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*Nadabhai Anandji*  
*11/2/1886*

PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

1867.

VOLUME VI.

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

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

The Council met in the Government House at Parell, on Tuesday, the 22nd January 1867, at 3 P.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 MUNGULDASS NUTHOOBHOY.  
The Honorable A. J. HUNTER.  
His Highness the Honorable MEER MAHOMED KHAN, TALPORE.  
The Honorable FRAMJEE NUSSERWANJEE PATEL.  
The Honorable Colonel W. F. MARRIOTT.

The Honorable Colonel W. F. Marriott took the  
Affirmation of office, &c, taken by usual affirmation of office and declaration of allegiance  
Colonel Marriott. 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 "Witness Bill."
2. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the "Bill to bring the Pergunnas of Edulabad and Wurrungaum under the Bombay Regulations and Acts."

3. Letter from the Government of India conveying the assent of His Excellency the Viceroy to the "Bill to amend Bombay Act No. X. of 1863."

The Honorable Mr. ELLIS in moving the first reading of the Bill to amend Act No. II. of 1865, said he did so *pro forma*, without committing the Council to the necessity of going into the details of the Bill at the present meeting. The fact was that there had been a great deal of discussion about some of the provisions of that Act; and there was a great variety of opinion about some of the proposed amendments. At the present moment the Justices were engaged in considering the details of some of these propositions, and he thought it was very desirable to have the benefit of their deliberations made known to the Council before it proceeded to consider the Bill in detail. He therefore did not wish to commit the Council to any expression of opinion as to the details of the measure, but would merely ask that the Bill be read a first time and that the consideration of it be delayed till a later meeting.

The Honorable the ADVOCATE GENERAL did not think that the Council should assent simply to the proposition of the honorable member, without expressing its opinion as to whether there was really any reason for these provisions either in whole or in part. He confessed he did not like to give his formal assent to a Bill which contained in it several clauses so objectionable (as he viewed them) as the first, second, and fourth; he meant those parts of the Sections which provided that in future the House Rates, and Lighting Rates, and the Police Rates should be paid in advance half yearly. Now, the measure before the Council had been in the hands of Honorable Members since the middle of October last, and although of course we should be most happy to hear what the Bench of Justices had to say on the subject, he thought the Council was quite capable of expressing an opinion, upon the Bill in question, and as to whether that which was in his opinion wrong in principle, and perfectly novel, ought to be allowed to be introduced into this Bill. The Council was probably aware that the assessed taxes in England, which might be looked upon as somewhat analogous to the rates in these provisions, had under the Statute 43, Geo. III., C. 161, S. 23 for more than sixty years, been payable quarterly, although by the Statute 48, Geo. III., Chap. 141, the collectors were empowered to collect them, and they were now usually collected half yearly. The provision in the three Sections he had named, introduced so far as he could discover, a perfectly novel principle, and he confessed he thought that principle unsound.

He found no reason suggested in the Statement of Objects and Reasons appended to the Bill for introducing into it a provision of that nature; and he found from the same Statement that the chief difficulty had been the recovery of the rates and taxes. As the law stood, rates and taxes could only be levied quarterly in arrears, so that there was no income proper for the first quarter, and the Municipal fund never had moneys available upon which to draw. By the amendment proposed, these rates were to be due, and leviable by distress within ten days, and were to be payable by half yearly instalments in advance, and there would by the arrangement, be only two sets of bills to collect instead of four. Now he ventured to urge, and to express it as his opinion, that the mere want of money upon the part of the Municipal Commissioner for the purpose of trying to benefit the Municipality by prosecuting works of improvement and pushing forward these works, was no reason for introducing a Bill based upon a principle which was radically faulty.

The City of Bombay had got the Municipal Act of 1865,—and to the Municipal Commissioner every credit was due for the energetic manner in which he had carried out what he (the Advocate General) conceived all must consider to be an experimental measure, for he apprehended that none of the provisions of the Act were as perfect as they might perhaps eventually be made. He did hope, therefore, that honorable members would express some opinion as to the propriety or otherwise of collecting these rates and taxes half yearly in advance. With respect to other parts of the Bill there was not, perhaps, much objection, but he failed to discover in the Statement of Objects and Reasons any reason why the taxation of the joint stock companies in class I. of Schedule A, appended to the Act, were to be increased to the sums proposed. By the Act as it now stood the first class of joint stock companies in class A were taxed at the rate of Rs. 350 per annum. The amended Schedule in the new Bill proposed to raise the rate to Rs. 750. The next class, namely, that where the capital of the company did not exceed ten lakhs, as the law now stood, paid Rs. 200, but it was proposed to double that amount and make such companies pay Rs. 400. He was far from objecting to the increase, in fact, he thought the first might well be made to pay Rs. 1,000, and the second Rs. 500. He failed to see from the Statement of Objects and Reasons why that increase was proposed, and, perhaps, before the Bill became law, the Council would have some more information placed before it on the subject. There was one point to which he would invite his honorable friend's attention. While there were some parts of the Act which probably required alteration, he would particularly notice the desirability of amending the 249th section, relating to fines and penalties. It enacted that "all fines and penalties, and all sums levied or payable under this Act, shall be paid to the Commissioner, to be carried by him to the credit of the Municipal Fund." Previously to the coming into effect of the Municipal Act on the 1st July 1865, the fines were paid to the credit of the Municipal Fund under the 26th Section of Act XXV. of 1858, which regulated besides other moneys, the disposal of all fines and penalties imposed and levied by the Court of Petty Sessions, or by any Magistrate of Police or Justice of the Peace within the Town of Bombay, and all sums of money collected on account of fees for licences granted under Act V. of 1842 or Section XIII, Chapter II. Regulation XIX. of 1827 of the Bombay Code. It directed that these moneys should form a fund which should be called the Municipal Fund of Bombay. Now, the Act of 1865 repealed that Section, and enacted, in its stead, the short one to which he had called attention, and as serious doubt had arisen as to whether the words at the commencement of the 249th Section, "Fines and Penalties" related to all fines and penalties levied under the Police Act or any other Act, or whether they applied to the fines under this particular Act of 1865, it was desirable to remove the doubt when they were amending the Act. A section comprising a few words could easily be framed for the purpose. With these remarks he did not oppose the first reading of the Bill.

The Honorable Mr. MUNGULDASS said the Justices had taken several objections to the Bill, and referred it to a Committee for consideration. The Council, after hearing the report of the Committee, would be able to come to some satisfactory conclusion regarding the Bill. He had therefore no opposition to offer to the first reading.

The Honorable Mr. FRAMJEE also expressed his assent to the Bill being read a first time.

The Honorable Mr. ELLIS thought the Advocate General had been somewhat premature in rushing into the consideration of the details of the Bill. A Bill, the object of which was to amend sundry sections of another Act, must necessarily be of very varied application, and the only proper way of considering the details of the measure was to take it section by section, after it had been considered by a Select Committee, and to affirm or reject the principle of each section on the second reading. It seemed to him quite premature to say at the first reading that certain of these sections met with approval and that others did not. A Bill of this description must be considered in detail, and when the Council went into it in detail it would be competent to the Advocate General or any other member to oppose the several clauses. He could not suppose it was the intention of the honorable gentleman to oppose the whole of the clauses, although he objected to certain of them, and he (Mr. Ellis) therefore supposed that the honorable gentleman would withdraw any opposition to the first reading.

The Honorable the ADVOCATE GENERAL thought his honorable friend might have gathered from the last remark he had made that he did not intend to offer any objection to the introduction of the Bill.

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

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

The Honorable the ADVOCATE GENERAL,  
The Honorable Mr. HUNTER,  
The Honorable Mr. MUNGULDASS,  
The Honorable Mr. FRAMJEE,  
And the MOVER,

with instructions to report to the first meeting after 20th February.

Bill to alter Capital of the Bank of Bombay.

The introduction of a Bill for the alteration of the capital of the Bank of Bombay was set down among the Bills and Orders of the day.

His Excellency the PRESIDENT explained that when this Bill was so set down, he was under the belief that it would have consisted of one or two short and formal clauses. It was the desire of the directors of the Bank that the measure should be proceeded with as rapidly as possible, and he had thought that by suspending the Standing Orders the Bill might have been passed to-day. He found that the alterations proposed by the legal advisers of the Bank, were more than one or two formal alterations, and as it was very desirable that the measure should be published before being proceeded with, he proposed that the order of the Council be discharged, and that the Bill be published, and that it be considered at the next meeting of the Council with the view of passing it through all its stages, if it was approved of.

The order was discharged accordingly.

The Honorable Mr. ELLIS, in moving for leave to extend the time for presenting the Report of the Select Committee on the Bill for the performance of quarantine in the Harbour of Bombay, said that since the Bill had been first brought before the Council a general measure in regard to Merchant Shipping had been brought before the Council of India, and it had been considered by the Com-

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

mittee on the Bill that it would be very desirable if the provisions of the Bill for the performance of quarantine in the harbour of Bombay could be embodied in the General Merchant Shipping Bill. A reference had been made to Mr. Stewart to ascertain whether there would be any objection to introduce the clauses for the sanitary regulation of vessels entering and leaving this harbour into the general Bill for all India. Until an answer was received to the telegram sent to Mr. Stewart, he was not in a position to proceed with the Bill. He would therefore move the extension of the time for presenting the report to the first meeting of Council after the 1st February, by which time he would probably know whether the Bill should be abandoned or whether any further extension of time would be required to consider it more completely with a view to its being again brought before the Council.

