were such as I am about to quote. A member of the name of Mr. John Smith, was the only individual who declared himself an unqualified opponent of quarantine

laws, and he did not hesitate to describe them as a mass of absurdity and folly. Sir Isaac Coffin, in proof of contagion and of the necessity of quarantine, related that he had been at Malta when the plague was brought to Valetta by a shoemaker by means of some leather: the man died and so did the family with whom he resided. The disease spread rapidly, and had it not been for the precautions adopted by Sir Thomas Maitland, who drew a *cordon sanitaire* round Valetta, and shot every person who attempted to pass it, the whole population would have been destroyed. From Valetta the disease was conveyed to Goza, and from Goza to Corfu, in the latter case by a young lady—by means of a skein of cotton—who perished with all her family. He further adduced what he considered the remarkable circumstance that at Tunis, Tripoli and Algiers, the Franks, as the Christian inhabitants of those places are called, invariably escape, for they immediately shut themselves up in, or rather, on the roofs of their houses, fumigate their food, and eat only stale bread—new bread being considered dangerous. He was followed by Lord Belgrave, who added that these Franks invariably took care to shoot all their oats, those harmless domestic animals being peculiarly capable of communicating the infection.

“ Now, Sir, these were the serious opinions held and avowed by our legislators in England at the time this bill was passed, and I solicit the Council’s attention to the difference, the remarkable difference apparent in the sentiments of Parliament a quarter of a century later.

“ A great International Sanatory Conference had been held at Paris in 1851-52; and Earl St. Germans, in the course of the session of 1852, in moving for certain papers connected with the Conference, in his place in the House of Lords, declared that a great modification had, of late years, taken place regarding the principle on which quarantine was founded. That principle was, that the various epidemic diseases that had at different times desolated the earth were communicable by contact with persons affected, or by contact with things touched by persons affected, and that these epidemic diseases could be prevented by prevention of the contact. But that the evidence given and experience supplied, in recent years, by medical and scientific men, went to show that prevention by sanitary measures, not by quarantine regulations, was what should be aimed at. That they had no longer to depend on merely interested evidence, the evidence of quarantine officers, naturally interested in maintaining the system, but on the contrary they now were in possession of evidence impartially collected from all quarters by the Board of Health. They had the unanimous judgment of the Academy of Medicine in Paris as to the fallacy of the opinions regarding the contagious nature of the epidemics referred to, and as to the impossibility of preventing them except by sanitary measures. The College of Physicians at New Orleans, the heart of the yellow fever, had reported to the same effect. Modifications had been introduced by France, and as between herself and Algiers, she had gone so far as to abolish all quarantine regulations. Earl St. Germans then referred to the then recent cases of the *Eclair* and the *Arethusa*. The *Eclair*, a steam sloop of war, arrived at Portsmouth from the Coast of Africa, having lost on the station and on her passage home, half her crew, including her gallant commander, by yellow fever. On her arrival at Portsmouth, the principal medical officer of the port, Sir John Richardson, was eager to have the crew landed at once, and carried to an airy and well-ventilated ward of Haslar Hospital; but his advice was overruled and the vessel sent into quarantine at Stangate Creek, where she was kept ten days in quarantine, and several deaths took place, including that of the pilot. At last the Admiralty

interfered, the crew were landed, and he had not heard that any contagion had spread in the locality. Contrast this with the case of the *Arethusa*, another ship of war. She arrived at Plymouth with her crew suffering from *small-pox*. But nevertheless the crew were instantly landed and placed in hospital, and he had not heard that any contagion had spread in the neighbourhood. He protested against the system of quarantine—a system under which the sick and the healthy were confined together, in a vitiated atmosphere, peculiarly disposing them to receive infection. Earl St. Germans then further referred to the subject in a commercial point of view. The quarantine regulations in regard to goods were oppressive, but in many instances they were not, and could not be, enforced. The want of accommodation was such that at English quarantine stations, cotton bales, which were supposed to be peculiarly capable of conveying infection, were very partially opened to the air, and at the Irish stations they were not opened at all. He concluded by declaring that quarantine regulations were both oppressive and inoperative, extremely injurious to the interests of the community, and at the same time perfectly inefficacious. He was followed by the Earl of Shaftesbury—(that benevolent nobleman whose efforts as Lord Ashley on behalf of the factory children and on other occasions may possibly have made his name familiar to the Native members of the Council)—who declared that effective preventive measures were not to be sought for in a *cordon sanitaire*, or in the suspension of commercial or even of personal intercourse, but in attention to the sanitary condition of seaports, the ventilation of ships, and the medical treatment and sanitary care of the crews.

“Such was the progress of opinion on this question between 1825 and 1852. In 1859, the English Board of Health again reported on the subject, fully confirmatory of all they had previously advanced. A Congress was subsequently held in Paris of delegates from all the medical authorities of the chief States in Europe; and even the delegate from Spain was forced by the evidence to concur in conclusions which were in effect the same as those adopted by the first General Board of Health. The subject was re-examined also in America and discussed at Congresses, one especially held at New York in 1859, one at Boston in 1860, and the same general conclusions adopted.

“I come now to the state of opinion existing in England at the present time, and to exhibit this I shall refer to two Orders in Council issued 22nd July 1865 and 4th May 1866, and to an article that appeared recently in the *London Times*. I will refer in the first place to the Order of the Privy Council of May 1866. The occasion of this Order was the expected return of the *Helvetia* to Liverpool with cholera patients on board. The case of this vessel has attracted so much attention in England, that it is probably familiar to the Council. The Order refers to it thus—“Whereas a certain vessel named the *Helvetia*, having a certain infectious disease on board, that is to say, the Asiatic cholera, has arrived, or is expected to arrive, at Liverpool, and whereas it is expedient to cut off all communication between persons on board that vessel infected with that disease and the rest of Her Majesty’s subjects, &c.” The Order then directs that by virtue of the powers conferred by the said Act, *i.e.* the Act of George IV.—*1st*, No person shall land for 3 clear days after arrival without permission of the Mayor. *2nd*, The Mayor shall cause all persons to be medically examined; and shall permit all to land immediately who shall be certified to be free from such disease. *3rd*, All persons affected shall be removed to hospital, &c. &c.

Now, Sir, although these regulations exhibit, amid perhaps some confusion of the principles of contagion and non-contagion, an adherence to quarantine, it will be evident to the Council that the provisions are very different to what is usually understood by quarantine, and to the provisions of the Bill before us. The other document I have to refer to is, an Order in Council dated 22nd July 1865, and it is so excellent and so well adapted in its recommendations to the state of Bombay, that with the permission of your Excellency, I will read the whole of it.

“THE CHOLERA.

“The following circular letter and its enclosures have been sent, by direction of the Lord President of the Council to the local authorities of the outports and of certain other places in the United Kingdom, suggesting the adoption of precautionary measures against the spread of cholera or other epidemic disease :—

“*Privy Council Office, July 22nd, 1865.*

“SIR,—I am directed by the Lord President of the Council to request that you will call the attention of the authorities at—————to the reports which have appeared in the newspapers respecting the severity with which cholera has visited Egypt, and to the fact that some cases of that disease have occurred in Turkey and in Italy.

“From the most recently received intelligence there is reason to believe that that disease is on the decline; but while the Lords of the Council do not consider it necessary to enforce the restrictions of quarantine against vessels arriving from countries which have been visited with cholera, their Lordships cannot altogether ignore the apprehension that that serious malady may visit the United Kingdom.

“Feeling strongly the importance of neglecting no precautions against the spread of the disease, if it should unhappily make its appearance in this country, their Lordships direct me to transmit to you, for your information, the enclosed copy of a letter which by their instructions was sent to the various outports of the United Kingdom in 1859, together with a copy of the Sanitary Memorandum therein referred to, in order that the authorities of your locality may be enabled to take such measures as they may think proper for the preservation of the health of the inhabitants of their neighbourhood.

“I am,

“Sir,

“Your most obedient Servant,

E. HARRISON.

“THE WORSHIPFUL THE MAYOR.”

(Copy)

“*Privy Council Office, August 20th, 1859.*

“SIR,—The Lords of Her Majesty’s Privy Council are informed by the Commissioners of Customs that upon inquiry of their officers at—————there does not appear to be any provision for the gratuitous reception and medical treatment of any poor seamen or other persons who may arrive at that port suffering from cholera.

“From the accounts recently received there is reason to hope that cholera is on the decline at Hamburg, and consequently that no necessity for such hospital accommodation will arise.

“The Lords of the Council are desirous to refrain from any such interference with the interests of trade as would result from the institution of restrictive measures of quarantine, doubting whether the most vigorous enforcement of such measures would afford any positive security against the importation of cholera.

“Their Lordships are, at the same time, anxious that every precaution should be taken to prevent the spread of that serious disease if, unfortunately, it should make its appearance, and they feel assured that the authorities at—————will concur with them in thinking that for the protection of the health of the town and neighbourhood, it is desirable that some arrangement should be made for the immediate provision of hospital accommodation, if required, and also with a view to induce any poor seamen who may on arrival be afflicted with cholera, to avoid seeking an asylum in the common, and too often dirty, lodging-houses where they would have but little chance of recovery, and whence the disease would be probably spread.

“In calling your attention to the enclosed printed Memorandum in regard to the outbreak of cholera and other disease, I am to request that you will bring this communication under the consideration of the authorities at—————and that you will favour their Lordships with the views of that body in reference to this important matter.

“I am, &c.

“C. A. HAMILTON.

“THE WORSHIPFUL THE MAYOR.”

“What does the Council suppose are the precautions recommended to be taken in the Memorandum referred to? Not an attempt to cut off all communication between the crews and passengers of vessels arriving and the people on shore, but such measures as might readily be taken by the energetic Municipal Commissioner of Bombay, and his *fidus Achates*, Dr. Hewlett. The cleansing of sewers and drains, the removal of foul ditches, the trapping of house drains and sinks, improved water supply, the removal of animal or vegetable refuse, the prevention of overcrowding in ships and lodging houses, the cleansing, scraping, and limewashing the walls of houses, increased hospital accommodation, ample ventilation, by means of that great natural disinfectant, pure air, abundantly and uninterruptedly supplied.

“The article in the London *Times* to which I have referred appeared a few months ago. It is well known that the *Times* is never greatly in advance of public opinion, and is seldom found halting far behind it. It has lately been, as far as I have been able to glean from a cursory perusal of its articles, in favour of restrictive measures, going so far as to suggest that the German emigrants should not be allowed to enter the country. At another time, however, declaring quarantine to be an impossibility not to be thought of in these days of free trade, and rapid communication, when indeed a steamer crosses the channel, and goes back again before a quarantine officer would have time to turn round. But the article drew attention to the circumstance that three times recently under remarkable circumstances, had cholera developed itself at sea. A Liverpool steamer sailed for America with 1300 persons on board; there was no cholera at Liverpool, and apparently no infection on board when she sailed, but cholera broke

out on the voyage, and the steamer put into Halifax with a report of 160 cases and 60 deaths. Another case was the British steamer *Atlanta* which arrived at New York with cholera raging on board, though she had left England with a clean bill of health. Again, a British troop ship with soldiers arrived at the Cape of Good Hope from England with cholera on board. The article concludes thus—"Now these three examples coincide in suggesting a particular inference and a particular question. The inference is consolatory. In no case was the disease communicated to the population of the country into which it was thus imported. The cholera patients were landed and treated both at the Cape and in America without the least harm to the inhabitants. The epidemic did not break out either in our own Colony or in New York, though far less cause in former times would have been thought sufficient to create it. It is plain therefore that we may have not only a single case of the disorder as at Bristol, (this refers to the case of a Dutch sailor from Rotterdam, whose death from cholera a short time before had caused the greatest alarm), or a dozen cases as at Southampton, but an actual importation of a plague stricken cargo without any extension or establishment of the disease. The question (adds the writer) arising from these examples is very singular and of no small importance." Had the writer extended his researches but a little, had he consulted the reports of the Board of Health, or the evidence collected by it, he would have found abundant proof that even in tropical climates there need be no fear of infection provided sanitary laws are duly attended to.

"I trust that the Council in their deliberations on this Bill will give due weight to the change of opinion on the question that has taken place, and to the evidence of this—not to my remarks—that I have placed before them. They will, I hope, remember that this Act of George IV. was passed 40 years ago, before public opinion was enlightened by the evidence that has been obtained since that period. That it was passed in days to which I think we are not very often in the habit of looking back for models of legislation, for with the exception of Roman Catholic emancipation, I do not remember any Act of the period to which we can recur with satisfaction. Those were days when a dozen men on a Monday morning would be hanged for forging one pound notes, when penal laws existed against Roman Catholics and disabilities against members of the Jewish persuasion, and I do think, Sir, that to pass any measure resembling such an Act in these days, would be unworthy of your Excellency's Government or of the Government of Bombay at this time of day. For my part, I say it with all respect and deference for those members of the Council who differ from me, I doubt if any legislation on the subject is required. It appears to me more a matter of administration than of legislation. But if there must be an Act of the Legislature, let it be a sanitary, not a penal measure. Reorganize the Master Attendant's office and the Pilot service; constitute the officials in these departments Officers of Health *ex-officio*; invite the Commanders of ships—Native and European—to make known to the authorities whatever sick they may bring into port. They will gladly do so, and do not enact such a measure as the present, a measure literally bristling with penalties. By means such as these, and by providing increased hospital accommodation, and preventing, as much as possible, the overcrowding of pilgrim and other ships, you will effect more good than by the revival of an antiquated system of quarantine, which I hope will soon be universally exploded among all civilized nations.

The Honorable Mr. HUNTER was in favour of the general principles of the Bill. He said it was desirable that Government should have the power to enforce quarantine regulations

when there was imminent risk of contagious diseases being imported. For example, in the case of the *Octavia*, Government could not have taken the precautionary measures which were adopted, had that ship been the property of private persons. He considered, however, that the Bill should be passed with many restrictions, and that the powers conferred under it should only be had recourse to under very exceptional circumstances.

The Honorable Mr. ERSKINE said that he would have felt difficulty in knowing how to deal with the Bill had it been proposed to pass it in its present form. But after what had fallen from the Honorable Mr. ELLIS, he was prepared to support it in the present stage. While agreeing with much that the Honorable Mr. FOGGO had said, he was of opinion that legislation was necessary, for in so large and difficult a matter, the executive Government, however active, required to be supported by legislative sanction. He hoped the whole question of quarantine law would have the benefit of full public discussion.

The Honorable Mr. MUNGALDASS observed that if great inconveniences from a quarantine law were found to arise in England, where all the people had one religion and similar manners and customs, the hardship to individuals would be far greater in India. For instance, Brahmins may not eat or even drink water on board ship. If therefore a Brahmin embarked at Surat or Broach for Bombay, and one case of cholera occurred on the voyage, he might under the quarantine law be detained on board 10 or 15 days and subjected to the greatest suffering. The law would therefore have the effect of preventing many persons going on board at all. On these grounds he would not vote for the Bill unless its operation was restricted to square-rigged ships, Indian ships being excluded.

The Honorable the ADVOCATE GENERAL said :—

“Sir, Notwithstanding the elaborate speech of my honorable friend opposite (Mr. Foggo), I entertain the same opinion I formed when I first considered the proposed Bill, and I certainly think, even stronger than I did then, that a Quarantine Bill in a somewhat modified or amended form, is urgently required for Bombay.

“Without pledging myself to the details of the measure now before the Council, I have no hesitation in voting for the first reading, as I consider that the Bill mainly contemplates giving to the Governor in Council similar powers to those which have been most beneficially exercised in England by the Sovereign in Council for many years.

“My honorable friend however opposes the Bill upon principle. He says that quarantine regulations are inapplicable to India, and that a change of opinion has recently taken place upon the subject in Europe, and in support of his views has cited a large number of medical and other authorities.

“I noticed too, Sir, soon after this Bill was published in the *Government Gazette*, that it was objected that quarantine regulations were generally considered to be oppressive, and that the proposed measure was not in accordance with the enlightened spirit of the age. I consider none of these objections have any real weight.

“Before, however, I proceed to state the ground upon which I support the present Bill, I wish to remark that I feel myself constrained to differ with the Honorable Mr. Foggo on two or three points upon which he has addressed the Council. In the first place, I doubt

whether he was strictly accurate in assigning the year A.D. 1484 as the earliest period to which quarantine can be traced. For I find it stated in a very recent edition of Stephen's Commentaries on the Laws of England, (that of 1863, Vol. III. p. 279) that the earliest known regulations in the nature of quarantine laws are those contained in an edict of Justinian, A.D. 542; so that quarantine was not a mere invention of the middle ages, but probably took its origin, singularly enough, in the same city, whence the most recent opinions have been issued on the subject of cholera and quarantine by the able and experienced delegates sitting in the Conference recently held with the coöperation of the Great European Powers at Constantinople.

"Then again, Sir, I doubt whether the 40 days of quarantine have, as suggested by Mr. Foggo, any relation to or take their origin from the 40 days of Lent. Possibly my honorable friend may not have studied the laws relating to matrimony and the rights of widows as much as others have done, but if he had, he would doubtless have found some affinity between the number of days from which quarantine takes its name and the widow's quarantine, a term made use of in law to signify the number of 40 days which a widow in olden time was entitled to remain in her husband's capital mansion house after his death, during which time her dower was to be assigned, a privilege which, if I mistake not, my honorable friend will find was reserved to widows by Magna Charta.

"Regarding two statements however made by Mr. Foggo, viz. 1st, that quarantine laws were first introduced into England in 1720, and 2nd, that the Act passed in that year remained in force until the consolidating Act 9, Geo. IV. c. 78 was passed, I beg very humbly to express my dissent.