The motion was agreed to.

The Honorable Mr. MUNGULDASS NUTHOOBHOY said that on account of his indisposition since his return from Poona, and on account of the absence from Bombay of Mr. Ellis, the Committee had not been able to proceed in the matter of the Bill to levy Town Duties in Bombay, and therefore he begged to propose that the time for presenting the report of the Select Committee be extended till the first meeting after the 20th February.

Time for receiving the report of the Select Committee on the Bombay Town Duties Bill extended.

The motion was agreed to.

His Excellency the PRESIDENT adjourned the Council.

W. WEDDERBURN,

Acting Secretary to Government.

*Bombay, 22nd January 1867.*

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

The Council met at Bombay, on Thursday, the 28th February 1867, at 4 P.M.

*PRESENT:*

His Excellency Sir H. B. E. FRERE, *G.C.S.I., 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 the ADVOCATE GENERAL.  
 The Honorable G. FOGGO.  
 The Honorable MUNGULDASS NUTHCOBHOY.  
 The Honorable A. J. HUNTER.  
 His Highness the Honorable MEER MAHOMED KHAN, TALPORE.  
 The Honorable FRAMJEE NUSSERWANJEE PATEL.  
 The Honorable Colonel W. F. MARRIOTT.

Paper presented to the Council.

The Report of the Select Committee on the Town Duties Bill was presented to the Council.

On the motion of the Honorable Mr. MUNGULDASS the further progress of the Bill was deferred for one month that the recommendation of the Committee, that the Report and the amended Bill be translated into Marathi and Guzerathee, might be complied with.

Further proceedings in connection with Town Duties' Bill deferred for a month.

The Honorable Mr. ELLIS, in moving the first reading of the Bill to reduce the amount of the Capital of the Bank of Bombay, did not propose to detain the Council with any lengthened observations, for whatever difference there might be in regard to the past management or future management of the Bank, it did not appear necessary to discuss the question here, inasmuch as there was a quite universal agreement as to the necessity of the measure which he was now laying before the Council. It had been admitted by the shareholders, it had been admitted by the Government of this Presidency and by the Government of India and by Her Majesty's Secretary of State, that, owing to errors in the past management of the Bank, there was estimated—and with reason, he was sorry to say—there was estimated to be a loss out of the whole capital of one half. And even if, as some gentlemen insisted was the case, there was to be a loss of more than one half, there could not be the least harm in passing the Bill which he now laid before the Council, and of which the necessity was admitted by them all, because one half of the capital at least was gone, and so long as the continuance of this nominal capital was allowed, no possible hope of a dividend could be entertained. If, on the other hand, as some few sanguine people were inclined to hope, the loss of half the capital was an over-estimate, no harm would occur in passing the Bill, because it was in the power of the Bank to recover any amount that was due to it. Under



these circumstances, it would seem to require no argument from him to press upon the Council the necessity there was for the speedy passing of this Bill. No doubt it would have been passed, but for some untoward circumstances, a long time ago, and in order to avoid any unnecessary delay, he proposed, if the Bill passed a first time, to proceed to move a suspension of the standing orders in order that it might be carried through all its other stages at once. There was one point on which he might be permitted to make a digression, because, though not connected with the present Bill, it was very closely connected with the Bill which was passed last year in reference to the Bank of Bombay. It would be recollected by the Council that one result of the disastrous management of the Bank was the conviction that the words in the 32nd clause of Act X. of 1863,—“and other companies”—giving power to the Bank to advance and lend money on shares in any public company in India, which were entered for the first time in that Act, had been productive of very great mischief, and that measures should be immediately taken for their removal from the Act. When that conviction arose, there was considerable discussion as to how these words had got into the Act, and a great deal of blame was attributed to those who were in charge of the Bill in Council for not having more prominently brought under the notice of the Council the fact that these words would be inserted in the new measure. At that time Mr. Robertson, who had had charge of the original Bill, was away from Bombay, and inquiries could not be instituted until his return, when Government referred to him to ascertain the reason for these words being inserted in the Act of 1863. Mr. Robertson had supplied Government with very full and ample information on the subject, and he (Mr. Ellis) thought it due to Mr. Robertson to explain how these words were inserted. Mr. Robertson had shown that the original draft of the Bill of 1863, in which the words were inserted, was first prepared by the solicitors of the Bank, and after being revised by the Advocate General and by the Government Law Officers was sent to the Government of India, and subsequently to the Secretary of State, and it was not until its provisions had met with the approval of the Secretary of State that the Bill was presented to the Council. In the draft submitted by the Law Officers of the Bank, it appears the phraseology of the Joint Stock Companies' Act was closely followed, and Mr. Robertson pointed out that it was preferable to adopt the Act of the Bank of Bengal, but this opinion was not concurred in by the Law Officers, and on their showing that the wording of the Joint Stock Companies' Act was in every respect superior to the wording of the Bank of Bengal, the former was adopted. There was no blame attachable to Mr. Robertson; and though the effect of the words had escaped notice, it was from no speculative tendency on the part of any member of Council that they found their way into this Act, but it was simply owing to the fact that the wording of the general English Act was preferred to the wording of the Bank Act on the other side of India. He deemed it necessary to trouble the Council with these explanations now, because when the Act was last before the Council it was not possible to give the Council any information as to the manner in which the words had been introduced into the Act of 1863. He concluded by moving that the Bill be now read a first time.

The Bill read a first time.

The Bill was then read a first time.

On the motion of Mr. Ellis the standing orders suspended, and Bill read a second time and considered in detail.

The Honorable Mr. ELLIS moved the suspension of the standing orders, that the Bill might be read a second and third time and passed.

The PRESIDENT suspended the standing orders, and the Bill was read a second time and considered in detail.

In reference to Section V. of the Bill, the Honorable Mr. FOGGO said he was not quite sure that he correctly understood its wording or tenor. Its primary object, he concluded, was the formation of a reserve fund, as indicated in the margin. The section provided that "all moneys and assets of the said Bank which, but for this Act, would have been deemed to be part of or to belong to the capital of the said Bank, as fixed by the said recited Act"—that meant the original capital of 50 lakhs—"or since created"—which meant the amount since increased up to two crores—"shall after setting apart and providing for the amount of capital as fixed by this Act, or any additional capital hereafter to be created be applicable to the formation or increase of the reserve fund provided for by Section XXXVI. of the said recited Act." It appeared to him that if the words "any additional capital hereafter to be created" were retained, that would not leave room for creating a reserve fund. The case would be this: Supposing an amount beyond the crore of capital fixed by this Act were to be recovered, it would be in the power of the Directors of the Bank to create additional capital. Now that might be a good object, but it was not the same as making a reserve fund. It appeared to him it would be better to leave out these words, and then if it was practicable to form additional capital it would be easy to state in another Act what the reserve fund should be. There was another point. If a considerable amount was to be recovered, would it not be worthy of consideration whether it would not be better not to bind the Bank to apply the whole sum recovered beyond the amount of the capital to the purposes of a reserve fund, but to take into consideration the claims of the shareholders in England and here. They had been without a dividend for twelve months, and that fell very severely indeed on many of them, and although it was quite true that a reserve fund enhanced the value of the shares, it happened that a great many of the shares were held by trustees who could not sell their shares. He would submit, therefore, that it should not be made imperative on the Bank to apply the whole of these recoveries to a reserve fund. It appeared to him that it would be better to substitute for the words "any additional capital to be afterwards created," some such words as these: "Provided always that it shall not be incumbent on the Directors of this Bank to provide a reserve fund bearing a larger proportion to the paid up capital as fixed by this Act or to any additional capital to be hereafter created than \_\_\_\_\_ of the said paid up or additional capital." He submitted these words to the Council with considerable deference, for, although he was tolerably acquainted with the subject generally, he must say that clauses drawn up by legal gentlemen were sometimes exceedingly puzzling, and it was difficult to ascertain precisely what their meaning might be. With reference to the first point he had mentioned, he thought that if the words to which he had directed the attention of the Council were retained, the object of the clause would be defeated.

The Honorable Colonel MARRIOTT presumed the meaning of the words to be that if there were a larger surplus than was expected, it might go either to increase the capital or to make a reserve fund. If it be thought desirable that the surplus should be available for distribution, the words seemed to be unnecessary.

The Honorable Mr. HUNTER quite agreed that any surplus should be distributed as a

bonus among the shareholders, because many of the shareholders have been without dividend for a long time. If there was found to be a surplus, which he was afraid was not very likely, it should be applied as a bonus.

The Honorable Mr. ELLIS consented to the omission of the words "or any additional capital hereafter to be created." He did not think it necessary to retain them. As to the other amendment he was sure the Directors would hail with delight Mr. Foggo's accession to the ranks of those sanguine people who believed that there would be a surplus recovered beyond the half of the Bank's capital. He himself thought there was so little hope of it that no possible good would result from giving the Bank the power of dividing the surplus instead of forming a reserve fund out of it. If Mr. Foggo was so sanguine that the shareholders would receive a very large portion of the lost capital which was to be recovered by the exertions of the present officers of the Bank, he (Mr. Ellis) should say there would be good reason for dividing it as a bonus, and he would rejoice to see it done. But as they knew very well, and the public believed there was very little chance of any considerable sum being recovered or carried to the reserve fund of the Bank. If the reserve fund was strengthened by these recoveries it would be quite possible for the Directors to declare a larger dividend, because they would not be obliged to apply the profits to the formation of a reserve fund, so that the shareholders would be in quite as good a position.

The Honorable Mr. Foggo could assure the honorable member, in reply to the somewhat satirical tone of his remarks, that he had no wish to take a captious objection to the Bill. His only object was to consider what was best for the shareholders under every contingency. He would not press the other part of his amendment, as no doubt the Directors would have it in their power in the contingency referred to, to compensate the shareholders by declaring larger dividends than ordinarily.

The Honorable Mr. MUNGULDASS concurred in the remarks made by the Honorable Mr. Ellis, and thought if there was any surplus it should be placed to the reserve fund.

The Honorable Mr. ERSKINE pointed out that the discussion seemed to raise the question whether the power of increasing the Capital of the Bank should be expressly continued. That power was continued by the first Section of the Bill, and if it was the intention of the Council that the power should be so continued, it seemed to him that any additional capital, should such ever be created, should by Section V. be put on exactly the same footing as the existing capital with respect to the reserve fund. His impression was that so long as the Act allowed the Bank to raise additional capital beyond the sum which was now to form their capital, some words similar to those inserted in the fifth Section could not be dispensed with.

The Honorable Mr. ELLIS said this Section referred only to the recovery of moneys included in the lost capital, and he did not see how the Honorable Mr. ERSKINE's objection applied. It was not at all necessary, even if additional capital were raised, that the moneys recovered from the lost capital should be applied to increasing the capital, and he was therefore disposed to agree with Mr. Foggo on this point.

The Honorable the ADVOCATE GENERAL agreed with the observations that had fallen from Mr. Erskine, and thought that some such words as those suggested by him were desirable.

The Honorable Colonel MARRIOTT said it would be rather a complicated transaction to issue new shares with a portion of the old capital, and he did not understand the clause to mean that any surplus over the now fixed capital of the Bank should be applied to provide new capital. New capital could be provided independently of that. If the words were taken out there would be no doubt about the clause, if they remained in there would be doubt.

The words "or any additional capital hereafter to be created," in the 8th and 9th lines of Section V., were omitted from the Bill.

The Honorable Mr. FOGGO did not press the other point to which he had drawn the attention of Council, and the Bill as amended was read a third time and passed.

The Honorable Colonel MARRIOTT, in moving the first reading of the Bill to make provision for the administration of Military Cantonments in the Bombay Presidency, stated that the objects of the Bill as set forth in the "Objects and Reasons" were the complete establishment of the Ordinary Civil Jurisdiction within Cantonments, and the introduction and enforcement of such peculiar local regulations as the circumstances of Troops and Cantonments require for order, for preservation of the soldiers' health, for general sanitary purposes, or for ruling the rights of occupation of Cantonment houses, and the doing this by the same means as those in force in the Cantonments under the immediate government of the Governor General of India in Council. The reasons are that the intended uniformity will simplify legislative, judicial, and administrative action, and that there are now no direct means for legally enforcing the needful regulative measures on all classes of Cantonment residents, and that, although Act XXII, of 1864, passed by the Governor General of India in Council, with which the present draft Act in great part corresponds, contains provision for its extension to the Bombay Presidency, if desired, yet this cannot conveniently be done because of the dependence of Act XXII. for part of its operation on other Acts not in force in the Bombay Presidency. The effect of the Bill would be that henceforth none but enlisted men would be liable to the exceptional jurisdiction constituted by the Articles of War. Even these would be tried for non-military offences by the ordinary Courts, and all classes not directly subject to the Articles of War would be subject in all matters to the ordinary Courts. The inconvenience that had attended the existing state of things had been very great, and the Honorable Advocate General would bear him out as to the number of cases in which doubts and conflicts of jurisdiction had arisen. He himself could call to memory several cases which had occurred lately. There was one case in which the Honorable the Advocate General was called upon to give an opinion as to whether it was the business of the civil or military authorities to appoint an Inquest. A clerk of the Pension Paymaster had misappropriated money, and the attempt to prosecute him entirely broke down because of the disputed question of jurisdiction. Beside convenience there were higher reasons—reasons founded on principles of equality and by consequence of large significance, in favour of avoiding, whenever possible, exceptional jurisdictions. As respects the purpose of enforcing local regulations, some of the Cantonments are very large towns, and a great number of the purposes thereby provided were such as in ordinary towns would be provided most conveniently by a municipal constitution. There were other purposes, such as the restricting the manufacture and sale of

liquor. There was a necessity of controlling houses of ill fame, and there were peculiar provisions required regarding the control of house property in Cantonments. There were no direct means of enforcing regulations, and hitherto they could only be enforced indirectly by the power of turning people out of the Cantonments. Uniform legislation was desired, and the present Bill had been drafted as nearly as possible in accordance to Act XXII, passed by the Governor-General in Council for similar purposes in the Bengal Presidency.

His Excellency the COMMANDER-IN-CHIEF remarked that the necessity for the Bill was very urgent.

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

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

The Honorable the ADVOCATE GENERAL,

The Honorable Mr. ELLIS, and

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

The Honorable Mr. ELLIS, in moving for leave to extend the time for presenting the reports of the Select Committee on the Quarantine Bill and Municipal Act Amendment Bill, said that in the case of the Quarantine Bill the Committee had under consideration the propriety of a reference to the Sanitary Commission, and also the Government of India, to divide the questions involved in the original scheme into two parts, one of which they considered might be better dealt with in the Bill before the Government of India regarding shipping generally, and the other to form part of the amended Act II. of 1865, which was the other Bill before the Council. The reason why the latter Bill has not been considered in Committee, was that the Committee had waited to receive from the Municipal Commissioner the resolution of the Justices in reference to this Bill. It was of course necessary that the Committee should be in possession of the views of the Justices before they committed themselves to any expression of opinion on a matter relating to the interests of the inhabitants and the Justices. The resolution had, however, just been put into his hands, and he would move the postponement of the time for presenting the reports until the first meeting of Council after 15th March. By that time the whole of the questions will be matured, and the Committee would be able to present them both in a shape in which they might recommend the Bills to be passed.

Time for presenting the reports of the Select Committee on the Quarantine and Municipal Act Amendment Bills, extended.

The motion was agreed to.

His Excellency the PRESIDENT adjourned the Council.

W. WEDDERBURN,  
Acting Secretary to Government.

*Bombay Castle, 28th February 1867.*

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

The Council met at Bombay, on Thursday, the 25th April 1867, at 11 A.M.

*PRESENT:*

The Right Honorable W. R. S. V. FITZGERALD, GOVERNOR of Bombay, *Presiding.*

The Honorable B. H. ELLIS.

The Honorable C. J. ERSKINE.

The Honorable the ADVOCATE GENERAL.

The Honorable MUNGULDASS NUTHOOBHOY.

The Honorable G. FOGGO.

The Honorable FRAMJEE NUSSERWANJEE PATEL.

The Honorable Colonel W. F. MARRIOTT, C.S.I.

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

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

The Honorable Mr. ELLIS thought he might not be out of strict order in mentioning,

The Honorable Mr. Ellis' observations on the Bill,

in reference to the Report of the Select Committee on the Quarantine Bill, that a petition had that moment been put into his hands remonstrating against certain clauses being inserted in this Bill as amended in Committee.

He had not been aware till now that the clauses which had been proposed for insertion had never been translated into the native languages, and that the people had not had a sufficient opportunity of considering the nature and object of them. He found, moreover, that, owing to the clauses having been loosely drawn up, very considerable misapprehension existed as to their object. It was supposed by the native inhabitants of Bombay that it had been the intention of the Committee in framing these clauses to give power to the Health Officer to drag them or their children from their homes, and carry them away to a sanitarium. He need hardly say that such an object was not proposed. The clauses were intended to apply to vagrants and pilgrims, and other people who at times flocked into Bombay, who might be affected with diseases of a contagious and dangerous character, and who were without the means of procuring proper accommodation for themselves. It had never been intended that the clauses should apply to all the people indiscriminately, and it was only from their rather loose wording, as they at present stood, that such a misapprehension had arisen. Unfortunately in drafting the Act some words which were in the English Act had been omitted. As the clauses had not been translated, and as it was necessary to make some alteration in the wording, he would propose to defer the notice of motion for the insertion of them till the next meeting. Fortunately we were not at the present moment afflicted by any great epidemic in the island, and there was therefore no reason to be in haste or to hurry on the consideration of these clauses. The petition might be recorded; it was unnecessary to read it, as he had stated the whole pith of the objection. He would therefore withdraw the motion of which he had given notice.

Bill recommitted.

At the suggestion of His Excellency the President, the Bill was recommitted, with a view to the reconsideration of the clauses.

Papers presented to the Council.

The following papers were presented to the Council:—

1. Report of the Select Committee on the Bombay Municipal Act Amendment Bill.
2. Report of the Select Committee on the Military Cantonment Bill.
3. Letter from the Government of India declining to sanction the imposition of a tax on opium brought for shipment.
4. Letter from the Government of India conveying the assent of the Governor General to the Bank of Bombay Amendment Bill.