"The notion that the plague was imported into Europe from the East seems to have prevailed in all ages. But the Venetians were, I believe, the first among the Western peoples who endeavoured to guard against its introduction from abroad, by obliging ships and individuals from suspected places to perform quarantine. The modern regulations upon this subject were, I admit, probably issued for the first time in 1484, and they have since been gradually adopted in most other countries.

"Their introduction into England was comparatively late, and the first Statute upon the subject with which I am acquainted was passed, not in 1720, but ten years earlier, viz. 9 Ann, c. 2, 'An Act to oblige ships coming from places infected more effectually to perform their quarantine,' a Statute which was followed (says Mr. Stephen) by several others in the reigns of George I. and George II., until at length all former provisions were repealed by 6 George IV., c. 78, which consolidated the whole of the Statute law now in force in England with respect to quarantine.

"Sir, I confess that even the most recent authorities cited by Mr. Foggo, such for example as the Order in Council of the 22nd July 1865, all point to the pressing necessity for precautionary measures of some kind or another, and I look upon the principle of the present Bill as based substantially upon the great law of self-preservation.

"Honorable members too will doubtless bear in mind that cholera in India is indigenous, and that in some towns and places in this Presidency, I instance one only, viz. Wace, between Poona and Mahableshwur, that dreadful scourge has been stated to be almost always present. Precautions which are considered necessary in England to ward off infec-

tious diseases of a virulent character, and to prevent their importation from abroad, appear therefore to me to be doubly so in this country, where many of them are generated, and where from the heat, the climate, and from other causes, diseases spread with greater rapidity than in Northern Europe, and persons are carried off with a suddenness which at times is quite startling.

“ I may mention that the idea of applying quarantine regulations to India is by no means new, for by Section 271 of the Indian Penal Code (Act XLV. of 1860), disobedience of a quarantine rule promulgated by the Government of India or any Government is made punishable with imprisonment not exceeding six months; or fine, or with both.

“ It may perhaps be too much at present to expect that any thing approaching the great lazarettos on the shores of the Mediterranean will be created in the harbour of Bombay ; but I cannot help thinking that the numerous Islands, such for instance as Butcher’s Island, afford peculiar facilities for isolating suspected vessels, and for preventing the spread of contagious diseases dangerous to life, which would probably take place if persons suffering from them were allowed access to any of the densely crowded portions of the Native town.

“ The lazarettos at Leghorn, Genoa, and Marseilles have long been considered very complete, and compared with these the quarantine establishments in England are exceedingly defective. I find it stated by Mr. Macculloch, so recently as in 1854, that there was not even in the Thames a lazaretto where a ship from a suspected place might discharge her cargo, so that she was detained frequently at a great expense during the whole period of quarantine, while if she had perishable goods on board, they might be very materially injured. Mr. Macculloch adds that it is singular that nothing should hitherto have been done to obviate such grievance. That the complaints as to the oppressiveness of quarantine regulations were almost wholly occasioned by the want of proper facilities for its performance, and that were these afforded (I see no reason why they should not in Bombay), the burdens it imposes would be rendered comparatively light.

“ With reference to the objection taken by the Honorable Mr. Munguldass Nuthoobhoy on behalf of the unfortunate Brahmin whom he supposed to be a passenger in a vessel bound from Surat to Bombay, and who it is said would die rather than touch food on board ship, I would suggest a very simple remedy. It is well known that the recent floods have stopped all traffic for some time on the Bombay and Baroda Railway. In a few weeks many persons will be coming from Guzerat to Poona, some for business, others for pleasure. The line may not be open by that time, in which case those I allude to may perhaps have to come by water. So I say in the case of the Brahmin, or any other native whose caste or religion compels him to fast on board a ship between Surat or Broach and Bombay—let him go by land. There is a railroad the whole way, or, if he does not like travelling by that mode of conveyance, though most natives do, he can ride or walk. I think it monstrous that the safety and health of any portion of the inhabitants of an immense city like Bombay should for one moment be jeopardised, and an inlet possibly given to a malignant contagious disease, and that quarantine is not to be enforced because a native chooses to come by sea to Bombay when he can come as well by land, and because he entertains certain scruples which prevent his eating or drinking anything whilst on his voyage.

“ I shall, therefore, Sir, vote for the first reading of this Bill, which I consider to be founded upon a perfectly unassailable principle; a Bill too which recent experience in Bombay has shown to be highly necessary, and which being of a purely precautionary character will, I trust, receive the cordial support of the Council.

The Honorable the PUNT PRUTINIDHI was in favour of the Bill.

The Honorable Mr. ELLIS referring to the Honorable Mr. Foggo's remarks said that he had not himself drafted the Bill, and that if it had been proposed to pass it in its present form, he would not have agreed to bring it forward. But in introducing the Bill he had distinctly stated that extensive alterations would have to be made. Had the introduction of any of the barbarous regulations to which the honorable member referred been now proposed, he (Mr. Ellis) would have been the first to oppose them, and he thought the honorable member might have given him credit for a wish to enforce precautionary measures only, in accordance with the received principles of modern sanitary science. He held that sanitary measures carried out in Bombay itself were insufficient to prevent the spread of contagious disease, while Government was unable to exercise any control over the vessels in the harbour, or the ports from which they came. He was not alone in these views. Dr. Leith, President of the Local Sanitary Commission, was of opinion that some legislative measure should be adopted, and he (Mr. Ellis) would also refer to the Report of the British Cholera Commission, addressed to the Earl of Clarendon, and dated Constantinople 25th May last. He would read an extract from this Report which showed the deliberate opinion and the latest recorded views of the persons best qualified to judge. The English Medical Commissioners stated their opinion as follows :—

“ It seems to us that in the case of ships or passengers arriving from infected neighbouring ports, the following measures might advantageously be adopted :—

“ 1. No persons should be allowed to land previous to efficient inspection by medical men appointed for the duty.

“ 2. The healthy passengers should be removed from the ship, and isolated for a period which need not exceed five days, at the end of which time they should be again inspected, and if found without choleraic symptoms, should receive pratique.

“ 3. All persons with cholera or diarrhœa at the time of arrival or at any period of the detention, should be isolated from the rest, and removed to a separate place, cases of diarrhœa should be retained under observation until the diarrhœa is cured or until the medical officer in charge is satisfied, from the features of the disease, that it is not of choleraic nature.”

With the permission of His Excellency the Governor in Council he would lay before the Select Committee this Report in extenso, as it contained many other valuable suggestions. With regard to the supposed case of hardship mentioned by the Honorable Mr. Munguldass, he wished to explain that persons arriving in Bombay from other ports would be detained only till inspected by the Health Officer, the object being to separate persons suffering from dangerous infectious disease. And so far from wishing to legislate with the view of keeping the sick people on board ship, a proceeding which would simply be legislative murder, the object of the measure was to oblige

infected persons to come on shore and live apart under proper treatment till the disease from which they suffered was no longer dangerous to the community. The honorable member had stated that it was the duty of the Municipal Commissioner to take action, but the Municipal Commissioner had no power to enforce such precautionary arrangements. The honorable member had expressed an opinion that the Bill would prove both oppressive and inoperative: he (Mr. Ellis) would take care that all oppressive clauses were removed, and if the Bill proved ultimately inoperative, it would be inoperative on account of its mildness. The question as to the class of ships, whether square-rigged or others to which the rules should apply, could be considered in Committee.

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

The Bill was read a first time, and on the motion of the Honorable Mr. ELLIS, was referred to a Select Committee composed of—

The Honorable Mr. ERSKINE,
The Honorable the ADVOCATE GENERAL,
The Honorable Mr. FOGGO,
The Honorable Mr. FRAMJEE NUSSERWANJEE,
And the MOVER,

with instructions to present their report at the first meeting of the Council after the 15th September proximo.

The Honorable the ADVOCATE GENERAL moved the first reading of Bill No. 7 to provide for the attendance and examination of witnesses before the Council of the Governor of Bombay for making Laws and Regulations. He said that the object of the Bill was to enable the Council to obtain information from non-official persons.

Mr. Bayley moves the first reading of the Bill to provide for the attendance and examination of witnesses before the Council of the Governor of Bombay for making Laws and Regulations.

The Bill read a first time.

The Bill was read a first time.

The Honorable Mr. ELLIS, in moving the first reading of Bill No. 8, to amend Act No. X. of 1863 (Bombay), said that he did not expect any opposition to this Bill, which was designed to repeal a clause of

Mr. ELLIS moves the first reading of the Bill to amend Act No. X. of 1863 (Bombay.)

Section 32 of the Act, and thus take from the Bank of Bombay the power to advance money on the security of shares; this change had been called for as much by public opinion, as by Government. In the year 1862, in consequence of the withdrawal from the Bank of Bombay of the right to issue paper currency, certain modifications became necessary in the old Charter, Act III. of 1840. Accordingly the Directors framed a new draft Act, which was submitted to the Government Law Officers and resulted in Act X. of 1863. This Act differed in some particulars from the corresponding Acts for the re-organization of the Banks of Bengal and Madras, the object apparently being to fetter the operations of the Bank as little as possible. The Advocate General pointed out at the time that the Bombay Bank would by such an enactment obtain greater freedom than the other Government Banks, but on referring to the proceedings of the Council it did not appear that this particular point of difference to which the Act now

before the Council referred, gave rise to any discussion. The questions of foreign exchanges and of the appointment of auditors were debated, but no reference appeared to have been made to the Section which enabled the Bank to advance money on the security of shares. To the effects of this Section a great part of the misfortunes which had overtaken the Bombay Bank had been attributed. He (Mr. Ellis) was of opinion that it depended on the Bank managers more than on any restrictions on the Bank management to make a good Bank, but at the same time he thought it would tend to revive public confidence if the objectionable clause were removed. It was due to the present Directors to say that for some months past the Section had been a dead letter and no advances whatever had been made on shares except those of guaranteed Railway Companies. But future Directors might be less discreet, so he thought the Council would be unanimous in holding that it was desirable to pass the Bill as soon as the Rules permitted.

His Excellency Sir R. NAPIER cordially assented to the Bill.

The Honorable Mr. FOGGO said: "I quite concur in the expediency of this measure. I believe that the principle that a Bank shall not advance on shares is a wise one, for, and I think, my honorable colleague Mr. Hunter will agree with me there are few, if any, securities of the kind that can be looked upon as a proper banking security; they are too liable to fluctuations in price, they are subject to great and sudden depreciation, and they are not readily convertible when most wanted. I am not however prepared to say that it was absolutely a mistake to give the Bank such a power by its Charter of 1863, for if well and wisely used the power might have been a very valuable one in periods of emergency, but I fear of that there is not much chance, indeed, experience has shown that it has not been wisely used in Bombay, and I therefore am quite ready to concur in its repeal. I may take this opportunity of stating that I do not agree with those who consider that the new Charter—the Charter of 1863—was in no respect an improvement upon the old. For instance, by the 26th clause of the Charter of 1840, it was enacted that the Bank should discount no bills and make no loan unless the amount of cash in possession of the Bank and immediately available shall be equal to at least one-fourth of all the claims against the said Bank outstanding for the time being and payable on demand. Now the working of this clause was any thing but satisfactory. The returns of the Bank, at a time when money was in demand, would be anxiously watched from week to week, and when the limit was being approached, a rush for money was made upon the Bank, and the very state of things, a state of panic, which I suppose the framers of the clause thought to prevent, was invariably induced. Take again the 27th clause, requiring the several responsibilities of at least two persons or firms unconnected with each other in general partnership. This stipulation proved in reality merely a nominal precaution. When a firm of undoubted credit applied for a loan, no loan was obtainable unless another's name could be given, and the difficulty of this being considerable, the practice arose of giving the name of a clerk or moonim, a person generally of no responsibility whatever. In other instances, the name of a broker might be given, who though often an individual possessed of wealth, had too many transactions in conjunction with the firm to which he gave his name, to be in reality an additional security. The absence of these two provisions in the Charter of 1863 was therefore, I think, a decided improvement on the old Charter. There may be more question regarding the limit of 3 lakhs as an advance (except on securities specified) to any firm. In

recent times 3 lakhs appeared a very small sum, but now that our ideas have moderated considerably, the limit might generally be found sufficient. At the Bank of Bengal there is now no limit, and no evil result has followed.

“ The honorable member (Mr. Ellis) wisely remarked that this stipulation would not be sufficient alone to prevent mischief in the absence of improved management. I entirely concur with him and consider that the matter is almost entirely a question of management. You may introduce this or that restriction or stipulation, but you cannot close every loophole for mischief. We very commonly hear banking spoken of, as if it were a mystery, like some abstruse point of mathematical science, which no man, not even an educated gentleman, could understand without a lifelong apprenticeship to it. Now, Sir, banking is no mystery at all, nor any other branch of finance, as far as my knowledge extends, but like every other profession, it does require some experience and attention ; and as much perhaps as any other profession, the possession of certain moral qualities. It requires great caution, constant watchfulness, great firmness, strength of will, honour and honesty, with a determination to adhere to what you consider right, in spite of the interested solicitation of those around you. There is not much scope for enterprise in banking—enterprise is necessary in a merchant, but not in a banker or at least not more of the quality than will enable him to employ his reserves to advantage, and to develop his business as far as prudence may warrant. I do not see why any gentleman whose concern it was, might not be quite as competent to sit round the bank table, (if he chose to give sufficient time to it,) in fact more competent, than many of those who have sat round it.

“ I am about to refer to two or three points of detail in the management of the Bank, but before doing so, I should wish to offer two observations. One is, that any remarks of mine, affecting details, in the management of the Bank can have no reference to any gentlemen now on the Board, not one member who now has a seat there, including the chairman, having been in the direction during the period from whence my experience is derived ending in December 1863. The other observation I have to make is this—that maxims of prudence and caution in financial matters are never listened to, except when people are smarting under pecuniary losses as they are at present.

“ The three points in the management to which I desire to call attention are the working of the system of Government directors, the appointment of chairman, and the discounting of Native bills. And first as to the Government directors. I am not one who thinks lightly of the coöperation of Government in any public Company, Bank or other, of sufficient weight and importance to the public to warrant Government coöperation. On the contrary, I believe that nowhere else than among Government servants can we look for a supply of what for want of a better term, I would call the Conservative element so easily to be had in England among the leading members of the mercantile community, but so difficult to be had in Bombay, though so necessary, to give a counterpoise to the go-ahead element so freely manifested by the young gentlemen from Manchester and Liverpool. The mercantile community, as a general rule, does not furnish it, nor does that profession of which my honorable and learned friend the Advocate General is the distinguished representative. Both these professions are commonly too much engrossed with the idea of making as much money in as short a time as possible and returning to their native country, and inclined to think rather of making

high dividends and realizing premiums than of the honour and credit of the institution or undertaking with which they are connected. Therefore, Sir, I do not think lightly of Government directors, but to be of real value, their attendance should be obligatory not optional, and they should be as responsible for the due performance of their directional as of their other duties. I hope I shall not be considered to be making an invidious remark when I affirm that during the three years that I was a director of the Bank, I cannot call to mind more than three Government directors who took that intelligent interest in the Bank which it is so desirable they should take. I know that the short period for which many of them held the appointment made it difficult for them to acquire the knowledge necessary to enable them to take such an interest. Then as regards the appointment of chairman. I know it is generally in England considered a good rule that the chairman of a Board should hold office for a considerable period; for three years perhaps, a shorter period being deemed insufficient to make him acquainted with his duties. Now there may be weight in this; but I think where the directors take a proper part in the work, a better plan is for the chairman to be annually chosen. If his example is a good one, it will be difficult for his successor to deviate from it. If it is a bad one, there is a chance of its being avoided. Besides, under the other plan, especially if he is a servant of Government, and at a Board constituted like the Board of the Bank of Bombay, the chairman acquires too preponderating an influence, and his decisions are often accepted on his mere *ipse dixit*, in a way that the decisions themselves do not warrant.

“ The system in regard to the discounting of Native bills may have been recently altered, and I shall be glad to hear that it has, but up to a late period I believe the practice was the same as formerly. At the Bank of Bengal, the responsibility rests, in all ordinary cases, with the manager, who is assisted in obtaining information by his head shroff and moonshee, and I speak advisedly when I assert that these officers have never been known to give wrong information. In special cases the manager refers to the daily committee of directors, or to the full Board, but never to an individual director. Now what is or was the practice at the Bank of Bombay, at least with a variety of bills. The bill was referred by the chairman to the native director, the manager disclaiming all responsibility on the subject, and according to the report of the director was the bill discounted or not. Now that I think is a power that ought not to be assigned to any individual director, and a responsibility that no director, European or Native, should undertake. Some attempt should be made in every instance to distinguish between bills representing actual mercantile transactions, and what are called in England “ flying kites.” It is difficult in many cases, but it is not impossible.

“ I proceed to offer a few remarks on the present position of the Bank, on the causes that led to it, what should now be done, and how to prevent mischief in future. I consider the main causes of the present state of things have been forgetfulness of the special responsibilities of a Government Bank, and a too eager desire to enter into competition with the other Banks of the place. The first increase of capital in 1863 was imperatively called for, but it did not follow because that was a wise measure that the capital should again be doubled. Such an increase of capital in Bombay, where it is so difficult at times to employ money to advantage, coupled with the desire for high dividends, and the touting for business which took place was of itself full of danger in the absence of most prudent and able management. We hear, Sir, as an apology for the present deplorable state of things, a great deal of the crisis,

that there never was such a crisis,—that it is all owing to the crisis. No doubt under any circumstances, the crisis would have been serious. But there has been, and before now, a crisis in Calcutta, they have had their speculations in tea companies and in other companies, and they had not very long ago, opium above Rs. 2,000 a chest. The important difference consists in the different policy adopted by the two Banks. In Bombay loans were given with a free hand, so that the Bank became nothing better than a milch cow to all the most reckless speculators in Bombay. In Calcutta the Bank set its face in every way against speculation;—I mean, utter gambling in shares of no value; although it afforded assistance liberally wherever deserved, and that, at one time, upon securities which it is not ordinarily in the habit of taking. The result shows the difference in the policy pursued. The Bank of Bengal estimates its losses at Rs. 30,000. The Bank of Bombay comes before the public with the loss of a million sterling. I consider the present position of the Bank most unsatisfactory, and such as ought not to be allowed to continue. It is unsatisfactory to Government, whose honour and whose credit are so closely connected with it. It is unsatisfactory to the directors, who are in a manner compelled to put forth a statement against which so much exception can be taken, and requiring so much explanation. It is doubly unsatisfactory to the shareholders, who have no prospect of a dividend, I fear, for years to come.