The Honorable Mr. ERSKINE moved that the Bill to amend the law relative to the issue of Liquor Licenses in the city of Bombay should be read a first

Mr. Erskine moves that the Bill for the issue of Liquor Licenses be read a first time.

time. Several months had elapsed since this Bill was introduced. It had been thought desirable to make a reference to the Governor General with respect to certain penal clauses,

and the reply to that reference had not been received in time to enable him to proceed with the Bill at an earlier meeting of the Council. He did not think the delay which had occurred was to be regretted, as it had given time and occasion for fuller discussion of the measure than would otherwise have taken place; and he had received, also, several petitions in which some of the provisions of the Bill were very freely discussed. He proposed to refer to these petitions presently; but in the meantime he would draw attention to the fact that the Bill was now before the Council, almost exactly in the shape in which it had been submitted to Government. There was no doubt that it required to be very carefully revised; and such a revision of course would take place if the Bill were sent to a Select Committee. Indeed the materials for revision were at hand already, but it would be premature to trouble the Council with any discussion on matters of detail. It would be premature even to ask the Council to assent at present to the principle of the Bill. According to the Rules, the discussion on that subject would take place on the occasion of the second reading, when the Bill should have returned from the Select Committee with their report. But as it was not likely that he would have another opportunity of making a statement on the subject, he might perhaps be allowed to refer to one or two points in connection with which an explanation seemed to be desirable. He thought it was hardly necessary to remind honorable members, in the first place, that this was exclusively a Municipal Bill. It had nothing whatever to do with the general Abkarce system, or the general law relative to the sale of spirituous liquors throughout the provinces of this Presidency. It would only have operation throughout the limits of the town and island of Bombay, or, as it was now called, the City of Bombay. He thought, too, it was hardly necessary to repeat that this Bill was not brought forward for the purpose of raising a revenue, but for the purpose of placing due restraint upon a traffic, in connection with which many disorders had occurred, and in connection with which he was afraid many disorders would still occur unless this Council could interpose some remedy. The Bill therefore was really introduced in the interests of public order. It might be said to consist of two parts; one which related to retail licenses, and another which related to wholesale licenses. As regards the former, he thought there was very little difference of opinion regarding the necessity that existed for some amendment of the law, which at present was not in a satisfactory state. It was proposed therefore that the licensing officers should be

more clearly authorized to divide the City, for the purposes of this Act, into small districts; that they should also be empowered to limit strictly within those districts the number of retail licenses to be issued; and further, that they should at the same time be enabled more adequately than at present to assess upon liquor licenses such charges as they might reasonably be made to bear. To that extent he had not heard that any exception had been taken to the proposed measure. But, in connection with one portion of the procedure by which it was intended to carry out these proposals, very strong objections were urged in one of the petitions to which he had already referred. The provision to which exception was taken formed part of the 3rd section of the Bill; and by that provision it was proposed that, in order to ascertain the charges, to be assessed on retail licenses, they should annually be sold by public competition. Now, that was a proposal which appeared to be a matter of procedure, and, therefore, of detail, in regard to which he had no doubt differences of opinion existed; and it seemed to be a point in connection with which it was particularly desirable that there should be an inquiry before a Select Committee, the result of which should be made known before Honorable Members were asked to express any opinion upon the question. He did not wish for his own part to offer any definite opinion upon it at present, and it would certainly be premature to ask the Council to do so. He ought to state that this proposal had repeatedly, in the course of many years, been urged upon Government by local officers of experience, who believed that very great abuses had existed—and he was sorry to say still existed—in the administration of this department, in connection with the lower subordinate agents, in this very matter of the assessment of charges on these licenses. On the other hand, he thought that Honorable Members would consider that some very strong objections were urged in the petition which had now been made by the retail dealers. As he had already said, he did not propose to ask the Council at present to pronounce between these conflicting opinions; but it did seem to him that if, after full inquiry before a Select Committee, it should appear that there was any just ground for the apprehension of these petitioners—viz., that under a system of annual sales by auction the tenure of these licenses would become so precarious, and the holders of them would be exposed to such reckless competition, that there would be a real danger of men of substance and repute being pushed aside by mere unscrupulous speculators—in that case it appeared to him that the Council would not be disposed to persevere in the proposal in the hope of securing any minor collateral advantages. As regards the second part of the Bill, which related to wholesale licenses, there was also a very general concurrence of opinion as to the urgent necessity for some legislative action. At present, under a local interpretation of the law, all sales of not less than a bottle were wholesale transactions, and every person who claimed to sell merely by wholesale was exempted from the necessity of taking out a license, and was in fact emancipated from all police control. The result was, that a large class of petty shops—*quasi* wholesale shops—had come into existence, and the number was rapidly increasing. It had repeatedly been pointed out that these shops were working a great deal of mischief; but there was no means at present of exercising any control over them. It was now proposed that those shops also should be brought under the licensing system. In connection with this part of the Bill, a petition had reached him from a number of respectable shopkeepers—general dealers as he believed they called themselves. They did not object to that portion of the Bill by which it was provided that petty shops should be brought under control; on the contrary, they recognised the necessity of that measure; but they pointed to a provision in the 6th section under which an exemption was granted in favour of the godowns or places of business of merchants who sold without breaking bulk; and they stated that in their



opinion this created an invidious distinction, and involved a positive injustice to them, as their style of business was in reality, very much the same as that of many persons who might be classed under the head of merchants. Of course it must be very far from the wish of the Council to create any invidious distinction, or do injustice to any one. He did not know how far it might be thought there was ground for this remark of these petitioners; but he would propose that their petition likewise should be referred, together with the Bill, to a Select Committee, who would consider the subject, and report upon it. The Council would then be able to determine whether any exemption at all was necessary, and if so, at what point the line should be drawn. It appeared to him, he confessed, that it might be found convenient to have recourse to a double class of licenses—special and ordinary licenses—as regards the wholesale dealers. There was a large class of persons, like these petitioners—most respectable persons—in regard to whom no complaint had been made, who did not habitually sell in small quantities, and over whom no surveillance was necessary. On the other hand, there was a large and mischievous class of shops which, though nominally wholesale, really sold by retail, and in regard to which it was very desirable that there should be some strict provision. He had thought it better to make these explanations now, as he might not have another opportunity of doing so; but his sole object at present was that the Bill should be read a first time, and that, together with the petitions relating to it, it should be referred to a Select Committee, who would inquire and report on the subject. He proposed that the Committee should consist of the following Honorable Members:—Mr. Ellis, the Advocate General, Colonel Marriott, Mr. Foggo, and Mr. Munguldass.

The Honorable Mr. MUNGULDASS said this was a question which—as it related to the liquor traffic—he was not much conversant with, and that his honorable friend Mr. Framjee would perhaps be more likely to be of service in the matter.

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

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

The Honorable Mr. ELLIS,

The Honorable the ADVOCATE GENERAL,

The Honorable Colonel MARRIOTT,

The Honorable Mr. FOGGO,

The Honorable Mr. FRAMJEE NUSSERWANJEE,

with instructions to report to the first meeting after 1st June.

The Honorable Mr. ERSKINE moved the first reading of a Bill to amend Act XIV.

Mr. Erskine moves that the Bill to amend Act XIV. of 1866 be read a first time.

of 1866. A few months ago a Bill had been passed by which the pergunnahs of Edulabad and Wurrungam were brought under the general laws and regulations in force in this Presidency. Doubts had arisen as to the method of disposing of suits which were pending when the Act came into force. The present Bill had been framed to give effect to a recommendation of the Judges of the High Court that there should be legislation on the subject.

The Bill read a first time.

The Bill was read a first time.

The Honorable Mr. ERSKINE moved that the standing orders be suspended, that the Bill might be carried through all its stages.

His Excellency the PRESIDENT suspended the standing orders, and on the motion of the Honorable Mr. Erskine the Bill was read a second time, and considered in detail.

In the 9th line of Section IV. the word "had" was inserted after "have."

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

The Honorable Mr. ELLIS moved the second reading of the Bill to amend Act II. of 1865. The honorable member said it would perhaps be well if he alluded to the different subjects which were treated in the Bill. It was exceedingly difficult to ask the Council to affirm any particular principle in the Bill, because the measure was made up of a number of amendments upon various sections of a former Act, which sections in no way hung upon one another, and were only connected in so far as they all related to the administration of Municipal affairs in the city of Bombay. The Municipal Act had been found in some respects to be defective. There was insufficient provision in it for the realisation of the rates, and certain technical objections had been taken by the magistrates which rendered amendments necessary. There was one deficiency of a very important character, the Municipal Commissioner having found himself hampered and fettered by the mode in which provision had been made for the realisation of the taxes. The old duties had been abolished, and between the date of the abolition of the old duties and the receipt of any payment on account of the new, an interval had been left in which the Municipal Commissioner had had actually no provision whatever for the payment of current establishments; and as in this country people were paid by the month—and not by the quarter, as in England—there had been a necessity for meeting month by month current charges for which the Municipal Commissioner had no funds in hand. It had become, therefore, a very serious question, whether, in order to prevent this chronic state of want of funds, it would not be desirable to make an alteration in the law empowering the Municipal Commissioner to levy in advance a portion of the rates which by the Municipal Act he had been authorised to levy in arrears only. It was not necessary to extend the alteration to all kinds of rates. The Vehar water rate, for instance, might be charged for and paid for in arrears by the persons using it. But when police had to be maintained, and sweepers to be paid for the conservancy of the town, and monthly bills for gas had to be met, it became absolutely necessary that there should be funds in hand to meet these charges. Some honorable members seemed to think it was a new principle to pay in advance, but if it was new it was one which was in fashion, as they had seen in the case of the Act which had recently been passed in the Council of the Governor General for the purpose of imposing a license tax on trades and professions. In that case the tax was made payable in advance, and as far as he could see there was no provision made for refunds. It therefore was not altogether a novel principle to ask that people should pay their taxes in advance. In fact he did not know that they could call it a principle at all. It did not in any way affect the nature of the tax itself, its incidence, or any other of those circumstances which were usually considered in matters of taxation; and as the Justices themselves had after very long discussion deliberately affirmed that it was expedient and advisable to levy these taxes in advance, he thought the Council would do well to give their legislative sanction to the alteration. He might mention, however, that in the Bill as received from the Bench of Justices he had

observed that the first payment under the new system would be very hard upon rate-payers, because, at the same time that the payment in advance would come into operation, another reform would be carried out. In order to save establishments, and also to save the public the annoyance caused by the constantly recurring visits of the tax-gatherers, it was proposed that the payment of these rates should be half-yearly, instead of quarterly. By the two changes being introduced at the same time it would become necessary that the rate-payers should pay for three quarters in one payment, which would no doubt be hard upon many of them; and to meet this difficulty he had framed an amendment in which he proposed that the alteration by which the payments would be made in advance instead of quarterly in arrears, should come into operation at once, and that the other alteration should be postponed for six months, so that the payment half-yearly instead of quarterly would not have effect till the 1st of January next. By this means the payment on 1st July would be for two quarters only, instead of three as it would have been under the Bill as drafted. He thought this amendment was a necessary one, and he had little doubt the Council would give their sanction to it. There were several matters of detail in the mode of assessing these rates, and in the mode of procedure to be adopted for the levy of them under the old Act, which had been found to work badly, and the greater number of the clauses of this amended Bill were taken up in improvements in those respects. They had without any exception, he believed he might say, passed through the filter of the Justices, and as now proposed in this Bill were, with some verbal alterations, just as they had been received from the Bench of Justices. In regard to the halalcores, who were not at present legally recognised as public servants, there had been a difficulty in punishing them; and provision was consequently made for this. There had also been difficulties in regard to notices to the Commissioner. It had been held that if a man called from the bottom of the stairs up to the Commissioner's office, that was sufficient notice; but it was now proposed that written notices must be given. In the matter of summonses also, technical difficulties had been raised, and these were dealt with in the Bill. Power was given to the Justices to borrow money upon the mortgage of their income, and an important alteration had been made in regard to the schedule relating to the Municipal license tax. The alterations in this last respect were proposed chiefly with a view to assimilating the levy here to that which was in force in Madras and Calcutta. Amongst other alterations there was one by which servants of Government became liable to taxation; and he could only say that for his own part he freely agreed to this alteration, because, although he might suffer by it himself, he did not see any reason why servants of Government should not assist in meeting the local requirements of the place in which they lived, the same as any other person who benefitted by municipal improvements. The schedule of assessments on joint stock companies had been somewhat altered from that which had been proposed by the Bench of Justices. The alterations had been made with the view of relieving the smaller companies from too high a rate. The maximum rate on the largest company had been increased from Rs. 750 to Rs. 1,000, but a graduated scale had been devised by which the smaller companies would pay as low as Rs. 250—instead of Rs. 400, which under the schedule of the Justices they would have been liable to pay. He believed he had touched upon the principal alterations that were proposed in this Bill. and with these observations he begged to move the second reading.

Bill read a second time and considered in detail.

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

The Honorable Mr. Foggo moved the omission of Clause I. of the Bill. The honorable gentleman, in asking the Council to refuse its assent to the passing of this section of the Bill, would confine his observations to the section itself, without discussing at present the other points of interest to which the honorable member had referred. He considered—without speaking of it at all as a matter of principle—that the practice sought to be introduced by this section was objectionable in many points of view, and would be found to be extremely onerous in practice. At present the taxes were collected as provided by Section 47 of Act II. of 1865, quarterly in arrears; and the 1st section of the present Bill provided that in future the house rate should be collected half-yearly in advance. In the report of the Committee on the Bill to which Mr. Ellis had referred, it was stated that “the Committee have been in communication with the Municipal Commissioner, and have had under consideration certain resolutions passed by the Bench of Justices at a special general meeting held to discuss the Bill. The alterations affirmed by these resolutions have for the most part been adopted.” Now, it would perhaps be inferred that the Bench of Justices were, if not unanimous, strongly in favour of this alteration, but that was not quite in accordance with what had actually occurred. No doubt a majority had been in favour of the taxes being collected in the way proposed in the present Bill, but the Standing Committee of the Bench, after having considered the Bill, had reported strongly against this alteration. At the meeting of the Justices when that Report was considered, the motion in favour of the proposal was carried by a majority of only 24 against 21; and the Bench might therefore be considered to be very nearly divided upon the question. He (Mr. Foggo) considered that if the taxes were collected half-yearly in advance it would be very oppressive to a very large number of tax-payers. It had been stated by Mr. Scoble, the late chairman of the Bench, that there were 15,000 houses the annual rental of which was less than Rs. 500. Now the owners of these houses would under this new section have to pay these taxes in advance, but they would not get the rent in advance on which they depended, in a great measure, for being able to pay these taxes; and if the Council passed this clause the effect would be, that while it was relieving the Municipality from the difficulty of being always in arrears—which no doubt was a difficulty, and should certainly be provided for in some way or other—it would be throwing these rate-payers into arrears, and causing a great hardship to many persons who were not able to speak for themselves. On that ground alone he would propose that the clause should not stand in the new Bill. He considered that the fact of which the Municipal Commissioner had complained—that he was constantly in arrears and that he had no reserve from which he could obtain a working balance and provide for unforeseen contingencies—was not to be met in this way. He thought it ought to be budgeted for, half-yearly, with the other charges upon the municipal revenues, and that if they opened the door—he would not say by abandoning a sound principle, but by admitting what would certainly be an onerous imposition (he used the word in no offensive sense), they would be called upon on other occasions of municipal necessities, to contravene a sound principle and a fair and just practice. He thought the Council should not be called upon to deal with questions affecting municipal taxation in this piecemeal manner. Before the Council was asked to depart, if not from a principle, a rule which had long been established in Bombay, and, as the Advocate General had pointed out some months ago, which had been adhered to, or partially adhered to in England; they should know well and fully what were the municipal requirements, and what, under the most economical and the same time effective system, was the position of the

revenues of the Municipality. They did not at present know that. They had no knowledge of the state of the municipal accounts or municipal funds since December 1865. They had had a budget—that is, an estimate of expenses and an estimate of revenue—but they had had no accounts on many points in regard to which the Council, to say nothing of the Municipality, ought to be furnished with information. From a statement which the Municipal Commissioner had brought forward a few months ago it appeared that the estimated deficiency upon the municipal accounts was the comparatively small sum of Rs. 70,000. Now, since that time they had had from the Commissioner himself the statement that many of the collections had exceeded the estimates. In regard to the Wheel Tax and other taxes there would be a considerable surplus over the estimate—two or three lakhs; and there were large arrears which had resulted from the carelessness of former municipal boards in collecting the revenue, these arrears amounting to several lakhs of rupees. Now, these arrears might or might not have been recovered, but of the receipt or recovery of them, in whole or in part, the Bench of Justices and the Council were entirely ignorant. On these grounds he considered the Council should not deal with any question of municipal finance till at all events they had more information on the subject.

The Honorable Mr. MUNGULDASS said his reason for approving of the proposal for collecting the house rate in advance was, because it was a less hardship for a person to pay the municipal taxes six months in advance than it would be for him to find the house rate increased to ten per cent. some day. One reason why he could not vote for keeping the maximum of the house rate at ten per cent. was that there was no chance of a house rate so high as ten per cent. being raised without great injustice being committed. In 1865, when the present Municipal Act was passed, the people of Bombay thought that the matter of taxation was one of the least consequence, and although the measure was strongly opposed by the Honorable Mr. Ellis and the late Mr. Juggonath Sunkersett, they were outvoted, and the ten per cent. house tax was introduced. But he had not met any one who said the ten per cent. rate could be justly imposed. At present the rate levied is six per cent. and then the house owners had to pay water, police, and gas rates, which made the total rates to  $18\frac{1}{2}$  per cent. There were 21,000 houses and 17,000 house owners, and as the majority occupied their own houses the total rates to which they would be subjected would amount to  $22\frac{1}{2}$  per cent.

His Excellency the PRESIDENT observed that the question now before the Council was the omission of the first clause of the Bill.

The Honorable Mr. MUNGULDASS (in continuing) said that though the majority of the Justices voted in favour of the clause, if the honorable member would agree to amend the clause by making the maximum of the house rate  $7\frac{1}{2}$  per cent., he (Mr. Munguldass) would vote against the motion of the Honorable Mr. Foggo, but if the ten per cent. was insisted on he should vote for the proposition of Mr. Foggo.