An important step towards placing and preserving the Bank on a right footing, would be, I conceive, the institution of a periodical Government audit. I do not mean such an audit as we have now appended to the Directors' Report, which though very necessary, is in fact a mere docketing, showing the cash in the treasury, cash with the shroff, Government paper in safe custody, past due bills in the hands of the Solicitors, and copper in the Castle. What I mean, is a report on the nature, character and extent of the business that has been doing, whether sound or unsound, and whether the Charter has been infringed in letter or in spirit, and lastly, if the Bank's officers are efficient, and this remark I make without any reference to its present staff, with whose capabilities I am necessarily but little acquainted.

“If these and other measures are adopted, I believe the Bank may recover itself and the confidence of the public. If nothing is done, if things are left alone, I believe matters will proceed from bad to worse.”

“Regarding the new Bill, I have no alteration or amendment to suggest. If the Honorable Mover sees no objection, I propose however to move at the proper time, that in Section XIX. of Act X. of 1863, for the words “who shall be Director of any other bank having a place of business” be substituted the words “who shall be Director, Provisional Director, or Promoter of any other Bank having or about to have a place of business.” The reason of the alteration is obvious, and it is called for by what has occurred in Bombay during the last two years.

The Honorable Mr. HUNTER said he would support the Bill. He believed that the clause now to be repealed was introduced to enable the Bank to take shares as security *in addition* to good personal security, but that the original idea was lost sight of in the days of speculation. Owing to the system pursued the Bank now held shares in bankrupt companies, and had thereby incurred a risk never contemplated by the directors. For example, it was well known that the Bank held a great deal of Commercial Bank stock, and there seemed reason to think that it would be responsible for any further calls that might be made

on that stock. He agreed with the Honorable Mr. Foggo in what he had said regarding the pernicious practice adopted by many persons and firms in Bombay of giving the names of their clerks as additional security when obtaining advances from the Bank. He (Mr. Hunter) was quite shocked to discover lately the extent to which this practice was carried. He thought also that 3 lakhs was a sufficiently large sum to advance on personal security, for it was clear that there should be some restriction to the amount of capital which individuals should be able to raise without any actual property to represent it. He considered that above all things it was requisite to appoint thoroughly efficient officers, and to have a responsible individual as manager. He thought the capital of the Bank was too large and had been too suddenly raised from 50 lakhs to 2 crores, thereby forcing the directors to *tout* for business. The circumstance of the Bank of Bengal having so large a capital was no argument for a similar capital for the Bank of Bombay—and this was borne out by the fact that whereas about 70 crores of Government paper were held in Calcutta, only from 5 to 6 crores were held in Bombay. In conclusion, it appeared to him very desirable that some steps should be taken to resume the payment of a dividend, as there were many persons whose livelihood depended on the income they drew from their shares, so that if no dividend was to be declared till the capital was brought up to its original amount much individual suffering would result. He was not sure whether this was a matter to be dealt with by the Council, but he thought it would be of advantage to reduce the nominal value of shares from Rs. 1,000 to Rupees 750 or thereabouts.

His Excellency the PRESIDENT said that such a proposal should originate with the shareholders and would then be considered by the Council with a view to a change in the Act.

The Honorable Mr. MUNGULDASS said that he heartily concurred in what had been said, and he thought that if the objectionable Section had never become law, a great part of the misfortunes of Bombay might have been spared.

The Honorable Mr. ELLIS, alluding to the points specially dwelt on by the Honorable Mr. Foggo, observed that it was no doubt desirable that the directors appointed by Government should be the persons best suited for the position, and that they should hold the appointment for a considerable time, but until lately Government was much restricted in its choice; under recent instructions however from the Home Government, it is now permitted to appoint Government directors holding shares in the Bank, and who have thus a double interest in its stability and welfare. As regards the choice of a chairman, that rested entirely with the Board of Directors. But there was one point in the honorable member's remarks to which he desired particularly to allude. Having himself been on the Board of Directors in former years, he felt himself bound, with reference to what had been said regarding the position of the native directors, to say that valuable assistance had always been rendered by his native colleagues. The Honorable Mr. Foggo had stated that the manager must necessarily depend on his native subordinates for information, and yet he would have implicit reliance placed on the manager to the exclusion of the native gentlemen on the direction who were chosen by the general body of shareholders. When he (Mr. Ellis) was a director, the greatest advantage was derived from consulting the native directors. But at the same time the manager was held thoroughly responsible. In judging of bills presented for discount the advice of the native directors was most valuable to their European colleagues, and

he held that the Board did well in being in great measure guided by such advice instead of trusting entirely to the manager or rather to the clerk and shroff, from whom the manager obtained his information. If in any case this power had been exceeded, the above does not afford sufficient grounds for deprecating its discreet use. He (Mr. Ellis) would not detain the Council further by discussing the other points referred to, as they appeared to be hardly relevant to the present Bill. And as the feeling in favour of the Bill appeared unanimous, he would now move the first reading.

His Excellency the PRESIDENT asked the Honorable Mr. Foggo, whether he proposed an alteration in the law in order to ensure a Government audit, or whether the alteration was only one of management.

The Honorable Mr. FOGGO said that he did not think any legislative change was required.

The Honorable Mr. HUNTER said that he thought provisions should be introduced into the Charter to secure a really efficient audit. At present the auditors were mere checking clerks.

The Honorable Mr. ERSKINE said it would be necessary to take care that the responsibility of the directors was not weakened.

His Excellency the PRESIDENT said that as the only member now present of the late Council which passed Act III. of 1863, he wished to state that in passing that Act great pains were taken to obtain the previous concurrence of the Government of India and Her Majesty's Secretary of State. He found it now difficult to say how the Section came to be inserted. He would not let this opportunity pass without bearing testimony to the great amount of labour performed by the present Board of Directors during the year and a half which has elapsed since the crisis of 1865. He hoped that the present Bill would strengthen their hands, and help to bring back the Bank to its old position.

The Honorable Mr. ELLIS said he would not move for a Select Committee; any amendments could be introduced under the Rules.

The Bill read a first time. The Bill was read a first time.

His Excellency the PRESIDENT then adjourned the Council to Saturday the 18th instant, at 11 A.M.

W. WEDDERBURN,
Acting Under-Secretary to Government.

Poona, 13th August 1866.

Abstract of the Proceedings of the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations under the provisions of "the INDIAN Councils' Act, 1861."

The Council met at Poona, on Saturday the 18th August 1866, at 11 A.M.

P R E S E N T :

His Excellency Sir H. B. E. FRERE, K.C.B., K.S.I., Governor of Bombay, *presiding.*

The Honorable B. H. ELLIS.

The Honorable C. J. ERSKINE.

The Honorable the ADVOCATE GENERAL.

The Honorable G. FOGGO.

The Honorable SHREENIVAS RAOJEE ROWSAHEB PUNT PRUTINIDHI.

The Honorable MUNGULDASS NUTHOOBHOY.

The Honorable A. J. HUNTER.

His Highness the Honorable MEER MAHOMED KHAN, TALPORE.

The Honorable FRAMJEE NUSSERWANJEE, PATEL.

Bill to provide for the attendance and examination of witnesses before the Council of the Governor of Bombay read a second time and considered in detail.

On the motion of the Honorable the ADVOCATE GENERAL, the "Bill to provide for the attendance and examination of Witnesses before the Council of the Governor of Bombay for making Laws and Regulations" was read a second time and considered in detail.

The following alterations were made :—

In the last line of Section I. the word "possession" was inserted between the words "his" and "power," and the word "custody" in the same line was omitted.

In lines 6 and 7 and in lines 14 and 15 of Section III. the words "such cause as may be deemed reasonable" were substituted for the words "reasonable cause to be allowed."

In line 25 of Section III. the words "and detained in" were inserted before the word "close."

In lines 30, 31, and 32 the words "The warrant may be directed to any officer in that behalf appointed by Governor" were omitted, and the following were substituted:—"The warrant shall specify the person or persons by whom such apprehension, committal, and detention shall be made."

The Honorable Mr. MUNGULDASS NUTHOOBHOY observed that as witnesses summoned to the ordinary Courts of Law were entitled to the payment of their expenses, it would be but fair to grant a similar right to witnesses summoned before this Council, leaving it optional with them to avail themselves of it or not; whereupon in lines 4 and 5 of Section IV. the words "such witness shall be entitled" were substituted for the words "the Governor of Bombay may if he thinks fit order such witness."

In line 6 of the same Section the words "or place" were inserted after the word "District"; and in line 10 the word "local" was inserted before the word "limits."

In line 6 of Section V. the words " of the Governor of Bombay" were omitted.

The Honorable Mr. ELLIS remarked that as, at the last meeting of Council a discussion on the first reading of the Bill to amend Act No. X. of 1863 (Bombay) had taken place, and as the principle of the Bill besides a great many questions irrelevant to the Bill had then been fully discussed, he conceived it would be unnecessary to do more at the present stage of the proceedings than to move the

Mr. Ellis moves the Second Reading of the Bill to amend Act No. X. of 1863 (Bombay).

second reading. The Bill appeared to meet with the approbation of every member of Council when the subject was under discussion at the last meeting. He would therefore move the second reading.

The Bill read a second time and considered in detail.

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

Mr. Foggo moves the introduction of a Section after Section I.

The Honorable Mr. Foggo moved the introduction of the following Section after Section I. :—

"That in Section XIX. of (Bombay) Act No. X. of 1863, for the words ' who shall be director of any other Bank having a place of business', be substituted the words ' who shall be a director, provisional director, or promoter, of any other Bank having or about to have a place of business'."

The Honorable Mover of the amendment said that it had been suggested to him by the Honorable Mr. Framjee Nusserwanjee Patel that it would be well to introduce the words " or any Financial Association" into the amendment as printed, so as to prevent any director, provisional director, or promoter of any Financial Association as well as any Bank from acting as a director of the Bank of Bombay.

The Honorable Mr. HUNTER asked whether a provisional director was not a director.

The Honorable the ADVOCATE GENERAL asked what a provisional director was.

The Honorable Mr. FOGGO said that a provisional director was a term used in England in place of the term used in Bombay—a promoter.

The Honorable Mr. ELLIS said there could be no doubt what a provisional director was. A provisional director had a status, but " a promoter " was a very vague term.

The Honorable Mr. FOGGO suggested that the term might be avoided by using words of more definite meaning. He mentioned a case in which one gentleman who was provisional director of a new banking association was at the same time one of the directors of the Bank of Bombay, a conjunction of offices highly objectionable. He said that his intention was to prevent the intention of the Act being evaded by the use of a word not specifically recognized by the Act.

The Honorable Mr. MUNGULDASS NUTHOOBHOY said that provisional directors were persons who started a Bank without being elected by the shareholders. They were self-styled and self-elected, and when they or others were elected by the shareholders at the first regular meeting of the company, they became directors. He (Mr. Munguldass) might give the Surat Bank as an illustration; it had been in existence for fourteen months, and he did not know where the money of the shareholders had gone. Up to that time the directors or managers had not been elected according to law. They might be connected with the Bank of Bombay, and to exclude such persons, he thought it essentially necessary to pass the amendment proposed by Mr. Foggo.

The Honorable Mr. FOGGO did not imagine that there was any danger of any director divulging the secrets of one Bank to another; but it was not desirable that a gentleman who was a director of the Bank of Bombay should be a director in any other Bank in the same place, or be connected in any other capacity with any such Bank, because if he attended to his duties in the Bank of Bombay, he would have enough to do in that line, without any other reason it was quite inadvisable on that ground alone.

The Honorable Mr. ERSKINE said the amendment as proposed by Mr. Foggo excluded the directors, provisional directors, or promoters of any Bank "about to have" a place of business. He asked how the shareholders of the Bank of Bombay when they elected a director, were to know that they were electing a gentleman who held an appointment in a Bank that was about to have a place of business.

His Excellency the PRESIDENT thought it would be proper to define a little more strictly what was meant by the expression "about to have a place of business," and he suggested that the criterion of an advertisement should be taken. He accordingly suggested that the clause should read "advertised to be about to have a place of business."

The Honorable Mr. FOGGO had no objection to this amendment.

The Honorable the ADVOCATE GENERAL thought the word "advertised" was not sufficiently distinct, and he suggested that the clause should read "advertised in any public newspaper as about to have a place of business."

The Honorable Mr. HUNTER said that if the clause was to include Financial Associations, he thought it was necessary to define what Financial Association was.

The Honorable the ADVOCATE GENERAL said that he did not suppose that if the directors of Financial Associations had been excluded in 1863, any of the disasters that had happened would have been avoided. The Financial Associations in Bombay were now on their last legs, and when the next period of speculation set in, which it did in England every nine or ten years, there would probably be some new form of speculation, so that he did not see any necessity for the introduction of words into the amendment referring to Financial Associations.

His Excellency the PRESIDENT said that his impression was that Financial Associations were far from being on their last legs. His idea of financial business was that it comprised that kind of banking business which did not admit of immediate realization of assets and which was accordingly distinct from old-fashioned banking. The nature of the two kinds of business being dissimilar, he did not think it was at all clear that we had seen the last of this particular form of Association.

The Honorable Mr. Foggo admitted there was much force in his Excellency's remarks. If a Financial was conducted on proper principles, and was not merely an association for gambling in shares, as most of the associations bearing that title in Bombay had been, a gentleman might very well be a director of the Government Bank and a director of a Financial Association at the same time. If the Council also thought so, he would be willing to omit the words "or of any Financial Association" which he had proposed to introduce into the amendment as printed. This was *carried*.

On the suggestion of the Honorable Mr. ERSKINE, the amendment moved by the Honorable Mr. Foggo was expressed in the following manner:—The number II. was prefixed to the Section, and the first two words "That in" were omitted, and the words "shall be read

as if" were inserted after "1863" in the first line, and in the third line the words "be substituted the words" were omitted that the following words might be introduced in their place, "The following words were substituted, that is to say". In the 5th line the words "advertised as" were inserted between the words "or" and "about."

The Honorable Mr. HUNTER said that he should like to have the views of the Council in reference to the clause of the old Charter by which advances were restricted to three lakhs of rupees to any one individual or firm on personal security. That clause was omitted from the new Act of 1863. He was not aware what the reasons were for the omission of this clause from the Act, unless it was because the clause was omitted from the Act relating to the Bank of Bengal. He was strongly of opinion that the restriction should still exist, and that it was a mistake to have withdrawn it. He had consulted with other members of the Council, and their idea was that the clause should be revived. He did not propose at present to make a motion to this effect, but he should be very glad to hear the subject discussed. As he said at the last meeting, the advancing of money on mere personal security was simply raising capital with nothing to represent it, and was therefore a very dangerous practice, and one only to be sanctioned in very exceptional cases. The capital of a firm ought to afford the requisite margin for conducting ordinary business operations. When people raised money in this way, it was simply for the purpose of bearing the losses which they might incur in the way of business, and was therefore a dangerous practice. The ordinary capital should be used for providing margins for losses.

His Excellency the PRESIDENT said that he was not sure that he could give the honorable member any information, without looking at the records, as to the reasons of the change, but his general impression was that the restriction was omitted in the new Act partly in imitation of the example of the Bengal Act, and partly because it had been observed that the restriction was got round in practice. It was therefore deemed better to leave the matter to the discretion of the directors.

The Honorable Mr. FOGGO said that he quite agreed with the Honorable Mr. Hunter that there was considerable risk in the power being left to the Bank of Bombay, and that it might be greatly abused. He thought that with firms, Native or European, generally speaking, three lakhs of rupees would be as much as they would be entitled to. But there were other associations, besides private firms, which frequently applied for accommodation. Banks of the best standing applied to the Bank of Bombay for assistance at times, and that even although their credit might be undoubted.

The Honorable Mr. HUNTER said it was the custom at home for Banks in such cases to lodge securities, and he did not see why the same should not be done here. The Bank of England was restricted in the very same way as to advances on personal security. A banker or any private individual who deposited good securities, such as Government paper, could get accommodation to any amount. He knew it was a very common thing amongst the natives of Bombay and others who had occasional requirements for money to keep it locked up in Government paper, which they took to the Bank of Bombay, when they obtained advances on it. This used to be the case with the Bank of Bombay and still was to a large extent.

The Honorable Mr. ELLIS said that perhaps the directors of the Bank of Bombay might be called upon to report as to the point raised by the Honorable Mr. Hunter.

His Excellency the PRESIDENT suggested that the Honorable Mr. Hunter should put his motion in form according to the Rules.

The Honorable Mr. HUNTER read the following proposed Section, adding that he would be glad to hear the opinion of the directors of the Bank of Bombay on the point :—

“ The directors of the said Bank, as re-incorporated and re-constituted under this Act, shall make no loan or advance of money or securities for money to any person or persons on the security of any shares or share or certificate of shares or a share in the capital stock of the Bank of Bombay ; nor shall they make any loan or advance on the mortgage or in any other manner on the security of any lands, houses, or other immoveable property, or on the title-deeds relating thereto ; nor shall they discount any negotiable securities which shall have a longer period to run than three months, or lend any money for a longer period than three months, nor shall they make any loan or advance on any negotiable security of any individual or partnership firm, which shall not carry on in the several responsibilities of at least two persons or firms unconnected with each other in general partnership, nor be in advance at one and the same time to any individual, or partnership firm, either by way of discount, loan, or in any other manner, (saving by loans upon the deposit of Government securities, or goods not perishable) beyond the amount of three lakhs of Company's Rupees. Provided always, that the advances upon Bills of Exchange accepted by the Government or upon other Government obligations shall not be considered as an advance within the meaning of this restriction.”