The Honorable Mr. FRAMJEE said he concurred with the Honorable Mr. Munguldass Nuthobhoy that the house rate ought not be more than  $7\frac{1}{2}$  per cent.

The Honorable Mr. ELLIS said he had always been in favour of keeping the maximum rate at  $7\frac{1}{2}$  per cent., and that he would vote in favour of the motion which Mr. Munguldass intended to move, fixing it at that amount.

The Honorable Mr. MUNGULDASS said that in that case he would vote against the motion at present before the Council.

The Honorable Mr. ERSKINE said he entered unwillingly upon this question; for he should be extremely sorry on his last appearance there, to express any opinion which might occasion practical inconvenience to the Municipal authorities. No one recognised more fully than he did the great claims to consideration possessed by the new Municipality, and the great public services which had been rendered by it. But he found a difficulty, a very great difficulty, in acceding to the present proposition, as he understood it. He had not the advantage of being a member of the Select Committee which had considered the Bill, nor of hearing what had taken place on the subject before the Bench of Justices, and what the feelings of the Bench were. But, looking at the question in a general way, it did appear to him that the proposition, if carried out, might occasion great inconvenience and distress to a large number of people—distress out of all proportion to the benefit it would confer. It did not appear to him that the License Tax was at all an analogous case. Under the License Act persons were required to make certain payments in consideration of their connection with certain occupations. The payments were to be made specially with reference to those occupations; and in fact as the price to be given for the privilege of practising them. But however that might be, it appeared to him that the particular rates which his Honorable Friend had singled out, the police rate and halalcore cess—indicated clearly enough one point of difference between the particular kind of taxation which they had now to consider, and other forms of general taxation. The police, and other Municipal rates were essentially specific rates for specific services; yet it was now proposed that these rates should be collected six months in advance, but that the payments for the services should be made monthly in arrears. Now, it appeared to him that, in the first place, the proposal was obnoxious to the general objection that it was intended to impose what would be a permanent inconvenience to the tax-payers, for the purpose of removing a merely transitory inconvenience resulting from a temporary exhaustion of the Municipal cash balances. And unless he was altogether mistaken, the proposal was also obnoxious to this further grave objection, that it would take more from the tax-payer, that it would cause greater loss to him, than any loss which could fall upon the Municipality if the rates were collected in arrears. What he meant was this: take the police rate, or the halalcore cess, the two items to which special reference had been made; and—not to put an extreme case,—suppose that the rates were to be paid quarterly and not half-yearly in advance; and suppose, for the same reason that Rs. 300 were to be taken from one person in the shape of a quarter's rates in advance. Now, what amount of loss would be entailed on the person paying these rates, and who would be deprived of the interest of that sum of money for three months? At 6 per cent. the loss of interest in the three months would be Rs. 4-8-0. On the other hand, what would be the burden imposed on the Municipal treasury, if, instead of receiving the rates in advance, the money needed to meet their actual expenditure, was taken up as required? The Municipality would not require any funds until the end of the first month, when they would require one-third of the Rs. 300. At the end of the second month, another hundred Rupees would be required. By the end of the third month the taxes would be due in arrears. But interest at 6 per cent. on one hundred Rs. for two months, and on a second sum of one hundred Rs. for one month, amounted only to Rs. 1-8-0. So that, unless he was mistaken, the amount of which the tax-payer would be deprived in the way of interest would be three times as great as that which the Municipality would save. The Municipal authorities wanted the use of Rs. 100 for two months, and of Rs. 100 more for one month, and on that plea they called upon the community to give them the use of Rs. 300 for three months. He had not had the same

opportunity of going into details that some Honorable Members seemed to have had ; but, looking at the proposition contained in this section in a general way, it did appear to him that it would impose a burden out of all proportion to the amount of benefit it would confer. For these reasons he had strong objections to the section as it stood. He ought to say, that he had also been under the impression that the late Chairman of the Bench of Justices had strongly recommended that a small reserve fund should gradually be formed, by temporarily increasing taxation for the purpose, if necessary. He thought that this suggestion deserved great consideration, both from the position and the ability of the gentleman who made it. He was not sure whether he was right in supposing that the Municipal rates were all strictly appropriated by law, and could be devoted only to the particular purpose for which they were raised ; whether for instance the police rate, even if collected in advance, could be used only for police purposes ? or whether it might be employed for general purposes ? It appeared to him at all events that the principle of levying in advance—especially with regard to the police and other rates of that kind—would be very objectionable ; and unless he should hear any argument which produced a change of opinion ; in his mind, he should be strongly disposed to support the amendment.

The Honorable Colonel MARRIOTT said he felt considerable hesitation in expressing an opinion on the matter. He understood the objects of the proposition to be two. First, to supply the deficiency which occurred in the interval between the time when the town duties were abolished, and the period when the new taxation in lieu of them came into operation and, secondly, that by levying the rates half-yearly there would be a considerable saving in the cost of the Municipal establishment. On the one side there would be a saving, and on the other a loss to the rate-payer. He was inclined to regard the matter as a form of additional taxation which being preferred by the Bench of Justices might be allowed. He confessed the objections urged against the section had made him feel a hesitation, and before he decided he should like to know what the state of the Municipal fund was, and what the permanent amount of the saving to the Municipality would be if the rates were paid six months in advance.

The Honorable the ADVOCATE GENERAL said that on the motion for the first reading of the Bill, although he had not formally opposed it, he had stated his disapproval of the principle of levying taxes in advance. In deference however to the opinions generally expressed by Honorable members in Committee, and as he saw no other way of providing for the pressing necessities of the Municipality, he had waived his objections, and he should accordingly vote against the amendment.

His Excellency the PRESIDENT thought the observations which had been made by the Honorable Mr. Erskine—and to which he had paid the greatest attention—were conclusive as against the proposition that the municipal taxes should be paid in advance. In the first place he thought that a change of this kind ought not to be adopted unless there was a very strong and predominant feeling in favour of it. It had been mentioned that a majority of the Standing Committee of the Bench of Justices had been opposed to the change, and that the Justices themselves at their meeting had been nearly equally divided on the subject ; and it seemed a fair inference from these facts that there was not a predominant feeling in favour of the change. It also seemed to him that the alteration would be likely to inflict a very great hardship upon a large class of the community, and he thought it would be possible in some other way to enable the municipal

authorities to meet their liabilities from time to time. The effect of the present proposal would be that the very difficulty from which the Municipality would be relieved, would be transferred to others, who would be compelled to pay the rates at the commencement of the quarter, though it might be that they did not till the end of that period obtain the means which would enable them to make the payment. The tax-payer would be put in exactly the same difficulty which it was sought to relieve the Municipality from. He was averse also to having recourse to a legislation which as far as he knew was without precedent either in this country or in England. He was not aware that the payment of rates in advance was required in the other great cities in India, and certainly there was he believed no example for it in England. At the same time though differing in degree the same inconvenience would affect Municipalities elsewhere. The Honorable Mr. Ellis had said that the difficulty was that in India salaries were paid monthly, while the rates were levied only quarterly. But in England a large portion of the salaries were necessarily paid by Municipalities weekly, others monthly, and the remainder quarterly, while the rates themselves, though some of them were payable quarterly were in practice for the most part paid half-yearly. The same difficulty might therefore be said to exist elsewhere, while the exceptional legislation now proposed did not. It seemed to him that the obvious remedy in the present case was for the Municipality to have a cash balance in hand. With regard to the point as to whether the taxes if paid in advance would be applicable only to the particular purposes for which the rates had been intended, or whether they would be available for the general purposes of the Municipality, His Excellency remarked that he saw nothing in the Bill which dealt with this question, and he wished to know if any member of the Council could tell him whether these taxes when they were received were paid into a special account kept by the Municipality with their bankers or their treasurers, or whether they were paid in to the general credit of the Municipality. If they were not paid in to the general credit of the Municipality, then of course they were by law only applicable to the particular expenditure for which they were levied. He would be glad to find the Council willing to meet the wants of the Municipality by facilitating the raising of a small loan, or by enabling it in some other manner to obtain a cash balance, which would meet the difficulty at present experienced. The alteration which was now proposed appeared to him in the first place to be novel in principle, and unknown to other municipalities, and in the next place to be likely to cause considerable distress to a large class of the community.

The Honorable Mr. MUNGULDASS observed that all the Municipal rates were paid in advance previous to 1857.

The Honorable Mr. ELLIS, in reply to the observations which had fallen from honorable members in regard to the Honorable Mr. Foggo's remarks, said the first point to which Mr. Foggo had taken objection was what he (Mr. Ellis) had represented the opinion embodied in the Bill as that of the majority of the Justices in the matter. If they were not to be guided by the opinions of the majority, he knew of no other way in which they could be guided. He would take occasion to say, with regard to the standing committee of the Bench, that Mr. Foggo was in error in saying that it was a special committee. The report was made by the standing committee, consisting of gentlemen who were not chosen for any special qualifications for such a subject, and who dealt with all ordinary matters which were not of sufficient importance to require a select committee. This matter had been very fully considered at the Bench, and after a long discussion, and not at all in a hole and corner way, the Bench



expressed its opinion in favour of the principle,—a principle which, he took it, must be regarded as the deliberate opinion of the Justices. His Excellency had already said that the true principle was to have a cash balance ; and so it undoubtedly was ; but at the present moment they had not cash balance to deal with.

His EXCELLENCY the PRESIDENT explained that he said that a cash balance was the right principle, but that it might be difficult to get one. The difficulty might be temporarily met by raising a loan, and upon that balance the Municipality might so regulate their income as to be able to have after a very short period a reserve fund.

The Honorable Mr. ELLIS said he could conceive nothing more demoralising than having to raise a loan for the temporary requirements of the Municipality. When a great work had to be carried out, in the benefit of which future generations would participate, then he thought a loan was a legitimate way of providing the means. But when the money was required for mere current expenses he could see no worse mode of raising it. He should be very sorry to see such a principle adopted in the Bombay Municipality, and he believed that it would be very false economy in the end. The other objections which had been raised were that by the operation of the section, great distress would be occasioned to the owners of houses who would have to pay the house assessment in advance, or else they would have to wait for their rents. His Excellency might not be aware that in the great majority of cases the house owners received their rent monthly, and not quarterly. The picture drawn by Mr. Foggo of 15,000 owners of houses who would be left without the means of meeting the demand upon them for the rates was much overdrawn ; for at the most the time they would have to wait for their rents would be one month. Again he could not concur with Mr. Erskine in thinking that this case was not analogous to that of the License Tax to which he referred. Mr. Erskine had said that the License Tax enabled a person to carry on his trade, but the money came out of his profits of trade all the same ; and if they took it out of a person's profits in advance, then it would be very analogous to the case in which they called upon the owner to pay his rates in advance. The objection that the money thus raised was not available for general purposes was quite true with regard to the police rate and halalcore cess ; for they being for special objects, could not be diverted or used for any other purposes than those for which they were raised. But the house tax was for general purposes, while the halalcore and police rates were for specific purposes, and it was quite right that the same mode adopted with regard to the rate for general purposes for payment of the current general establishments should be followed in the case of the special rates for payment of the special establishments. With regard to the observations which fell from His Excellency as to the application of the funds, and as to whether they were all credited to general purposes or kept distinct, he might say that the course taken was to credit the Municipality with the funds collected, under the heads of police, water supply, halalcore cess, and so on, and that if at the end of the year when the accounts were balanced, there was any amount that had not been spent on the purpose for which it was raised, it was carried forward. He (Mr. Ellis) believed this was the course adopted ; he was not sure whether there was any one present who could put him right if he was wrong, because the honorable member who had spoken had said he was sorry he had no knowledge of Municipal accounts. He (Mr. Ellis) could only say it was not so much the duty of the Legislature, as of the Bench of Justices, to get information as to the accounts of the Municipality. The Legislature made checks for the purpose, and if the

provisions of the Legislature were not made available by the Bench of Justices, it was not the fault of the Legislature, but that of the Justices themselves, who had the remedy in their own hands. He regretted that he had not been able to comply with the demand of Colonel Marriott, for he was not in a position to do so; however he had given the Council all the information he could. It was in a great measure to retrieve the Municipality's false position, and place it upon a sound basis that the proposition contained in the clause was now made. He was very confident that the fears as to the hardship which would be entailed on the rate-payers by the collection of the rates in advance, had been over-estimated, for he was quite sure that the native members, who knew what the real feelings and opinions of the natives were, would never give their consent to the proposition if they thought it would entail so much hardship. He repeated he had great confidence, for the native members were of course in a much better position to know what the effect would be on the poorer rate-payers, than any European gentleman could be, however energetic and well-informed. He trusted the Council would affirm the clause by rejecting the amendment.

The Honorable Mr. FOGGO would say a few words in reply to the arguments advanced against his motion. As to what had been said about the license tax being levied in advance, he could not think that the Council would admit the argument that if an injustice was done in one case it might be in another. As to the standing committee not being a committee appointed specially to inquire into this question but a committee permanently appointed, he might say—as he did not happen to be upon it—that it was composed of the *elite* of the Justices, and that their report was of so much the more force; and that their deliberations would be entitled to so much the more weight from their being a standing committee, than if they had been a committee appointed on the spur of the moment.

The Council divided on Mr. FOGGO's amendment :—

~~Ayes—2.~~  
The Honorable Mr. FOGGO.  
The Honorable Mr. ERSKINE.

Noes—5.  
The Honorable Mr. ELLIS.  
The Honorable Mr. MUNGULDASS.  
The Honorable Mr. FRAMJEE.  
The Honorable Colonel MARRIOTT.  
The Honorable the ADVOCATE GENERAL.

The amendment was accordingly lost.

The Honorable Mr. ELLIS said he had already alluded to the amendment which he proposed to make to the first section, and he thought it would be favourably received, as it was in favour of those who would be affected by the change from the quarterly collection in arrear, to the half-yearly collection in advance. The payment in advance would render a person liable in July, for three months of arrears, and for three months in advance; but if they added to that the change in the payment from quarterly to half-yearly payments, it was obvious that the rate-payer would have to pay not one quarter, but two quarters in advance and one in arrears. He had thought that would be too heavy a demand to make, and in order that no person should be subjected to it, the Municipality should be satisfied with receiving one quarterly instalment (in arrears) on the 1st July next, and one quarterly instalment in advance; and that on the 1st October, the third and last quarterly instalment should be due. From January the half-yearly instalment might be collected in advance. This would enable the Commissioner to reduce the Municipal establishment considerably;

but it would be better, rather than to let the burden press heavily upon any one, to postpone the reduction in the establishment. In reply to a question from His Excellency, the Honorable Mr. Ellis said the operation of the alteration in the clause would be, that nobody would have to pay more than six months rates at a time. He then moved that after the ninth line of Section I. the following words be inserted :—

“ Thereof in quarterly instalments in the following manner; that is to say, on the 1st July next one quarterly instalment in arrears shall then be due and leviable for the second quarter of 1867, and a further quarterly instalment shall be then due and leviable in advance for the third quarter of 1867, and on the 1st October next ensuing the fourth and last quarterly instalment for the year 1867 shall be then due and leviable, and on and after the 1st January next ensuing the annual rate of 5 per centum leviable upon houses, buildings, and lands in the city of Bombay under this section, shall be payable by the owners,”

The honorable member having again explained that the object of this addition was to lighten the burden which would be thrown upon the tax-payers by the two changes—viz. that by which the rates were made payable in advance, and that by which they would be levied half-yearly—coming into operation at once.

The question was put, and the words were inserted after line 9.

The Honorable Mr. MUNGULDASS, in accordance with the notice he had given, then moved that in Section I., line 5 from the end, of the Municipal Act Amendment Bill, the word “ten” be omitted and that the words “seven and a half” be substituted. In doing so, he said he would merely move the proposition as he had already expressed his views on the subject, but would afterwards take the liberty to reply to any objection that might be raised.

The Honorable Mr. ELLIS begged to say a few words on the subject, as he had been previously appealed to by Mr. Munguldass. He (Mr. Ellis) had consistently held the opinion throughout, that it was quite useless to insert as a maximum of taxation on house property an amount which no one was prepared to impose. And it was proper that they should restrict themselves to that which would in an emergency be necessary, he was quite sure that no attempt to raise the full maximum of 10 per cent. upon house property would be made, for it would be met with such general dissatisfaction that it could not possibly be carried out, and he believed that there were very few persons who would propose it, although he knew there were those who thought it best to keep the sword hanging over the heads of the householders by retaining the maximum at 10 per cent. In accordance with the view he had expressed, he should support the amendment of the honorable member. A majority of the Justices had decided that the amendment now proposed should not be inserted in the Bill, and that 10 per cent. should be retained; and he thought that in deference to their opinion the proposition should be retained in the Bill, when it came before the Council. He would mention, as so much stress has been laid on the opinions of the standing committee, by whom the matter had been discussed, that they were in favour of Mr. Munguldass' proposition. They decided by a majority that it was expedient to lower from 10 to 7½ per cent. the maximum rate on house property; and as Mr. Foggo had such confidence in the *elite* of the Justices, who, he said, formed the committee, the honorable gentleman would probably vote in favour of Mr. Munguldass' motion.

The Honorable Mr. FOGGO said his honorable friend was mistaken on that point. He had great confidence in the opinion of the standing committee, but he intended to vote against the amendment proposed by the Honorable Mr. Munguldass. Without wishing to see the House tax raised to ten per cent., he thought it was an unexceptionable source of revenue.

The Honorable Colonel MARRIOTT thought that it was in general undesirable that the Council should go into opposition to the wishes of the Bench of Justices, in a matter in which they were interested, but houses and land were ultimately responsible for the Municipal expenditure, and as the Municipality was far from being in a wealthy condition, it was desirable that there should be some resource to meet that expenditure without going to the Council for new legislation every time the Municipal income required to be extended. The proper source for such extension was the House and Land Tax.

The Honorable Mr. FRAMJEE NUSSERAWANJEE was in favour of the amendment.