The amendment was ordered to be printed, and the further consideration of the Bill was adjourned to Monday the 27th instant.

His Excellency the PRESIDENT then adjourned the Council to Monday the 27th instant, at 11 A. M.

By order of His Excellency the Governor in Council,

W. WEDDERBURN,

Acting Under-Secretary to Government.

Poona, 18th August 1866.

Abstract of the Proceedings of the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations, under the provisions of the "INDIAN Councils' Act 1861."

The Council met at Poona, on Monday, the 27th August 1866, at 11 A. M.

P R E S E N T :

His Excellency Sir H. B. E. FRERE, K.C.B., G.C.S.I., Governor of Bombay, *presiding.*

His Excellency Lieutenant-General Sir R. NAPIER, K.C.B.

The Honorable B. H. ELLIS

The Honorable the ADVOCATE GENERAL.

The Honorable G. FOGGO.

The Honorable SHREENIWAS RAOJEE RAO SAHEB PUNT PRUTINIDHI.

The Honorable MUNGULDASS NUTHOOBHOY.

The Honorable A. J. HUNTER.

His Highness the Honorable MEER MAHOMED KHAN, TALPORE.

The Honorable FRAMJEE NUSSERWANJEE PATEL.

On the motion of the Honorable the ADVOCATE GENERAL the following alterations were

<p>Further consideration of the Bill to provide for the attendance and examination of witnesses before the Council of the Governor of Bombay for making Laws and Regulations.</p>	<p>made in the Bill to provide for the attendance and examination of witnesses before the Council of the Governor of Bombay for making Laws and Regulations:—</p>
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In line 2 of the title of the Bill, the words "assembled for the purpose of" were substituted for the word "for."

In line 4 of the preamble and in line 7 of Section I. the same alteration was made.

In line 12 of Section I. the words "the said" were substituted for the word "such."

In line 13 of Section I. the word "measure" was substituted for the words "project of law."

In lines 14 and 16 of Section I. the words "the said" were substituted for the word "such."

In lines 17 and 23 of Section I. the word "and" was erased before the word "writings," and the words "and documents" were inserted after the word "writings."

In line 4 of Section II. the words "of Bombay" were inserted after the word "Governor."

In line 8 of Section II., after the word "aforesaid," the following words were inserted:—
"and the person to whom such oath or affirmation shall be administered shall be bound to state the truth."

In lines 26 and 27 of Section III. the words "unless he shall in the meantime" were omitted, and the words "until he shall" were inserted in their place.

The Honorable the ADVOCATE GENERAL said that at the previous meeting of the Council the fourth Section had been amended on the motion of the Honorable Mr. Munguldass Nuthoobhoy, so as to give witnesses, who might be required to give evidence before the Council, a right to demand payment of their expenses, instead of leaving the payment to be made or withheld discretionary with the Governor of Bombay. It had been suggested to him by the Honorable Mr. Erskine, who was absent from the present meeting, that the amendment which had been introduced might imperil the passing of the Bill, because there was no fund out of which the expenses to be paid to witnesses would be forthcoming, and these would have to be charged upon the Imperial revenues. He therefore suggested to the Honorable Mr. Munguldass, who had moved the amendment, whether the Bill should be endangered by the provision contained in the amendment. He (the Advocate General) could not say that he went so far himself as to think that the amendment would imperil the Bill, but as the Honorable Mr. Erskine was not present, it was only right to represent his view to the Council.

The Honorable Mr. ELLIS thought that the amendment would not endanger the Bill, because as the clause originally stood, the Governor of Bombay might order payment of the witness's expenses if he pleased, and yet no fund was provided out of which the expenses so ordered were to be paid, any more than the expenses which the witness was now entitled to demand. Either as the Bill originally stood, or as it now stood, there was therefore a charge upon the funds of the State. He did not think any new fund would be required to meet the expenses of witnesses payable under the Bill; the payments might be made out of the allowance for contingent expenses connected with the Council. He preferred to see the amended clause retained. If the one was objectionable so was the other, and by reverting to the clause as it originally stood, the Council did not get out of the difficulty.

The Honorable the ADVOCATE GENERAL withdrew his suggestion.

In line 10 of Section IV. the word "Civil" was inserted after the word "original."

The Bill read a third time and passed.

On the motion of the Honorable the ADVOCATE GENERAL the Bill was read a third time and passed.

Bill to amend Act No. X. of 1863 (Bombay) considered in detail.

The Honorable Mr. HUNTER had given notice that on consideration in detail of the Bill to amend Act No. X. of 1863 (Bombay) he would move:—

That for Section XXXIV. of (Bombay) Act No. X. of 1863, the following Section be substituted:—

"The directors of the said Bank, as re-incorporated and re-constituted under this Act, shall make no loan or advance of money or securities for money to any person or persons on the security of any shares or share or certificate of shares or a share in the capital stock of the Bank of Bombay; nor shall they make any loan or advance on the mortgage, or in any other manner on the security of any lands, houses, or other immovable property, or on the title deeds relating thereto; nor shall they discount any negotiable securities which shall have a longer period to run than three months, or lend any money for a longer period than three months, nor shall they make any loan or advance on any negotiable security of any individual or partnership firm, which shall not carry on in the several responsibilities of at least two persons or firms unconnected with each other in general partnership, nor be in advance at one and the same time to any individual, or

partnership firm, either by way of discount, loan, or in any other manner, (saving by loans upon the deposit of Government securities, or goods not perishable) beyond the amount of three lakhs of Company's Rupees: provided always, that the advances upon Bills of Exchange accepted by the Government or upon other Government obligations shall not be considered as an advance within the meaning of this restriction."

The Honorable Mr. ELLIS said that before the Council entered upon the further consideration in detail of this Bill, he might mention that the Chief Secretary to Government telegraphed on Thursday to the Directors of the Bank of Bombay for their opinion of the Bill Friday and Saturday were holidays, and the Bank being closed, no answer had been received. The Council, at the last meeting, thought it would be desirable to obtain the opinion of the Directors before the amendment of Mr. Hunter was proceeded with.

His Excellency the PRESIDENT asked Mr. Hunter whether he would, under the circumstances, proceed with his motion.

The Honorable Mr. HUNTER said he would prefer having the opinion of the Directors of the Bank of Bombay before moving the amendment. He was not aware of the reason why the Section regarding which he had given notice had not been inserted in the Act of 1863. He thought that as the Council was now amending the Charter, these restrictions should be inserted unless there was some good reason to the contrary.

His Excellency the PRESIDENT said that in that case the most convenient course would be to adjourn the consideration of the Bill.

The Honorable Mr. Hunter having agreed to the adjournment, His Excellency the PRESIDENT said that he thought the reason why the Section had been omitted was, that it was considered that the Bank should be unfettered in its action. He did not think the Council would get any other reason than that.

The further consideration of the Bill was therefore adjourned till Monday next.

The Honorable Mr. HUNTER said he was desirous of bringing in a Bill to place the men in the employment of the Harbour and Pilotage Board under similar regulations to those of the Merchant Shipping Act. The Harbour Board was very anxious that this Bill should pass as soon as possible, in consequence of the difficulties in which they were placed from the men in their employment leaving without any notice, or striking work. This put the Board to great inconvenience and seriously endangered the vessels entering the harbour, as sometimes men could not be got to man the Pilot boats needed to bring ships into the harbour. He had handed the Bill over to the Honorable Mr. Erskine, but owing to the absence of the honorable gentleman, he was not himself in a position to move for its introduction into the Council at that meeting.

His Excellency the PRESIDENT asked whether it was proposed to introduce provisions different from those in the Merchant Shipping Act, and whether any fresh principle would be involved.

The Honorable Mr. HUNTER said that it was not proposed to introduce the provisions different to those in the Merchant Shipping Act, and that no fresh principle would be involved. The object of the Bill was simply to oblige the men employed under the Harbour and Pilotage Board to come under agreements with the Board, and in the event of desertion

or neglect of duty, or in the event of their destroying property, to have them punished by imprisonment and fine.

His Excellency the PRESIDENT said that he was sorry that the Honorable Mr. Erskine had been prevented by illness from being present that day. He saw that by the Rules three days' notice was required before a Bill was introduced, but the same object would be attained if it were published in the course of the week, and at the next meeting the honorable member could proceed with it.

His Excellency the PRESIDENT then adjourned the Council to Monday the 3rd September proximo.

W. WEDDERBURN,
Acting Under-Secretary to Government.

Poona, 27th August 1866.

Abstract of the Proceedings of the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations under the provisions of "the INDIAN Councils' Act, 1861."

The Council met at Poona, on Monday, the 3rd September 1866, at 11 A.M.

P R E S E N T :

His Excellency Sir H. B. E. FRERE, G.C.S.I., K.C.B., Governor of Bombay, *presiding*.

The Honorable B. H. ELLIS.

The Honorable C. J. ERSKINE.

The Honorable G. FOGGO.

The Honorable SHREENIVAS RAOJEE ROWSAHEB PUNT PRUTINIDHI.

The Honorable MUNGULDASS NUTHOOBHOY.

The Honorable A. J. HUNTER.

His Highness the Honorable MEER MAHOMED KHAN, TALPORE.

The Honorable FRAMJEE NUSSERWANJEE PATEL.

On the previous consideration in detail of the Bill to amend Act X. of 1863 (Bombay),

the Honorable Mr. Hunter had given notice that he would move
 Consideration in detail of the Bill to amend (Bombay) the following amendment, and reference had been made to the
 Act No. X. of 1863. Directors of the Bank of Bombay for their opinion thereon:—

“That for Section XXXIV. of (Bombay) Act No. X. of 1863, the following Section be substituted:—

‘The Directors of the said Bank, as re-incorporated and re-constituted under this Act, shall make no loan or advance of money or securities for money to any person or persons on the security of any shares or share or certificate of shares or a share in the capital stock of the Bank of Bombay; nor shall they make any loan or advance on the mortgage, or in any other manner on the security of any lands, houses, or other immovable property, or on the title deeds relating thereto; nor shall they discount any negotiable securities which shall have a longer period to run than three months, or lend any money for a longer period than three months, nor shall they make any loan or advance on any negotiable security of any individual or partnership firm, which shall not carry on in the several responsibilities of at least two persons or firms unconnected with each other in general partnership, nor be in advance at one and the same time to any individual, or partnership firm, either by way of discount, loan, or in any other manner, (saving by loans upon the deposit of Government securities, or goods not perishable) beyond the amount of three lakhs of Company's Rupees: Provided always, that the advances upon Bills of Exchange accepted by the Government or upon other Government obligations shall not be considered as an advance within the meaning of this restriction.’”

The Under-Secretary submitted the following letter from the Officiating Secretary and Treasurer of the Bank of Bombay in reference to the above proposed amendment :—

BANK OF BOMBAY, *Bombay*, 29th August 1866.

To the UNDER-SECRETARY TO GOVERNMENT,
Legislative Department, Poona.

SIR,—I have the honour to acknowledge receipt of your letter No. 329, dated 27th instant, forwarding copy of a proposed amendment of Act X. of 1863.

I am instructed by the Directors to reply, that in their opinion the amendment is neither expedient nor required, and they would be glad to see that Act, as amended by the Government of India, passed into law without delay.

The Directors would point out, that in the Charters of the Banks of Bengal and Madras no such restrictions appear as are proposed to be introduced into the Charter of the Bank of Bombay by this amendment.

They are strongly of opinion, that if the amendment be carried, it will operate most seriously against the interests of the shareholders. They consider, that questions such as are referred to in the amendment, should be left entirely to the discretion of the Directors, and that in such matters they should be wholly unfettered.

There is nothing in the records of the Bank showing the reasons which led to the omission in the present Charter of such a Section as is now proposed to be re-introduced, and as none of the present Directors held office at the time, they are not able to give any information on the subject.

I have the honour to be, &c.,

D. ROBERTSON,
Offg. Secretary and Treasurer.

The Honorable Mr. HUNTER said there was nothing in this letter to alter his opinion in reference to the necessity of re-introducing the Section he had proposed.

His Excellency the PRESIDENT remarked, that if the honorable gentleman thought so, the best course would be for him to move his amendment, and state his reasons in support of it.

The Honorable Mr. HUNTER then moved that the Section as printed be added to the Bill. He said it was from no want of confidence in the present directors of the Bank that he was induced to propose the clause as an addition to the Bill. He believed the present directors had acted throughout in the most praiseworthy and judicious manner; but in the case of a Government Bank, it was his opinion that there should be certain rules laid down for the guidance of the directors, and more especially so in a place like Bombay, where society was constantly changing, and where therefore—though Government had perfect confidence in the present direction—Government could know nothing at all as to who the directors would be two years hence, or indeed next year. There were strong reasons for such a clause in the circumstances which had occurred during the past few years and in the present position into which the Bank had been brought. He had no doubt it was known to all the members of this Council, that the loans which were now so much lost money—the loans to men who were

now insolvents—were made in almost every case upon personal security, and that no collateral security was given at all. It was only after losses had been sustained that the Bank directors did all they could to get security. That might have saved the Bank a considerable amount of loss in a large number of cases, but at the same time it had brought the Bank into further difficulties, as for instance when it got the shares of companies which were now bankrupt—such as the Commercial Bank—transferred to its own name. On the Commercial Bank shares alone the Bank of Bombay was now liable for a call of ten lakhs of rupees, and he was afraid the call would be enforced. This was a serious difficulty for any Bank to be brought into, and more especially the Government Bank of the place. Although there was no reflection to be cast on the present directors, he thought it only right that the Government should lay down rules for the guidance of the Bank. He was sorry that the directors, in the reply received from them, had given no reasons for the opinion they had expressed in opposition to the clause. The directors point out “that in the Charters of the Banks of Bengal and Madras no such restrictions appear as are proposed to be introduced into the Charter of the Bank of Bombay by this amendment.” Upon this point he would mention, that the management of the Banks of Bengal and Madras had been so excellent, that there was no reason for such a restriction; but in the case of the Bank of Bombay, the question on which the Council had to found its opinion was what was necessary for the future. The letter went on to say, that the directors “are strongly of opinion that if this amendment be carried, it will operate most seriously against the interests of the shareholders.” He (Mr. Hunter) was sorry to find the directors gave no reason for this. His own opinion was, that, had this clause been in existence, the Bank would not have been in the position it is to-day, because many of the bad debts which have swept away so much of the capital of the Bank would have been avoided. The letter proceeded, “They consider that questions such as are referred to in the amendment should be left entirely to the discretion of the directors, and that in such matters they should be left wholly unfettered.” He (Mr. Hunter) would be very glad indeed to leave them unfettered, provided the public could have entire confidence in the discretion of the directors who might be on the board five years hence, or two years hence. “There is nothing,” the letter added, “on the records of the Bank showing the reasons which led to the omission in the present Charter of such a Section as is now proposed to be re-introduced, and as none of the present directors held office at the time, they are not able to give any information on the subject.” No reason was stated here (continued the honorable gentleman) why the clause would operate against the interests of the shareholders. Had any reasons been given, he would have been very glad to have withdrawn this motion, but he could see no reasons at all for saying that the clause was opposed to the interests of the shareholders, more especially as the capital was now much reduced. Had the capital been two crores of rupees, the directors might have found considerable difficulty in getting investments for so much money, but a portion of that money had been now withdrawn by the altered state of affairs. He concluded by repeating his motion that the Section as printed be introduced into the Bill now before the Council.

The Honorable Mr. ERSKINE said, that the motion which the honorable gentleman had made included several distinct and independent propositions. Of these one or more might be expedient, while at the same time others might be likely to produce inconvenience. He understood that the following part of the proposed Section was in the

Act as it now stood:—"The directors of the said Bank, as re-incorporated and re-constituted under this Act, shall make no loan or advance of money or securities for money to any person or persons on the security of any shares or share, or certificate of shares, or a share in the capital stock of the Bank of Bombay; nor shall they make any loan or advance on the mortgage, or in any other manner on the security of lands, houses, or other immoveable property or on the title-deeds relating thereto." The original proposition of the honorable member was mainly in reference to the latter portion of the clause, which ran thus:—"Nor be in advance at one and the same time to any individual or partnership firm, either by way of discount, loan, or in any other manner, (saving by loans upon the deposit of Government securities, or goods not perishable,) beyond the amount of three lakhs of rupees: Provided always, that the advance upon bills of exchange accepted by the Government or upon other Government obligations, shall not be considered as an advance within the meaning of this restriction." A great deal that had been urged with reference to this portion of the amendment was deserving of much consideration. With regard to the intermediate portion, and especially to that portion which related to the making of loans for a longer period than three months, it appeared to him—but he spoke with diffidence in the presence of honorable gentlemen who had much better means of information on the subject than he had—that the present Act omitted to make one material provision which was to be found in the old Act, and the omission of which must neutralize much of the effect which the insertion of the intermediate portion of the amendments might otherwise have produced. He referred to the old provision against overdrawing accounts. There was a provision in the old Charter against overdrawing accounts; but in the present Act there was nothing of the kind. For this reason, and in the face of the remarks of the directors, he was doubtful of the intermediate portion; but as regarded the latter portion of the amendment, he was disposed to concur with the honorable member.

The Honorable Mr. HUNTER said, that he might perhaps be allowed to explain that his original intention was to introduce the clause as to the restriction of three lakhs, but he had adopted the entire clause of the former Act. He would be glad to withdraw the intermediate portion if Mr. Erskine thought it desirable.

The Honorable Mr. FRAMJEE NUSSERWANJEE said, that he had no objection to the restriction of loans on personal security to three lakhs of Rupees, but he thought that the grant of such loans should not prevent the directors from discounting foreign bills of exchange drawn or endorsed in favour of the parties who had received such loans. Some bills might come in for five days, some for fifteen days, some for a month; a number of them might be first class bills from China, or London, or Bengal.

The Honorable Mr. MUNGULDASS said, that he had not so much experience in the matter as his honorable friends Mr. Hunter and Mr. Framjee; but still he thought the middle course would be better, and he would increase the sum proposed by the honorable mover of the amendment from three lakhs to a larger amount, perhaps six lakhs. The honorable members of the Council should bear in mind, that when the limit of three lakhs was first introduced into the Charter, the Bank's capital was fifty lakhs of rupees. With all the Bank's misfortunes, it must not be forgotten that the Bank's capital, as per printed reports, was three times larger than what it was before, and that the trade of Bombay had considerably extended,

and would continue to extend. There was therefore danger that the Council might take too great precautions by the restrictions proposed, and thereby hinder trade.

The Honorable Mr. ELLIS was not prepared to support the amendment, and he would place his objection on the broad ground of avoiding over-legislation. The question implied in the amendment was not one with which, in his opinion, Government or the Legislature should interfere. They might make such restrictions, but he was not sure that such restrictions would ensure perfect management. No legislation could secure good management. To secure that, good Bank directors were the great requisite, and there must also be proper inquiry and investigation on the part of the shareholders themselves to see that the directors were doing their duty and nothing more. Mr. Framjee and Mr. Munguldass had given instances of the difficulties which might occur if the Council restricted the action of the directors. There might be a crisis in which it would be the height of folly for the Bank to refuse assistance to a first class firm to the extent of five or six lakhs. It was the duty of an institution like the Bank of Bombay to support the trade of the place, and give assistance to old and well known firms. At such a time a Bank might be crippled by restrictions on its power to do good, and the trade of the place might thereby suffer. It was only quite recently, as he was aware, that the Bank had been in a position to give most valuable assistance beyond three lakhs, to other institutions which were in want of assistance. He thought it would be dangerous to fetter and tie up the Bank by such restrictions as the honorable mover of the amendment had proposed. He quite agreed with Mr. Hunter, that the Bank had suffered from improper management, but he did not see why the Council should anticipate a repetition of such mismanagement. He did not see why they should anticipate that irregularity should occur again in Bombay, and not occur in Calcutta and Madras. It was just as likely to occur in Calcutta and Madras as to occur again in Bombay: for Bombay had learned its lesson. As long as the management was conducted on a sound and proper footing, he had every confidence there would be no repetition of the lax and reckless system which had been pursued in past times; but if the directors wished to commit irregularities, they would manage to effect their object in spite of every restriction the Council could put upon them. He would prefer that the Council should leave the Bill in its present form, and not adopt the restrictions which the honorable member had proposed.

The Honorable the PUNT PRUTINIDHI said the chief point to be looked at was the matter of security. If a person of undoubted credit required a loan, he thought the Bank should have power to give it.

The Honorable Mr. Foggo said, he very much agreed with the remarks made by his honorable friend Mr. Ellis. As he (Mr. Foggo) had said the other day, he thought there was considerable weight in the arguments of Mr. Hunter, but, upon the whole, he would leave it to the discretion of the directors to decide whether an advance to any one firm should exceed Rs. 3,00,000. Section 34 in the new Charter of the Bank was almost word for word the same as that occurring in the Charter of the Bank of Bengal, and he had no hesitation in saying, as he had already mentioned, that the principle which guided the framers of the present Charter, was to follow the Bank of Bengal as much as possible. One of the provisions which Mr. Hunter proposed to introduce into the Bill, was that bills should not have a longer period to run than three months, and that the Bank should not make any loan or advance on any negotiable security of any individual or partnership firm, which

should not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership. These restrictions, as well as that referring to the amount, had been deliberately omitted in the Charter of 1863, having been found inconvenient and unnecessarily restrictive; and he had great hopes that after the lessons which had been learned in Bombay during the past two years, with the security of having Government directors on the Board, with the introduction of a Government audit, and with the stipulations already introduced into Section 34, great and heavy losses, such as had been experienced, would not be again incurred, he should therefore feel it incumbent on him to say "no" to the proposed amendment.

His Excellency the PRESIDENT said, he thought before the honorable member (Mr. Hunter) replied to the objections which had been raised to his proposed amendment, he (the President) might as well observe that, upon referring to what took place at the proceedings when the last Act was passed, he failed to find any very distinct reason assigned for the omission of the restrictive clause; but from what he gathered, and from what he recollected of what passed, he thought the reasons for omitting the clause were, first of all, because it was considered that Rs. 3,00,000 was too small to allow of any sort of scope in transactions where large loans of money were required, and the existence of such restriction would lead to a constant risk, either of the Directors being pressed to evade the Act, or of their coming up to Government for indemnity if the provisions of the Act were broken. Supposing the management of the Bank during a time of trial to have been quite unexceptionable, the directors might often come to Government and say: "If you do not allow us to exceed this limit, we must allow some houses or banks—as the case might be—of good position to suspend payment, an act which will do an immense amount of mischief, and although their ultimate solvency, if temporarily aided now, is a matter beyond doubt." The Bank would frequently in reality come to Government with an application of that kind, and if they did not, there would be great temptation, almost irresistible under the circumstances, to turn the flank of the Act, as it were, by means of putting in as the third party required to a transaction, some man of straw, or some firm of little real weight, or by converting what was a loan into an overdrawn account. There might be an evasion of the provision by some manœuvre of that kind. In fact, the Act as it originally stood was a temptation to evasion, and that was the principal reason why the restriction was left out of the Act of 1863. Whether there was any weight in that reason the honorable member (Mr. Hunter) would be better able to judge.

The Honorable Mr. HUNTER said he looked upon an overdrawn account in the same light as a loan.

The Honorable Mr. FOGGO said that that did not get rid of the objection that the directors should not be fettered.

The Honorable Mr. HUNTER said he thought it would be desirable to make an exception in favour of Joint Stock Companies, and that loans might be granted so as to enable the Bank to make advances to Banks, like the Oriental Banking Corporation. He thought it would be as well, therefore, to make an exception in such cases, and to introduce in the amendment after the words "firms unconnected with each other in general partnership" the words "Joint Stock Companies excepted."

The Honorable Mr. ELLIS said that would meet some cases certainly.

The Honorable Mr. HUNTER said, from what he had heard he saw no reason why any firm should get an advance upon personal security of more than three lakhs. His honorable friend Mr. Munguldass Nuthoobhoy had referred to the increase of trade in Bombay as being a reason why more than three lakhs should be lent to one firm, but he (Mr. Hunter) did not see that that was any reason why the restriction should not be imposed, because it must be remembered that the increase was not consequent on the larger operations of individuals or firms, but on the increased number of those engaged in trade. It seemed to him (Mr. Hunter), therefore, that that was an argument rather in favour of restriction. The increase of trade in Bombay during the past few years had been enormous; but then its operations had been spread among ten times the number of those who were formerly engaged in commerce. As regarded the remarks that had been made as to the Bank's assisting other Banks by loans, he would meet that part of the case by introducing into the clause the words "Joint Stock Companies excepted." It was very true that the Banks of Bengal and Madras were quite as liable in future times to fall into errors as the Bank of Bombay had been in the past, but he did not see because the directors of the Bank of Bombay had learned a lesson, that thence it was a fact that the Bank of Bombay would always profit by the lesson. In the course of time, the present directors would be succeeded by others, and in a few years the losses which the Bank had met with would be forgotten.

His Excellency the PRESIDENT asked, if it was not within the experience of the past few months that such a case as this had arisen: a large native merchant, engaged in very extensive transactions, say in cotton, would come to the Bank and say, "I shall be obliged to suspend payment if I do not get accommodation to an amount much beyond three lakhs of rupees." The Bank would then ask him how matters stood, and he would reply, that if he went down through not being able to raise the money he required, he would, as the Bank was aware, pull down with him So and So, certain Joint Stock Banks being amongst the number. And the Bank on looking into the case would find it was one where there was not only good security for a very large advance of money, but that unquestionably the failure of the one merchant would bring down a number of firms or companies. What would be the duty of the Bank then? Their duty would be to place before the Government of the day the state of the case and say, "We are armed with certain powers and we are also restrained from acting in this matter, but will the Government bear us harmless in the advances that we may make here?" Now he (the President) thought the experience they had of continued liability of that sort of pressure being brought to bear upon the Government to induce them to allow the Bank to break the law, would be a greater evil than the risk that the honorable Mr. Hunter said would have to be run by the directors, being left to exercise their own discretion. Whether it was a likely case or not was a matter which the honorable member would be able to judge, but it was that kind of case which had been put forward in defence of this discretion being allowed to the Bank directors. He thought the honorable member (Mr. Hunter) had not adverted to the remark made by Mr. Ellis, to the effect that the Government of India, in pointing out the desirability of the restrictions to be imposed by the Bill as it stood, had not referred to the desirability of introducing any clauses which were not to be found in the Acts of the other Banks. Therefore for the present, at all events, it might seem better for the Council to restrict themselves in the Bill to that which the Government of India thought would be desirable, (and which appeared to coincide with the views of

honorable members generally), and to postpone the consideration of the further restrictions proposed, the exact terms of which there might be some doubts about, because if he was at all right in supposing that such a case as he had put might occur, the honorable member would see, that if the proposed restriction was introduced into the Act it might be made inoperative. A man instead of coming up in his own name would come up in that of the Joint Stock Bank whose existence was bound up with his own; and the directors, pressed as they would be, would find it very difficult to reject the application.

The Honorable Mr. HUNTER observed, that if any person who applied for a loan could prove to the satisfaction of the directors of the Bank that he was in a perfectly solvent state at the time, and that any advance made to him would expose the Bank to no danger of loss by the loan, then he (Mr. Hunter) thought it would be a very good case for a special application for leave to exceed three lakhs; although, as a rule, he thought it was unadvisable that such restrictions should exist, as would render necessary frequent applications to Government to break through those restrictions. But he was inclined to think that such instances would seldom occur. It would have been more judicious, and perhaps almost better, for the commercial community, if the applications alluded to by His Excellency had not been granted, and if persons making such application had been informed that it was against the Charter of the Bank for the directors to grant such loans. If that were the state of the law, it would necessitate the directors going into the state of each man's affairs and making up a case before going to Government to obtain the removal of the restriction. He would introduce into the amendment, with the permission of the Council, a clause not to allow any person to overdraw his account, and he would also introduce an exception in favour of Joint Stock Companies. The amendment as now altered would therefore stand thus:—

“ That for Section XXXIV. of (Bombay) Act No X. of 1863, the following Section be substituted:—

‘ The Directors of the said Bank, as re-incorporated and re-constituted under this Act, shall make no loan or advance of money or securities for money to any person or persons, or allow any person or persons to overdraw his or their accounts on the security of any shares, or share or certificate of shares, or a share in the capital stock of the Bank of Bombay; nor shall they make any loan or advance on the mortgage, or in any other manner on the security of any lands, houses, or other immoveable property or on the title deeds relating thereto; nor shall they discount any negotiable securities which shall have a longer period to run than three months, or lend any money for a longer period than three months, nor shall they make any loan or advance on any negotiable security of any individual or partnership firm, Joint Stock Companies excepted, which shall not carry on in the several responsibilities of at least two persons or firms unconnected with each other in general partnership, nor be in advance at one and the same time to any individual or partnership firm, either by way of discount, loan, or in any other manner, (saving by loans upon the deposit of Government securities, or goods not perishable,) beyond the amount of three lakhs of Company's Rupees: Provided always, that the advances upon Bills of Exchange accepted by the Government or upon other Government obligations, shall not be considered as an advance within the meaning of this restriction.’ ”

The Council divided on Mr. Hunter's amendment. .

Ayes—1.

The Honorable Mr. HUNTER.

Noes—7.

The Honorable MR. ELLIS,
The Honorable MR. ERSKINE,
The Honorable MR. FOGGO,
The Honorable the PUNT PRUTINIDHI,
The Honorable MR. MUNGULDASS NUTHOO-
BHOY.
His Highness the Honorable MEER MAHOMED
KHAN.
The Honorable Mr. FRAMJEE NUSSERWANJEE
PATEL.

The amendment was accordingly lost.

The Honorable Mr. ERSKINE, in recording his vote on the amendment, said that the words which the Honorable Mr. Hunter had introduced had somewhat startled him, and he was not inclined to support the amendment as modified. He considered, that if Joint Stock Companies of all kinds could obtain advances irrespective of the restriction, there would be as much danger as if advances could be so made to private individuals. Had the exception referred only to Banks, he might have seen his way to supporting the amendment.

The Honorable Mr. MUNGULDASS NUTHOOBHOY in recording his vote said, that some increase was necessary in his opinion on the restriction of three lakhs, but as the honorable member was not disposed to increase the restriction to six lakhs of rupees, he would vote against the amendment. He (Mr. Munguldass) was not satisfied with the honorable gentleman's explanation, for people now traded in millions instead of lakhs, and although he (Mr. Munguldass) was in favour of a restriction, he would say "no" to the amendment.

The Honorable Mr. FRAMJEE said, that he would vote for the restriction of three lakhs if bills were excluded, but as the amendment stood, he also would say "no" to it.

After the Council had divided on the amendment,

The Honorable Mr. HUNTER said that after what had fallen from several of the honorable gentlemen in recording their votes, he would propose the amendment with two alterations. He would leave out the words "Joint Stock Companies excepted" and he would insert the words "Banks excepted." After hearing the remarks of the Honorable Mr. Munguldass, he was inclined, rather than lose the motion altogether, to increase to some extent the amount beyond which advances were not to be made, but still so as to have some restriction. He was inclined to propose an alteration from three to five lakhs. He would therefore move that the following amendment be adopted :—

"That for Section XXXIV. of (Bombay) Act No. X. of 1863, the following Section be substituted :—

'The Directors of the said Bank, as re-incorporated and re-constituted under this Act, shall make no loan or advance of money or securities for money to any person or persons, or allow any person or persons to overdraw his or their accounts on the security of any shares or share, or certificate of shares or a share in the capital stock of the Bank of Bombay; nor shall they make any loan or advance on the mortgage, or in any

other manner on the security of any lands, houses, or other immoyeable property, or on the title deeds relating thereto; nor be in advance at one and the same time to any individual or partnership firm (Banks excepted) either by way of discount, loan, or in any other manner, (saving by loans upon the deposit of Government securities, or goods not perishable,) beyond the amount of five lakhs of Rupees: Provided always, that the advances upon Bills of Exchange accepted by the Government or upon other Government obligations shall not be considered as an advance within the meaning of this restriction.' ”

His Excellency the PRESIDENT said that the alteration would hardly meet the case. The honorable member would judge whether it was an impossible case, where a great merchant and a Bank might be bound up together, that he might get his loans through the Bank.

The Honorable Mr. HUNTER replied that if that happened the Bank of Bombay had the Bank itself as security.

The Honorable Mr. ELLIS asked if the honorable member considered a Bank like the Commercial a great security. He thought the discussion which had that day taken place was the very best argument against the motion which the honorable member had just made, and showed the impossibility of their now deciding whether some five or six years hence any particular firm should have a credit of 3½ lakhs of rupees, or of only 3 lakhs of rupees. Were they to go on legislating for these minutiae of Bank management which should be left to the Bank directors? This discussion furnished the very best possible proof that the Council should not attempt to impose the restrictions which had been moved.

The Honorable Mr. FOGGO entirely concurred with the Honorable Mr. Ellis. The misgivings of his honorable friend on his left (Mr. Hunter) regarding Joint Stock Companies and Banks, were the best argument against the Section, and showed that the Council should restrict the Bank directors as little as possible.

The Honorable Mr. HUNTER asked why, if no restriction was required, have a Charter at all? The object of the Charter was to make restrictions, and if no restriction was necessary, he did not see the necessity of a Charter. All that the Honorable Mr. Ellis or the Honorable Mr. Foggo had said had not removed from his mind the recollection that the directors of the Bank of Bombay admitted the loss of 80 lakhs of rupees through their advances to individuals. Nearly in every case the present losses had been caused by making advances on personal security without any collateral security whatever.

The Council then divided :—

Ayes—3.

The Honorable Mr. HUNTER,
The Honorable Mr. ERSKINE,
The Honorable Mr. MUNGULDASS NUTHOO-
BHOY.

Noes—5.

The Honorable Mr. ELLIS,
The Honorable Mr. FOGGO,
The Honorable Mr. FRAMJEE NUSSERWANJEE,
The Honorable the PUNT PRUTINIDHI,
H. H. the Honorable MEER MAHOMED KHAN.

The amendment was therefore lost.

On the question that the Bill be read a third time, the Honorable Mr. FOGGO said that if he should not be considered out of order, he wished to take the present opportunity of asking a question on a subject not altogether irrelevant to the matter of the present Bill. It had doubtless not escaped the notice of Government that very great complaints—he could not take upon himself to say whether they rested on sufficient grounds or not—were being made at the present moment regarding the working of Act XXVIII. of 1865, the Act relative to insolvent estates; and if not out of order, he would ask the question, whether there was any intention on the part of the Government, or whether the Government was aware that any intention existed on the part of the Supreme Government, to appoint a committee, or commission, or other body to inquire into the working of the Act? The Act affected the interests of a very large portion of the mercantile community, and it would be desirable, if it could be compassed, that it should be ascertained whether there was ground for the comments that had been made, and that if so, such alterations might be made as would remove the objections.

The Honorable Mr. ERSKINE said, it did not appear to him that the question of the honorable member could be connected with the third reading of the Bill relative to the Bank of Bombay; moreover, this Council was unable to make any alterations in the Act to which the honorable member had alluded. It rested with the Governor General in Council to reconsider it. But with regard to the inquiry as to the manner in which that or any other Act had worked in Bombay, he might assure the honorable member, that any representations made to Government would receive attentive consideration.

In answer to a question of His Excellency the President, the Honorable Mr. ERSKINE said, that several communications on the subject of the Act had been received—one had been received from the Chief Justice.

His Excellency the PRESIDENT said it would probably satisfy the honorable gentleman to know that the matter was under consideration.

The Honorable Mr. FOGGO said he had wished to draw the attention of Government to the matter; and he would leave it to take it up as it might deem proper.

The Honorable Mr. HUNTER thought Government would receive a communication soon from the Chamber of Commerce on the subject.

The Bill read a third time and passed. The Bill was then read a third time and passed.

The Honorable Mr. MUNGULDASS NUTHOOBHROY, in moving for leave to introduce a “Bill empowering the Municipality of Bombay to levy Town Duties on several articles imported into the Town and Island of Bombay” said: “Sir, every honorable member knows what are the chief and most pressing wants of the city of Bombay :—(1st) A complete system of drainage. (2nd) Extension of Vehar water supply, including the laying of a new main, and probably the construction of a new reservoir. (3rd) Improved communications over the G. I. P. Railway, and the laying out and opening of new streets. All these important matters have been urged on the Bench of Justices by the Government itself. They have been frequently discussed of late by the Bench, which has given proofs of its willingness to do its duty in providing for these pressing necessities. The Bench has also substantially recognized the necessity for increased expenditure on the conservancy of the Town.

During the first year of self-government it must be admitted to have done its duty, and it is prepared to do it for the future. But all the important questions of drainage, water supply, &c., have resolved themselves into one simple question—that of ways and means—how is the money to be raised? Even to meet the current expenses of the Municipality some further provision is necessary, because rents are now daily falling, and will continue to fall for some time to come. All inclination for luxury has disappeared. Thus the house-rate and wheel-tax—chief sources of Municipal income—must fall off greatly; and unless the experiment of self-government is to be a farce, this question should be decided according to the wishes of the Bench. The Bench appointed a committee to report, and after discussions at several meetings during the past year, have by a large majority expressed their wishes, and have authorised me to state them to this Council. The Bench was unanimous that town duties in some shape or other should be imposed, but it was divided in opinion as to whether the duties should be import town duties, as recommended by the committee, or octroi duties only. To octroi duties there were no opponents. Finally, it was resolved to apply for the imposition of town duties, leaving the tariff to be settled by this honorable Council. The present application for the town duties comes so soon after the abolition of the old town duties, that it is desirable to recount briefly the considerations which induced the Legislature to abolish them and to test their soundness. In the first place, it is remarkable that the original draft of the present Municipal Act included in its provisions all the sections of the Town Duties' Act, and that the Select Committee of this Council, in paragraph 12 of their report, stated “that they did not think it right to interfere in regard to taxation beyond what was rendered absolutely necessary for the immediate exigencies of this Bill.” As the Bill proceeded, the Honorable Mr. Inverarity proposed that the town duties should continue to be levied until 31st December 1867, but that the Bench might, with the sanction of Government, abolish them before that date. This wise provision, however, which allowed breathing time to the Bench, and left them some voice in the matter, was subsequently abandoned, and the town duties summarily abolished, against the advice of some of the most experienced honorable members of this Council, without even the form of reference to the Bench, and a tax imposed as a substitute, of which all that the public knew was, that it had been abandoned at the last moment by the Government of India!!! It was admitted that a substitute for the town duties was required, and it was believed that the license tax would supply its place, some honorable member estimating its yield at 8 lakhs. I shall now proceed to the consideration of the question whether the license tax has supplied the place of town duties. Certainly it has not, and is not likely to do so. The Commissioner estimated the net yield of this tax at 4 lakhs of rupees, but he has not been able to realize $2\frac{1}{2}$ lakhs for the current year, and next year the yield will still be less, owing to the decrease of many joint stock companies and of brokers during the present year. Now the town duties, on the other hand, realized Rs. 6,65,718 in the year 1864-65. I shall not detain the Council by stating what is already sufficiently notorious, viz. that the old town duties were *never* unpopular, and never complained of, because they were inappreciable in amount; that when they were abolished, there was no reduction in the price of a single article formerly taxed; whereas the license tax is most unpopular, and has, as I believe, been the chief cause of the maintenance of high prices of all the necessaries of life. A grain dealer, wood-seller, or shop-keeper of any kind never felt the old town duties, but he feels at once, and very keenly, having to pay 12, 25, or 50 Rs. for his license tax, and

resolves to repay himself by enhanced charges to his customers. The necessity for other taxation than the house-rate and wheel-tax, has been admitted from the first, and the license-tax, which was to take the place of town duties, has proved a failure, and, in my opinion, the sooner abolished the better. We have again to seek some other source of income, and we do so, I venture to say, with much better knowledge of the actual wants of Bombay than was possessed by any one eighteen months or two years ago. It is remarkable that in the discussion of the Municipal Act the necessity for heavy expenditure on the great wants of the city—drainage, water supply, &c., was never alluded to. The Act, it is true, provided two and a half lakhs to be set apart for the drainage works; but this sum would only provide a loan of from 25 to 30 lakhs, whereas the drainage will, it is supposed, cost three times that amount. The Act provided for the payment of the debt for the old water works, but did not contemplate any further heavy outlay on extending or enlarging the water supply, and other important but expensive municipal improvements. The discussion seems, in fact, to have been limited to the provision of a sufficient income for current expenditure, on the supposition that the rents would remain at their then high figure. It will of course be asked, why do not the Bench exercise the power given by the Act and raise the house-rate from 6 per cent. to 10 per cent. The answer of the Bench, as contained in a resolution at the Budget meeting is, because present municipal taxation chiefly falls upon house and land property, and is already found intolerably heavy, and because to burthen this class of property still further would be unjust to it, and would injure the future of Bombay. There are about 21,000 houses and properties (huts included) liable to the house-rate, and there are about 17,000 owners, who pay, on an average, Rs. 53 each annually for house-rate alone. The population of Bombay, exclusive of the harbour, is 780,000 souls, who are accommodated in the 21,000 houses and properties, and pay three rupees three annas each per annum for municipal taxation. The house-rate, formerly 5 per cent. has just been raised to 6 per cent. In this same year there has been a lighting rate of 1 per cent., and a police rate of 3 per cent., making in all 10 per cent. rates on houses and landed property!! or double the rates of the previous year. It will be said that the lighting and police rate are occupiers' rates; the answer is, that the first is paid by the owners with few exceptions, when an entire house has been let to one individual, and that the latter also falls on the owners when they occupy the premises; and their number, as already stated, forms a large majority of the tax-payers. But any how these three rates together are a grievous burden on house property. In fact the bulk of municipal taxation falls on house property and on house owners; the masses are untouched. Take for example a common case: A person lives in his own house, which is assessed at 100 rupees per mensem, he has to pay

House Rate	6 Rs.
Police Rate	3 „
Lighting Rate	1 „
Vehar Water Rate	5 „
Halalcore Cess, about	3 „

18

or 18 per cent. on his property. Now what is the chief want of the residents of Bombay? It is of course cheap and abundant house accommodation. Why are hundreds of thousands of people huddled together in the Native Town or crowded in cadjan huts about the Flats? Because house property is not remunerative; because labour and materials are so costly, that houses cannot be built at a rate to return a reasonable income—6 per cent. The high price of

material is a question of supply and demand, but the high price of labour is due in no small degree to the want of decent house accommodation. And if this is so now, what will it be a few years hence when railway communication is complete? What provision shall we have for increased population? Is it not madness under these circumstances to burthen house property with more taxation, and thus actually to deter persons from building? Is it fair that house owners, who on an average already pay Rs. 53 house-rate at 6 per cent., and Rs. 159 per annum, if all taxes are included, shall be called upon to pay 4 per cent. more per annum—and that the bulk of the population shall contribute no more. This is not the time to discuss what shall be the articles to be taxed, and I reserve all my arguments on these points. I will only say here, as regards town and octroi duties, that when they are levied in every large town in Bengal and the North-West Provinces, in every considerable town in this Presidency—in France and Algeria, there can be no reasonable objection to their being levied here where our necessities are so many and so pressing, and where in other respects the Municipality has taxed itself to the utmost. If there is a town whose wishes on such a question should be respected by the Legislature and the Imperial Government, it is Bombay. It is the only city in India that has carried out the wishes of the Governor General of India in Council (*see* Res. of 31st August 1864) regarding the Police. It is the only Municipality that pays for its Police. On this it expends Rs. 3,80,000 per annum. In other words, it has relieved the State of an annual outlay which, capitalised, represents at 5 per cent. 76 lakhs of rupees! In Bombay alone, Government contributes nothing to the police, or to the lighting, or to the conservancy of the town; even the paltry contribution of Rs. 13,000 formerly paid to the house-rate has been stopped. It is stated that Calcutta cheerfully pays 10 per cent. house-rate; but it would not be so cheerful if it had a 3 per cent. police rate added to that, if Government withdrew their contribution to the police, and refused to pay house-rate! Money in Calcutta goes twice as far as in Bombay; labour and materials and provisions are all much cheaper. In conclusion, I take the liberty to quote the words of His Excellency the President when the abolition of the old duties was under discussion. His Excellency said:—"The only defence for town duties was, that it was very necessary to launch this Bill with sufficient means, and it was a question whether, by taking away five and a half lakhs of income which the town duties yielded, we might not cause the new Commissioner to commence his career in a state of insolvency." I think it has been satisfactorily made out that this Bill was launched with insufficient means, and the Commissioner and the Controllers have pointed out that the Municipal fund is in a state of chronic insolvency, while the Bench admit the income insufficient for the work to be performed, and point out the best way to increase it: in fact a stronger case of necessity can hardly be imagined. It is hoped that Government will not object to allow the Commissioner of Customs to collect the town duties as before; but in case there should be objections to collect the town duties as before, Sections would be added to this Bill to provide machinery for their collection. His Excellency the President on a former occasion pointed out, as one of the most serious objections to town duties, the search and detention necessary for their collection—such search and detention is necessary however for the recovery of the Customs. If then the town duties are recovered with the Customs, this objection at least will have disappeared; but besides this, the insular position of Bombay presents peculiar facilities for the recovery of the town duties.

The Honorable Mr. ELLIS said, it was not desirable to enter into any long discussion at this stage of the proceedings. He could hardly suppose that leave would be refused to the honorable member to bring in any Bill. Independently of the great weight attached to his

own local experience and information regarding the state of Bombay, he came before the Council backed by the great majority of the Bench of Justices. It would be the universal wish of the Council that a Bill of this description should be fully discussed and considered. He (Mr. Ellis) would therefore merely at this stage express his opinion that leave should be given to introduce the Bill.

The Honorable Mr. HUNTER had no objection to leave being granted, if granting leave did not imply any approval of the principle of the Bill.

The Honorable Mr. ERSKINE believed that the granting of permission to introduce a Bill did not imply any approval of the principle of the Bill.

His Excellency the PRESIDENT said :—“ As the honorable member has referred to what I said on the occasion when the town duties were removed, I shall make one or two observations on the statement which he has just made. In the first instance, I would beg to say that, as far as I can judge from the very cursory inspection I made a short time ago, I could not quite agree with the dreadful picture that the honorable member drew of Bombay as a ruined city, with rents falling, and all taste for luxury extinct. I must say Bombay a few weeks ago looked to me as lively as it usually does in the rains, and containing fully as much taxable property as at any time during the 32 years I have seen it. Possibly it is not spending its money quite so fast; but I am glad the honorable member has given me an opportunity of recording my conviction, that the springs of the material prosperity of Bombay, its sound commerce, and its resources for taxing itself, are as great now as at any time during the last five years. Whatever I might think regarding the form of taxation which the honorable member proposes, and regarding which I should desire like the other members to reserve my opinion until the discussion of the principle of the Bill, I should consider it almost imperative upon us to allow the consideration of any Bill which came before us as a Bill desired by a majority of the Bench of Justices. It is taking nothing from the well-earned honours of the Municipal Commissioner to say, that to the Bench of Justices having used the powers given them by the recent Municipal Act, is due an immense deal of the improvement which is apparent in Bombay, and that they have set themselves vigorously to support him, and especially by seeking to know how they really stood, and what their means were to meet their expenditure. On this ground, I am enabled fully to agree with my honorable friend, that now for the first time during a great many years past, we have a prospect of knowing how we stand with regard to our wants and resources in Bombay. But while fully admitting the right of the Bench to ask us at once to allow this Bill to be considered, I would point out to my honorable friend that, in omitting to state the list of articles he proposes for taxation, he omits a most essential part of his Bill; because those who have strong objections to this particular form of taxation, would find their objections very considerably modified according to the nature of the tariff. The case which the honorable member makes out is, that the Council was mistaken as to what the taxes imposed by the existing Bill would be likely to produce; that we were mistaken on that point; and that we were also mistaken in supposing that fixed property in Bombay was more lightly taxed than in other parts of India. Supposing, when we come to discuss the Bill, that he is able to make out these two points, he would be able to establish a very strong ground for our considering any form of taxation which he might lay before us. He would say, “ There is certain work to be done towards the future improvement of Bombay greater than the income at our disposal can meet, and we look to you to find the means.” I think we should be bound to give these means, but whether this shall be done by adopting the

proposed town duties, depends entirely as to whether the proposition he may place before us is open to the same objections as the old town duties or not. I may make this statement, because it is the only opportunity I may have of pointing out to my friend what may be called the strong point of his Bill when he introduces it. Suppose he proposes to tax luxuries, then the objection to such a form of taxation would be reduced to an objection to the interference it would cause to trade, of the vexation or annoyance which might be caused by the levying of the tax. It would not at all touch any question connected with consumers. On the other hand, if he were to revert to some of the old taxes which have been already removed by the Council, such as the tax on grain or building materials, I for one would consider the objection to imposing a tax on such materials as quite insuperable. The honorable member adverted to the fact that the late town duties which yielded such a large amount of duty were not unpopular, and were never felt. He is doubtless aware that the popularity and unpopularity of such a tax depends upon its being perceptible. But the eaters of the grain did not know for certain that there was any tax upon it; that fact was concealed from them, and they were not generally aware of it, and so they never thought that the high price of grain was at all enhanced by taxation. Therefore the popularity or unpopularity of an invisible tax like this, an indirect tax, is very little of an argument for or against it. It may be the most vicious tax possible, and may not be unpopular. As to its being unfelt and having no effect upon prices, it may be difficult to trace the effect; it may be difficult to show how it acts, but the honorable member will, I am sure, agree with me on reflection, that whatever taxation is imposed, however small it may be, it must *protanto* enhance the price, and it must so far be felt. The result of all this is, that when the honorable member lays his Bill before us, I hope he will at the same time put before us the particulars of the articles which he proposes to tax. Speaking merely for myself, I should say that, supposing he made out his case of insufficient means and miscalculation of the yield of the present taxation, my view of any new town duty would be affected by the nature of the articles he proposed to tax. I can imagine articles to which most members of the Council would agree, if we could get the Government of India to agree also, for his argument must be one which must carry with it the Government of India also. There is one other point to which the honorable member referred—the example of Bengal and the North-West Provinces, of France and Algeria. On that point I would only say, that very generally our country imagines itself to be in advance of other countries, and I do not think he would expect us to go back altogether to modes of taxation which have been proved to be evil, even if he showed us that they existed in France. With regard to examples in this part of the world, I hear a very great outcry against this form of taxation in other parts of India. It was considered perfect and unobjectionable when it was introduced into the Central Provinces; but somehow or other I have heard a great outcry against the octroi system in the Central Provinces, and I believe he will find that it is not accepted so universally in the Punjab and North-West Provinces as he believes, unless it is placed upon matters of luxury.”

The Honorable Mr. MUNGULDASS NATHOQBHOY replied to some of His Excellency's remarks. His Excellency had observed that rents were not going down, but it was a fact known to every member of this Council that house rents in Bombay were 25 per cent. less than when the share mania and speculation were at their height, that is, when the Act abolishing the town duties was passed. At that time men did not regard Rs. 1,000 per month

as a large sum for the rent of an ordinary house, but now it was quite the reverse. At present there were houses for which large rents were paid in consequence of leases already entered into, but when the present leases expired, and they became vacant, they would not bring the amount they were now yielding. Bombay, it was true, was not completely ruined, and Bombay was just as prosperous as it was twelve years ago; but twelve years ago the house assessment was about one lakh of rupees, and it was now calculated to produce about nine lakhs of rupees, and it would not realise what it was calculated to realise. He believed the horse and carriage tax would strengthen his position by showing a reduction of 25 per cent. There could not be two opinions on the point that the health of the population depended upon efficient drainage, and when that was not secured, other improvements could not follow. As regards the tariff it had been already proposed, as the Council was aware, by the Justices' Committee. It was discussed by them very fully, and afterwards it was discussed in a meeting of the Bench itself. As to the necessity of an Act such as he proposed being passed there were not two opinions, and the Justices were unanimous. There was a difference of opinion on one point; some Justices preferring town duties and others preferring octroi duties. The tariff had been published, but the Bench of Justices very properly left it to the option of the Council to select the articles on which the duty should be levied. The Justices said "we want money; we want ten lakhs of rupees a year, and if the Government expects us to do our duty, they must give us money."

Leave given to introduce the Bill.

Leave was then given to the honorable member to introduce his Bill.

The Honorable Mr. ELLIS gave notice, that at the next meeting of the Council he would, with the permission of the Council, introduce a "Bill to bring the Pergunnas of Edulabad and Wurrungaom under the General Regulations and Acts of the Presidency of Bombay."

Mr. Ellis gives notice that at next meeting he will introduce a Bill to bring the Pergunnas of Edulabad and Wurrungaom under the General Regulations and Acts of the Presidency of Bombay.

These districts had been ceded by His Highness Scindiah in 1860, and had been since managed as non-regulation districts.

The Bill he would introduce proposed to place the districts under Government regulations. He would move at the same meeting for the suspension of the standing orders to enable him to carry the Bill through all its stages. If there should be any opposition or discussion on any point, he would not press the Bill through, but if the sense of the Council was unanimous upon the necessity of the measure, he would propose to carry the Bill through, as he had said, at the next meeting.

The Honorable Mr. MUNGULDASS NUTHOOBHAY said, that at the next meeting he would move that a Select Committee be appointed on the Town Duties Bill. He would like the Bill to be passed before January if that was possible, but he very much feared it was not. If it could be passed before January, the Commissioner would be enabled to begin the next year under it.

Mr. Munguldass Nuthoobhoy gives notice, that at the next meeting he will move for the appointment of a Select Committee on the Town Duties Bill.

His Excellency the President adjourned the Council till Monday the 17th instant.

W. WEDDERBURN,

Acting Under-Secretary to Government.

Poona, 3rd September 1866.

Abstract of the Proceedings of the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations under the provisions of "the INDIAN Councils' Act, 1861."

The Council met at Poona, on Monday the 17th September 1866, at 11 A.M.

P R E S E N T :

His Excellency Sir H. B. E. FRERE, G.C.S.I., K.C.B., Governor of Bombay, *presiding.*

The Honorable B. H. ELLIS.

The Honorable C. J. ERSKINE.

The Honorable the ADVOCATE GENERAL.

The Honorable G. FOGGO.

The Honorable SHREENIVAS RAOJEE ROWSAHEB PUNT PRUTINIDHI.

The Honorable MUNGULDASS NUTHOOBHOY.

The Honorable A. J. HUNTER.

His Highness the Honorable MEER MAHOMED KHAN, TALPORE.

The Honorable FRAMJEE NUSSERWANJEE PATEL.

The Honorable Mr. MUNGULDASS NUTHOOBHOY, in moving the first reading of the Bill for the levy of Town Duties in the city of Bombay, had to add but very little to the remarks he had submitted to the Council when moving for leave to introduce the Bill, having on that occasion stated fully, and he hoped proved to the satisfaction of the Council, the urgent necessity of important but expensive works, such as a complete system of drainage, the extension of the Vehar supply, the laying of a new main, and probably the construction of a new reservoir, the laying out and opening of new streets, &c. He hoped he had also proved that the License Tax which was substituted for the old Town Duties which in the opinion of some honorable members was likely to yield 8 lakhs, had proved a failure, having only yielded 2½ lakhs, and not being likely to yield even that amount next year for the reasons he had stated at the last meeting. He did not need to say that when the present Municipal Act was passed, Bombay was at the highest pitch of prosperity and the value of landed property was becoming fabulous. Even then, it was, very properly, never contemplated to raise the House Tax so as to supply the loss of revenue caused by the abolition of the Town Duties, the Council having substituted a License Tax for the abolished Duties. As the House Tax under one or other name came to 18 per cent., it was a grievous burden on a particular class of property and was not certainly levied to that extent in any other town in India, nor as far as his information went, in any other country. If the honorable Council agreed with him to this extent, it must admit the necessity of further taxation, and that there was no other course open to it but to fall back on Town Duties. If they concurred with him so far, he would move for the first reading of the Bill, and the appointment of a Select Committee who would have ample time to discuss the details and to determine the articles which it would be least objectionable to tax, in the opinion of the Council, with a reasonable percentage on the same. He did not think it necessary, therefore, to discuss these points at the present stage of the proceedings. He should, however,

be very happy to give any further explanation on the subject, if required, by any honorable member, and he concluded by moving that the Bill be read a first time.

The Honorable Mr. ELLIS was not sure whether it was intended at this stage of the proceedings to enter into a full discussion of the principle of the Bill, or whether it was the desire of those gentlemen who, he believed, intended to oppose it, to reserve the discussion for the usual stage of the proceedings, namely, the second reading of the Bill. It seemed to him that a sufficient *prima facie* case had been made out, as he observed at the last meeting of the Council, to render it incumbent upon the Council to give a patient hearing and consideration to the facts and principles which the Honorable Mr. Munguldass had laid before them. To throw out the Bill at the first reading, would not be to give a patient consideration to it, and, therefore, he would urge that those gentlemen who were disposed to set their faces against the principle of Town Duties should reserve their opposition until it was seen what form the honorable member proposed that these Duties should take. There was so very wide a range of articles taxable in the shape of Town Duties, that if the honorable gentleman who had introduced the Bill proposed to tax every article which might come under such a form of taxation there would be very strong opposition raised to his proposition. Until, however, the Council saw the form in which the Select Committee would lay the Bill before the Council, it was hardly possible for the members to say what possible objections might be made to the taxation proposed. There was no doubt that a case had been made out for some taxation, and it seemed to him (Mr. Ellis) that it would be a proper course if the Bill was allowed to go before a Select Committee for the purpose of being reported on as to the best form of taxation that should be adopted. It would then be open to the members of the Committee to lay before the Council any suggestions which they might deem it desirable to make. He would suggest to his honorable colleagues to allow the Bill to be proceeded with to its next stage, that the exact mode of taxation and the exact articles to be taxed should be reported on before the Council finally resolved whether this form of taxation by means of Town Duties should be adopted or not. He would therefore vote for the first reading of the Bill.

The Honorable the PUNT PRUMNIDHI was also in favour of the first reading of the Bill.

His Highness the Honorable MEER MAHOMED KHAN was likewise in favour of the first reading.

The Honorable Mr. FOGGO would vote for the first reading of the Bill on the understanding that the Bill was to take its usual course and that its principle would be discussed at the second reading.

His Excellency the PRESIDENT read for the information of the Council the 20th Rule for the conduct of business at meetings of the Council, which was as follows:—"If the motion for the first reading of a Bill be carried in the affirmative, such Bill may be referred to a Select Committee for report, which, when ordered, shall be presented before the Bill is read a second time. On the second reading being carried the principle of the Bill will be considered as affirmed, and the Council will proceed to consider the Bill in detail. The Council having so examined such Bill, the Bill may then, or on some subsequent day, be read a third time."

The Honorable Mr. HUNTER was not opposed to the first reading of the Bill, but he was opposed to the principle of the Bill as it stood at present. He was opposed altogether to the

system of levying duties on goods merely passing through Bombay. He was opposed to the principle of making people pay for the cost of drainage and other useful improvements who derived no benefit from them, and on that ground he thought it well to state that he opposed the general principle of the Bill as it now stood. As the Honorable Mr. Ellis had remarked however, the Bill would, in all likelihood, leave the hands of the Committee very different from the state in which it now was, so that he did not think there was any call for opposition at present.

The Honorable Mr. ERSKINE felt some difficulty in offering an opinion, at this stage of the proceedings, from doubts, on a point which had not been very clearly elucidated up to that time, as to what was really the principle of the Bill before the Council. It appeared to him that their judgments must depend, in the first place, upon the views they held as to the preliminary question, how far the duties they were asked to impose would really be Town Duties? The Bill, as had been suggested by his honorable friend Mr. Hunter, proposed to levy certain burdens, however small, upon the general trade of the country; and it was deserving of consideration, in the first instance, how far the Indian Councils' Act, which limited the authority of the Council in respect to legislation, would interfere with the imposition of such taxation on some of the articles which at present appeared in the schedule. One of the subjects which it was not lawful for this Council to take into consideration, except with the previous sanction of the Governor General, was any matter affecting the Customs' Duties or any tax or duty now in force and imposed by the authority of the Government of India for general purposes. It seemed to be deserving of consideration, how far this provision of law might be held to bar their action with respect to some of the articles mentioned in the schedule, unless sanction were, in the first instance, obtained from the Governor General. This point appeared to be specially deserving of attention in connection with such articles as cotton and opium. He confessed that, whatever might be the views on that point of higher authorities, he should still share very much in the unwillingness of their honorable colleague to sanction, for clearly local convenience, and clearly local purposes, the imposition of rates which had very much the appearance of Import and Export Duties. The inexpediency of pressing for such a measure at the time seemed to be particularly marked with reference to the article of cotton; and it was deserving of the greatest consideration whether the Council should even allow it to be supposed that it would entertain proposals for the imposition of some duty upon that staple article of export. In regard to opium, the question, he believed, might be left almost entirely to others. He did not suppose that the populations who would be chiefly affected by additions to the burden on that traffic were represented in the Council, or would meet with much sympathy there. In regard to other articles, it was necessary to bear in mind that whatever action the Council might take on the subject would be to a great extent provisional. It was very uncertain how far any verdict they might give, in favour of such taxation, would be ratified elsewhere. The objections already noticed applied in like manner to the proposed duties on piece goods; and looking even to other articles mentioned in the schedule, there was a great deal of difficulty in ascertaining before-hand how their taxation would operate, and a good deal of uncertainty in the use of the word Town Duties as applied to them. It was not at all clear, in regard to many of those articles, whether the honorable member who had introduced the Bill intended really to impose a duty which would be in strictness a Town Duty; or whether he intended rather to propose the imposition of something like a tax or toll upon the passage of all such goods through

the port. The opinions of members of the Council might be a good deal affected by any explanation which the honorable mover of the Bill might be able to give on that subject. He had made these remarks because, like other members, he really felt great difficulty in knowing what was to be the exact scope of the proposition before them. It would be easy to allow the Bill to go before a Select Committee; but they would be imposing a very difficult duty upon that Committee if they asked them to deal with this question without giving some indication of the general opinion of the Council as to the leading principles which ought to guide the Committee in framing their report. It must be conceded to the honorable member in charge of the Bill that he had shown the existence of a really strong and urgent necessity for an increase, in some shape, to the Municipal revenues. Sharing as he (Mr. Erskine) did in the indisposition of other members of the Council, to impede in any way the provision of such relief as was most urgently required for public purposes, he would offer no opposition to the first reading of the Bill, which might then go to a Committee. He could, however, consent to the first reading only with the reservations which he had endeavoured to express.

The Honorable Mr. FRAMJEE NUSSERWANJEE PATEL was also in favour of the first reading of the Bill.

His Excellency the PRESIDENT said: Before I put the question, I should like once more to repeat to my honorable friend what I pointed out to him when he applied for leave to bring in the Bill, and what may be unpalatable advice, but what I am certain he will find of value when he comes to look at this question in detail. I am sure that all the honorable members of this Council, who heard his speech when he moved for leave to introduce the Bill will agree with me that he has done most excellent service, as a member of the Bench of Justices and as a member of this Council, in the mode in which he brought the question before the Council. But what I wish to point out to him is, and I gather it is the opinion of the honorable Mr. Erskine also, that he has not placed the question before us precisely in the form in which the Council can ultimately deal with it. As I mentioned when he first applied for leave to bring in the Bill, the opinions of the Council, to a great extent, must depend upon the articles to be taxed. He says, and I believe he made out a very strong case for carrying us with him, that there is a great want of efficient means for carrying out all the improvements of drainage, ventilation, and all the great works of a sanitary kind, including water supply, which the Bench of Justices had in hand. But before he presses us to undo the step which was deliberately taken only a short time ago, I think he should furnish us with something more of detail as to the extent of its necessity. It may be that the deficiency is very large or very small. We cannot exactly tell what it is until the Commissioner is able to put before us his estimates of the works which he proposes to undertake, and has made a more complete estimate of the means which he thinks he will have when he has carried out to their full extent all the means of taxation which he at present possesses. From what I know, from what I have seen, both of the water supply and the drainage, I think it will be sometime before it will be possible for the Commissioner to tell us how much he wants. Until we have such a statement before us, I think the Council will be very likely to say that the honorable member is premature in supposing that there is such a deficit as cannot be met by the means at the disposal of the Bench, or by some slight increase, it may be one-half or one per cent. upon the House Tax, or some other slight increase on the present system of taxation. But let us suppose that he has proved

the question of deficiency, and that he has proved that some new tax must be imposed, it will still remain to be considered whether this tax which he puts before us is the best tax which we could have. I may only remind my honorable friend of what I have on other occasions said to him, that as far as I am concerned as a member of this Council, I feel very insuperable objections to Town Duties in the usual sense in which the words "Town Duties" are understood. As Mr. Erskine pointed out, we cannot apply that to the whole of the present scheme, because some parts of the scheme may be carried out without imposing what I consider to be a Town Duty proper. Having had some little experience in former days when Town Duties were common in this Presidency, I shall state what my objections are. I shall refer to Town Duties as they existed in this city of Poona. The Town Duties as they operated in Poona were practically a monopoly in the hands of certain great merchants and were rarely collected at the limits of the Town. There were salt merchants, grain merchants, metal merchants, and others, and the firms who carried on a trade in each of these articles were known, to all the people who were employed in the collection of the Duties. In a great many cases, I know—in the case of salt, for instance—the person who had the greatest share in the trade in salt was the person who farmed the Town Duties, and when the traffic came to the town limits, it was passed in, in a general way, with the man in charge of the packed bullocks or carts—there were very few carts in those days—and went to the owner's warehouse with very little search, with very little inquiry, and very little delay. The poor or any interloping trader fared but badly. He might be kept for days waiting outside the town until he paid the salt duty to the Town Duty collector, or made a complaint to the Collector, or until he managed to get past. But as a general rule, the collection of the Town Duties did not form any serious bar to the great trade of the country. The great articles passed in and out of Poona with very little interruption. I need hardly remind my honorable friend that that is a state of things which supposes a very simple and primitive mode of carrying on commerce, and one which is perfectly inapplicable to a place like Bombay. You could not revert to it even in such a place as Poona. It would be quite impossible to re-impose Town Duties in Poona in the mode in which they formerly existed. If you re-imposed them in Poona now, and if you re-imposed them in Bombay, you do put on the general trade of the country a very serious interruption or burden: and whether you taxed the articles or not the mere fact of stopping trade to see what articles are being transported, to see whether the packages contain opium, or ghee, or any other sort of commodity, is in itself a great impediment to trade. That is one of the objections which I would remind my honorable friend he would have to overcome. It will not be sufficient to refer us to other places where Town Duties are levied, and to say that they are levied in France, or in the Punjab and in the Central Provinces, and are found to be a very popular and a very efficient means of raising revenue, and that, therefore, we ought to have them in Bombay. I will answer for it that if he will inquire of any one who has gone, not as a leading merchant, not as an officer of Government, but as a small trader to any of these places, whether it is Paris or any Indian town, he will find that they look upon these duties as an unmitigated nuisance and a great interruption to trade. But as I said these duties which we shall be asked to reimpose when the Bill comes to be read a second time, can hardly be classed as Town Duties proper, and it would be quite possible, as in the case of opium, to put very heavy taxes upon every chest that comes into Bombay without in the least interfering with the general trade. I would, therefore, wish the honorable member to consider

before he brings the Bill before us again that it provides for almost every form of taxation which is possible. We will take the first article, cotton, which stands alone. Any tax on cotton might possibly be a sort of toll, like that which is collected for the use of the Pinjrapole. It may be collected almost imperceptibly, but I would remind my honorable friend that that will not get over any opposition to a tax upon cotton. However small may be the additional burden you put upon it, it cannot fail to be felt, and the example of the Americans at this moment is very striking. No matter how great the temptation may be to put a tax upon a great staple of export, we should resist the temptation, and tax cotton as lightly as possible. There are gentlemen whose opinions are entitled to the highest consideration who do not agree with me in this matter, but if the honorable gentleman will remember how much the smallest impost is multiplied, I think he will agree with me that cotton ought not to be weighted with any impost further than we can help. Then we come to the second class of imposts which are represented by taxes on opium, wines, and spirits, and tobacco. As far as additional taxes on these articles go, I agree with my honorable friend, Mr. Erskine, that there is no objection to weight them as heavily as they can bear without increasing the risk of smuggling, but as pointed out, neither opium, nor wines and spirits, nor tobacco, can have any additional weight put upon them by any action of ours. We must refer to the Government of India to get their leave to impose any tax on these articles for Municipal purposes. Then comes the article metals, which may be taken as another representative article. It may be said that metals, especially copper, brass, zinc, and so on, are articles of luxury and that in taxing them, you tax a taxable luxury. But if you extend it to iron, you put a tax upon one of the great necessities of the country, and I think, instead of putting an additional tax upon iron, though it might well bear it, and though it might appear very imperceptible, my honorable friend would be rather putting an additional weight upon the future interests and improvement of the country, which he would regret if he could see its full extent. Then we come to piece goods. Here, again, I do not think we can proceed to impose any taxation on our own judgment. We must refer in this case also to the Government of India, and I would remind my honorable friend that he could not select any article which would be more surely productive of deputations to the Secretary of State for the disallowing of this Bill than piece goods. We next come to sugar which, with ghee, may be taken as representing two luxuries that may be taxed without touching any but those who can afford to pay additional taxation. That may be my honorable friend's view. And I must say these two articles appear to me the most tolerable of the articles which he proposes to include in his schedule; but as regards ghee especially, I cannot help thinking that he goes considerably below those whom he would wish to tax, and that he would, to a considerable extent, be taxing the poor if he put a tax upon ghee, that is, any tax which would very much affect its price. Then we come to coals, which I would class with metals as among those things which are easy of taxation and on which a productive tax may be levied, but which I should be very sorry to see levied though the tax should bear a small proportion to the price. I should be very sorry to see a tax levied on coal beyond what is imperatively necessary. In regard to the last of the articles on the list, timber, I would point out to him that one of our great wants in Bombay is additional house-room. He knows how much the expense of ordinary native houses consists of the expenses of timber, and if you tax timber and iron you will be putting a very heavy burden upon any building which might go to increase the house accom-

rodation of the place. From what I have said the honorable member will gather that, with the exception of opium, wines, spirits and tobacco—if we could get leave to tax them—and, to a lesser degree, sugar and ghee, I think very strong objections would be stated to the articles he proposes to tax. In one form or another, I think, before this Bill comes before us again, the honorable member should let us see clearly what kind of taxation he proposes as to its incidence. Supposing he has made out his case that fixed property has been sufficiently taxed, does he propose to tax those who live on the interest of their capital or by the profits of their trade? Does he propose to make his tax a transit duty or a consumption duty. I think he should put his Bill in such a shape as to let us see our way clearly as to what is his object, because the mere object of getting a further amount of revenue will always be met by the answer—“You can raise the rates of your present taxes.” There is one resource which I ought to allude to, and it strikes me as the real road out of the difficulties which the Municipality finds itself in. An income tax is never a popular tax, but there is none of the arguments which can be stated on behalf of these Town Duties which will not apply with such greater effect to any form of income tax. I bear in mind what the honourable member said in regard to the License Duties. License Duties are after all a very imperfect and insufficient form of income tax, but after the honorable member has proved his case that a larger amount of additional taxation is wanted, after he has proved his case that you cannot increase the present tax upon fixed property or on any other tax the Municipality has at its disposal, he will still have to answer the argument that the income tax is the proper remedy for the deficiency—that a tax which would apply to the profits of trade and incomes above a certain amount so as to leave the wages of the day labourer and of the poorer classes of artisans exempt, is the proper remedy for any deficiency which may exist. I am quite aware that the honorable member may justly tell me I have exceeded the limits of reasonable advice in suggesting to him a substitute for his Bill; but as we shall now have some weeks to consider the matter, I trust the subject will be well considered by the members and the Bench, who I can hardly believe will be deliberately unanimous in recommending the re-imposition of Town Duties. I hope that all these points will be considered by the honorable member when he brings up the Bill for the second reading.”

The Hon'ble Mr. MUNGULDASS NUTHOOBHOY was very thankful for the suggestions which His Excellency had been good enough to make. As far as the proposed expenditure was concerned, a Committee of the Bench of Justices reported to the Bench that it expected that a certain amount of expenditure would be necessary. Of course they had not a minute estimate, and the real amount required might be ten per cent. less or more, but this was the proposed amount:—

The Drainage system completed at a probable cost inclusive of land purchases of	Rs. 1,00,00,000
Extension of the Vehar Water supply both by the construction of a new Reservoir, and the laying of a new Main, costing say	35,00,000
General improvements especially connected with the Great Indian Peninsula Railway Crossings in the Native Town and laying out of new streets	20,00,000
	Total . . . Rs. <u>1,55,00,000</u>

In reference (continued Mr. Munguldass) to the sum of 20 lakhs, great doubt existed among the Justices. It had been agreed to on a report being made to the Bench that the former Board of Conservancy had not objected to a level crossing. The railway had been allowed to come in, and the Justices possessed no power to compel the Company to build their own bridges; but since the Justices had agreed to that sum, a member of the Bench had alleged that he discovered, and was willing to prove from the proceedings of the former Municipal Commissioners or Board of Conservancy, that the Board had never agreed to anything of the kind. The matter, therefore, would be again discussed by the Bench, and he (Mr. Munguldass) could not say what decision would be arrived at on the subject. The report of the Town Duties Committee went on to say:—

“The expenditure on the Drainage Works will necessarily be spread over several years, and the Municipal Commissioner thinks that as the Municipal Act provides $2\frac{1}{2}$ lakhs per annum for drainage, which would cover a loan of Rs. 25,00,000, or a quarter of the estimated cost, it will be sufficient to provide another fourth, say Rs. 25,00,000

On the other hand the construction of a new Vihar Reservoir, and the laying down of a second Main is a work which should not extend over more than three or four years. The whole estimate must, therefore, be provided for, or say 35,00,000

(This work, it is well to note, will to some extent be remunerative.)

So again with the expenditure on general improvements connected with the Great Indian Peninsula Railway Crossings and new streets, the money must be immediately provided, say 20,00,000

Rs. 80,00,000

In all, then, it appears necessary that a loan of 80 lakhs should be immediately raised.”

But leaving all these aside (resumed Mr. Munguldass) he would take the liberty of reading a letter which he had received from the Municipal Commissioner. It was as follows:—

“17th September 1866.

DEAR SIR,—I have at your request gone closely into the estimate of House Rate for 1867, and find that rents have fallen throughout the Island, so as to bring the average depreciation to at least 25 per cent.

As to the Fort, I could give you many instances of rents having fallen fifty per cent.

As to Colaba, private houses have not fallen very considerably in value, but the rents of godowns and warehouses have fallen immensely.

Throughout the native town and indeed wherever goods are stored, rents have fallen considerably, and from the notices I receive daily, I see they are still falling.

In Mazagon, parts of Girgaum, in Parell, and other suburbs there are many vacant houses, and rents have fallen 30 and 40 per cent. in many cases.

In Malabar Hill many second-rate houses are vacant.

In 1864 the assessable value of property was	Rs. 1,17,50,000
In 1865	1,20,00,000
In 1866	1,50,00,000
And for 1867 I estimate it at	Rs. 1,12,50,000

That is to say, the House Rate at 6 per cent. will only yield about Rs. 85,000 more in 1867 than it yielded at 5 per cent. in 1864.

The 3 per cent. (maximum) Police Rate will barely pay for the Police.

The 1 per cent. Lighting Rate will not pay for the lighting.

The recent survey shows that of the 20,411 assessable properties, only 5,778 carry a rental of five hundred rupees and upwards. No less than 14,633 are rented at less than Rs. 500 per annum, and included in this number are 4,202 huts!

There are 237 Government buildings that contribute nothing to the Municipal expenditure.

Those persons who reside in Bombay cannot but have noticed how the number of carriages and horses has fallen off during this year. Every dealer has his warehouses full of carriages for which there are no purchasers, and the small prices paid for equipages at auction is further evidence on this point.—Believe me, yours faithfully,

(Signed) ARTHUR CRAWFORD,
Municipal Commissioner."

It thus appeared (continued the honorable gentleman) that the taxes at present available were not sufficient, and that some remedy was necessary. This letter also corroborated what he had stated at the last meeting that the value of house property had fallen off, and he would only repeat that the various taxes on that class of property amounted to 18 per cent., which was more than was levied upon that class of property in any town in India, or in any country in the world that he was aware of. As to the objection taken to Town Duties that they were not levied in England, he held in his hand a letter from a gentleman whose name he was not at liberty to mention, and he challenged any member of the Council to deny that a duty of 3*d.* was not levied in the town of Liverpool on every package, 2*d.* for Dock Dues, and 1*d.* for Town Dues. The Bill which he had now laid before the Council was the idea of the Bench of Justices; but he agreed with it, otherwise he would not have brought it in. After a great deal of discussion in the Committee of the Justices a report was drawn up with the full consent of Mr. Lidderdale, and Mr. Stewart, of Messrs. Finlay, Scott and Company, and it was laid before the Bench. The Justices were unanimous in two particulars—one was that the House Tax could not be raised because it was a grievous burden on a particular class of property, and the other was that Town Duties should be levied. The Justices were not averse to the former Town Duties and they were much grieved when they were abolished without a reference to them, but as they knew and were told that the views of the Council and particularly of His Excellency were quite opposed to the Duties on the necessaries of life, out of respect to his Excellency they had omitted such articles from the list appended to the present Bill. The Bench hoped that the Council would not throw out the Bill, because it might have a particular objection to a particular article; and therefore it had been left optional to the Council to modify or increase the rates on any of the proposed articles, or to substitute any other article in the place of any of those in the list. As for the

income tax he did not know what might be the Justices' view, but that was a tax which though most just in theory, was the most unsuitable tax for this country at least. There had been an Imperial Income Tax already, and they knew from bitter experience that the honest man paid the most, and the dishonest man who could bribe the tax collectors paid the least. Such a tax might be very well suited for England where the education and taste of the people were different, but it was quite unsuited for the people of this country. Besides, he would, with due respect, beg to say that the essence of Municipal government was that the people of the Municipality should be allowed to propose and levy taxes necessary for local purposes which they thought best. If this liberty was allowed to the Municipalities of comparatively insignificant towns and cities in the Mofussil, was it fair that the unanimous opinion and wishes of the Justices composed of the most educated and influential European and Native inhabitants of Bombay should be ignored? In fact, he might venture to say, in the words of the Honorable Mr. Inverarity, that the Honorable Council had usurped the function of the Justices in abolishing Town Duties, and they would be repeating the same by throwing out the present Bill.

Bill read a first time.

The question was then put and the Bill was read a first time.

Bill referred to a Select Committee.

On the motion of the Honorable Mr. MUNGULDASS, the Bill was referred to a Select Committee, consisting of

The Honorable Mr. ELLIS,
 The Honorable Mr. HUNTER,
 The Honorable the ADVOCATE GENERAL,
 The Honorable Mr. FRAMJEE NUSSERWANJEE PATEL, and
 The Mover,

with instructions to report at the next meeting of the Council.

Mr. Ellis moves the first reading of a Bill to bring the Pergunnahs of Edulabad and Wurrungaum under the General Regulations and Acts of the Bombay Presidency.

The Honorable Mr. ELLIS moved the first reading of the Bill to bring the Pergunnahs of Edulabad and Wurrungaum under the General Regulations and Acts of the Bombay Presidency.

Bill read a first time.

The question was put and the Bill was then read a first time.

The Honorable Mr. ELLIS, in pursuance of the notice given at the last meeting of the Council, moved the suspension of the Standing Orders, to enable the Bill to be carried through its other stages at the present meeting. His reason for pressing the Bill upon the Council was that, owing to the anomalous position in which these districts stood, considerable inconvenience had been found to arise, and questions had been raised with regard to jurisdiction which were likely to affect very seriously the administration of justice. It was very desirable that all such doubts about jurisdiction should be removed with the utmost practicable speed, and as the Bill merely contained provisions in almost the same words as those of an Act passed two years ago to bring other districts under the regulations, and as the regulations under which these districts would be brought were the regulations and laws of

the rest of the Presidency, he did not think that any member of the Council would object to the passing of this Bill through all its stages at this sitting of the Council.

His Excellency the PRESIDENT then suspended the Standing Orders.

Bill read a second time and considered in detail.

On the motion of the Honorable Mr. ELLIS, the Bill was read a second time and considered in detail.

In Section II., line 1, the words "claims on" were inserted before the words "the following."

It was proposed that the titles of the Regulations shown in Section III. should be entered.

This was carried.

In Section IV., line 2, the word "by" was substituted for "in," and in lines 3, 9 and 17, the word "Officer" was substituted for the word "Court."

In lines 10 and 18 the word "empowered" was substituted for the word "constituted."

In line 12, the word "any" was erased, and the word "such" inserted before the word "Officer."

In line 13 the words "presiding over or" was erased, and "or any person" were inserted before the word "acting."

In the same line the word "his" was substituted for the word "the" after the word "under."

In line 14 the words "of such Court" were erased before the word "for."

Bill read a third time and passed.

The Bill was then read a third time and passed.

The Honorable Mr. ERSKINE, in moving for leave to introduce a "Bill to amend the law relative to the issue of Liquor Licenses in the City of Bombay," said that the Bill he now asked the permission of the Council to introduce touched upon a large and difficult subject, but had reference only to one small portion of that subject, and even to that portion only within a very limited area. The object of the Bill was merely to obtain an amendment of the local regulations relative to the issue of Liquor Licenses within the city of Bombay, in regard to one or two points in connection with which it had been found that practical objections had been raised. He believed that inquiries of a more comprehensive character, as to the abkaree system generally, and as to the best method of regulating the sale of liquor in this Presidency, had been in progress for some time; and hereafter, he hoped, the Council might have an opportunity of considering a larger and a more general measure of reform than that of which he now moved the introduction. But in the meantime, it seemed very desirable that defects which were known to exist should be corrected as soon as they were brought to notice. He need not detain honorable members of the Council by alluding to the details of a Bill, which would soon be in their hands, and would only therefore ask attention to the two main points towards which its provisions were directed; in the first place, the granting of power to limit the number of retail licenses for each locality in the city, and to improve, if possible, the system under which charges upon those licenses were assessed; and in the second place, the imposition of some restrictions on the so-called sellers by wholesale. Under the present system the duties on retail licenses were fixed from

Mr. Erskine moves for leave to introduce a Bill to amend the law relative to the issue of Liquor Licenses in the city of Bombay.

time to time by the licensing officers with the sanction of Government; but that arrangement was not found to be satisfactory. The local officers had not the means of ascertaining with any accuracy the charges which ought to be imposed under different circumstances; and the result of the uncertainty had been that disorders and malpractices had prevailed; and that the subordinate agents of the licensing departments had been exposed to temptations from which it was desirable to protect them. He thought it would be admitted that the local authorities should have power to limit the number of retail licenses to be issued in respect of each district. It would also be admitted that, for the assessment of charges upon those licenses, that system should be preferred under which the risk of collusion between those who applied for licenses and the subordinate or intermediate agency which ought to operate as a check upon them, would be reduced to a minimum. It would further be admitted that the charges should be fixed at as high a rate as practicable, so that indulgence in those habits to which it is the business of these retailers to minister should be made as expensive as possible to their customers, provided the limit were not passed at which danger would arise of evasions of the law and of illicit practices. It had been repeatedly suggested by those who understood the subject, that the best means of procuring these results would be to limit the number of licenses and then put them up to open competition. It would be indispensable of course if that plan were adopted that full discretion should be reserved to the licensing officers to refuse any offer, on grounds affecting the character of the applicant or for any other sufficient reason. The adoption of these measures had repeatedly been recommended to Government, and had met with their approval many years ago. It would of course be understood that the measures were not advocated with any view to their probable fiscal results. On the contrary, that point was altogether subsidiary to other and higher considerations. Indeed, charges upon licenses for the sale of liquor were not imposed for purposes of revenue; but in the interests of morality, in the interests of health, in the interests of good order, and for the general welfare of the community. The proposed reform had been viewed with approval, because it was thought that those interests would be promoted by the change. The Government had expressed their willingness some years ago to make a trial of these proposals; and the matter had again been pressed on their attention lately with increased urgency, by the Police Commissioner and by the Municipal Commissioner. He might mention that some years ago the Honorable Mr. Lumsden had placed it on record that he had been assured on the best authority, that the holders of retail licenses were willing at that time to pay three fold the amount of their license fees provided that changes similar to those now proposed were not introduced. And he understood that the sums actually paid by those people even now were believed to be much in excess of the sums received on this account into any public treasury; the balance no doubt must be used for purposes which it was most desirable to prevent. He (Mr. Erskine) hoped therefore that, as an experimental measure at least, the Council would not object to the arrangement he had described. The only other point to which it was necessary to allude, had reference to the so-called wholesale dealers. He believed, that according to a local ruling, all persons who sold spirits by the bottle were considered to be wholesale dealers; and persons who so sold, or were supposed so to sell, were not obliged to take out any licenses, and were practically beyond all control by the local officers. The result of such an exemption might easily be imagined; and indeed for years past there had been many representations as to the great mischiefs caused by that class of traders. In that respect also the Government had more than once expressed a desire to deal with this question; and he had

not been able to ascertain very clearly why the question had not actually been dealt with long ago. He found that ten years ago a Committee, of which a predecessor of their colleague Mr. Hunter in the chair of the Chamber of Commerce was a member, had been appointed to consider this subject. That Committee in their Report endorsed the recommendations made by the then Senior Magistrate, to the effect that wholesale dealers should no longer be exempted from taking out licenses, but should be brought under the same control as retail dealers. In the present instance, it was not proposed to go quite so far as the Committee of that day had recommended. It was now considered, and he thought justly, that it would not be necessary to require that licenses should be taken out by merchants who merely sold liquor from their own warehouses, and without breaking bulk. But with that exception, it was proposed to impose upon all wholesale dealers an obligation to take out licenses; though of course the class of respectable shopkeepers and general traders would be protected from any vexatious surveillance by the police. The main object was to control the petty shops, which were not closed at sunset and which worked a great deal of mischief. As an instance of the working of the system which exempted certain petty dealers from charges to which all retail dealers were liable, the honorable member alluded to a report prepared by Mr. Forjett, the Police Commissioner, some years ago, from which it appeared that the Commander-in-Chief of the Bombay Army having taken exception to the number of retail liquor shops at Colaba, requested that the authorities would reduce the number of licenses for that district. Thereupon the holders of the licenses were told that they could no longer retain licenses for Colaba, but that they might have retail licenses in other localities in Bombay. They however refused these terms; and it was soon found that they had returned to their old quarters, where, without licenses, they managed to carry on their old trade in the character of wholesale dealers. The money saved, owing to their new exemption from licensing charges they spent on organizing small establishments of active scouts, who gave warning of the advent of the police on all occasions; and the result was that the experiment of doing away with the retail licenses was a failure, and that more cases of drunkenness occurred after those licenses were taken away, than before. Within the last few months the present Commissioner of Police had reported that the wholesale dealers were acting as retail dealers to a very large extent, and were causing a great deal of public mischief, in all parts of the city. It was most desirable that something should at once be done to remedy or at least to mitigate this evil. The honorable member concluded by moving for leave to bring in this measure.

Leave granted to bring in the Bill.

Leave was granted to the honorable gentleman to bring in this Bill.

Time for receiving the report of the Select Committee on the Quarantine Bill extended.

On the motion of the Honorable Mr. ELLIS, the time for presenting the report of the Select Committee on the Quarantine Bill was extended to the next meeting of the Council.

His Excellency the PRESIDENT adjourned the Council *sine die*.

W. WEDDERBURN,

Poona, 17th September 1866.

Acting Under-Secretary to Government.