The Honorable Mr. ERSKINE thought there were cases in which this Council would hesitate to act on the recommendations or views of the Justices. When the Bench of Justices recommended this Council to impose any kind of tax which would fall upon persons who were not resident in this City; or when they proposed to this Council that it should levy an unexceptionable tax in a manner which was unusual and burdensome, and to which many persons objected; then this Council would be obliged to consider whether it was not its duty to decide against the views of the Bench. But when the Bench were expressing the greatest anxiety as to their ability to raise a sufficient revenue, and at the same time concurred in asking for authority to raise, as occasion requires, a most unexceptionable tax to a certain stated maximum rate; then very great weight was due to their opinion. The question of a House Tax was considered very carefully two years ago, when the Municipal Act was passed; and the maximum rate of 10 per cent. was then inserted in the Bombay Municipal Act, as it had been inserted in the Municipal Act for Calcutta. He did not see that any reason had been given for reducing the maximum; and he was not prepared to say that the alteration moved by the Honorable Mr. Munguldass should be assented to.

The Honorable the ADVOCATE GENERAL was opposed to the amendment. Nothing he had heard, either here or elsewhere had led him to form an opinion that the law as it stood in the 47th section of Act No. II. of 1865 should be altered. He was not aware that any reason was now advanced to lead to an alteration in the rate which had not been put forward when that Act was under discussion.

The Honorable Mr. MUNGULDASS in reply admitted that the House rate in Calcutta was ten per cent., but in Calcutta there was no Police Tax, no Lighting Tax, and he was certain there was no Water Tax. As all these taxes were levied in Bombay, the amount of taxation was very large. The poor class of householders would suffer severely if they were called upon to pay not only six months' taxes in advance, but also to pay a House Tax at the rate of ten per cent. If ten per cent. had been a fair sum to levy from householders, and if it could be borne by the householders without hardship, it might be believed that the Bench of Justices would long ago have levied that amount instead of proposing to increase the revenue by Town Duties and a License Tax. Bombay was taxed more heavily for Municipal purposes than any city in India, or as far as his information went, even in England. If this tax was to be levied what was the use of conferring the power of levying fresh taxes? Why don't they (the Justices) raise the House Tax to 10 per cent.? The Municipal Commissioner had always complained that the funds at his disposal were not sufficient for the carrying on of the im-

provements necessary in Bombay, and nevertheless he had several times publicly stated, knowing the heavy burden which fell on householders, that he could not recommend the House Tax to be raised beyond six per cent. Besides there was an immense amount of landed property in the hands of trustees under liquidation for which among other reasons, owing to this impending fearful rate any thing like a fair value could not be obtained. He did not see therefore the slightest use in keeping ten per cent, hanging over the heads of householders.

The Council then divided :—

*Ayes—3.*

The Honorable Mr. ELLIS.  
The Honorable Mr. MUNGULDASS.  
The Honorable Mr. FRAMJEE NUSSE-  
WANJEE.

*Noes—4.*

The Honorable Mr. ERSKINE.  
The Honorable the ADVOCATE GENERAL.  
The Honorable Mr. FOGGO.  
The Honorable Colonel MARRIOTT.

The Amendment was therefore lost.

In reference to Section V. His Excellency the PRESIDENT suggested that there should be some provision here, as to the time within which application to refund should be made, and that there should be some tribunal where the questions raised could be taken to.

The Honorable Mr. ELLIS said he thought the Petty Sessions would take cognizance of cases under the section of the general Act. Section XVIII. of the present Bill referred to the refund to occupiers. Notice was to be given to the Commissioner when the occupier vacated within seven days.

His Excellency the PRESIDENT remarked that there was no specific provision of the kind, and it would be well to introduce such a provision; this could be done after the clause relating to refunds.

In reference to Section VII., the Honorable Mr. ELLIS explained that under this section the owner of property was to give the Commissioner a list of his tenants, and the amount for which the property was liable to be assessed, 15 days before the 1st January and the 1st July. This year, property would also be liable to assessment on the 1st October, but it would not be necessary to call on the owners of property to give fresh lists for the assessment on that one quarter.

The following alterations were made :—

In line 2, Section VIII., the word "any" was substituted for the word "the."

In lines 2 and 3 of the same Section, the word "otherwise" was omitted, and the following words substituted :—"by reason of any portion of the house, building, or land being without a tenant."

In lines 4 and 5 of the same Section the words "made by the tenants" were omitted.

In line 5 of Section XI. the words "or Halalcore cess" were inserted after the word "Rate."

After line 7, the following words were added to Section XI.—"Provided that no moneys shall be recovered from any person who was not liable to assessment under the said Act."

After Section XVIII. the following Section was introduced :—

"XIX. All questions and disputes which may arise under Sections V., XII., and XVIII. of this Act, shall be determined by the Court of Petty Sessions."

The Honorable Colonel MARRIOTT moved that the words "or prejudicial," in the sixth and seventh lines of Section XXI., be omitted.

The question was put to the vote:—

*Ayes—3.*

The Honorable Col. MARRIOTT.  
The Honorable Mr. MUNGULDASS.  
The Honorable Mr. FRAMJEE.

*Noes—4.*

The Honorable Mr. ELLIS.  
The Honorable Mr. ERSKINE.  
The Honorable Mr. FOGGO.  
The Honorable the ADVOCATE GENERAL.

The Amendment was lost.

In line 19 of Section XXV., the word "the" was erased, and the word "such" substituted, and in the following line the words "thus mortgaged" were omitted.

After Section XXVI. the following Section was introduced:—

"Section CCXL. of the Bombay Municipal Act of 1865 shall be read as if between the words 'upon' and 'the,' in the first line of the said Section, the following had been inserted:— 'The Justices of the Peace for the city of Bombay or any of them, or.'"

In the Schedule, Class II., lines 2 and 3, the words "not being a Regimental Military officer in the service of Her Majesty in Bombay," were omitted, and the following words were substituted:—"in the service of Her Majesty in Bombay, not being a Regimental Military officer." In the fifth line of the same Class the words "whose salary" were omitted, and the words "provided the salary of such a person" were substituted.

In Classes III. and IV., lines 2 and 3, and line 5, the same alterations were made.

In the 18th line of Class II., the words "Cotton, Hide, or other screws" were omitted, and the following words were substituted:—"Screws for the pressure of Cotton, Hides, or other things."

Bill read a third time, and passed.

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

Colonel Marriott moves the second reading of Military Cantonments Bill.

The Honorable Colonel MARRIOTT moved the second reading of the Military Cantonments Bill.

Bill read a second time and considered in detail.

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

In line 2 of Section XXXII., the word "Bombay" was inserted before the word "Cantonment."

Bill read a third time and passed.

On the motion of the Honorable Colonel MARRIOTT the Bill was read a third time and passed.

His Excellency the PRESIDENT adjourned the Council.

W. WEDDERBURN,

Acting Under-Secretary to Government.

Bombay Castle, 25th April 1867.

9 lp

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

The Council met at Poona, on Tuesday, the 3rd September 1867, mid-day.

*P R E S E N T :*

The Right Honorable W. R. S. V. FITZGERALD, Governor of Bombay, *presiding.*

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

The Honorable B. H. ELLIS.

The Honorable S. MANSFIELD.

The Honorable the ADVOCATE GENERAL.

The Honorable SHREENIVAS RAOJEE RAO SAHEB PUNT PRUTINIDHI.

The Honorable MUNGULDASS NUTHOOBHOY.

The Honorable G. FOGGO.

The Honorable FRAMJEE NUSSERWANJEE PATEL.

The Honorable Colonel W. F. MARRIOTT, *C.S.I.*

The Honorable ALEXANDER BROWN.

The Honorable ALEXANDER BROWN took the usual affirmation of Office, &c., taken by Mr. Brown. 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 Bill to amend (Bombay) Act No. XIV. of 1866.
- 2.—Letter from the Government of India, conveying the assent of His Excellency the Viceroy to the Cantonment Bill.
- 3.—Letter from the Government of India, conveying the assent of His Excellency the Viceroy to the Municipal Act Amendment Bill.
- 4.—Report of the Select Committee on the Liquor License Bill.

On the Report of the Select Committee on the Liquor License Bill being presented to the Council, the Honorable Mr. ELLIS said he did not propose

Mr. Ellis proposes that the report of the Select Committee on Liquor License Bill and the Bill as amended be translated, and gives notice that he will proceed with the Bill at the next meeting of Council.

to take any further steps in regard to this Bill that day, inasmuch as the report and the amended Bill had only just come into the hands of the members of the Council; and it was very necessary that both the report and the new Bill should be translated without delay into the Marathi and Guzerathi languages, in order that the people of Bombay, whom they

specially affected, might have an opportunity of learning how very different the provisions of the Bill as now amended were from those which had been embodied in the first draft. He would therefore propose merely to give notice that he would proceed with the Bill at the next meeting of Council; and in the meantime it should be translated with as little delay as possible.

10 *lp*

On a question from His Excellency the President as to how the Bill would be made public, the Honorable Mr. ELLIS said it will be published in the next issue of the *Government Gazette*, and he hoped the translations would be made immediately. The translations might be published in a supplement to the *Gazette* as soon as they were ready, but there was no objection to the Report and amended Bill as at present submitted appearing in the next *Gazette*.

The Honorable Mr. ELLIS moved the first reading of a Bill to amend the Schedule annexed to Act XII. of 1866 (Bombay). The honorable member said that as this was a very short Bill, and as the provisions of it were very simple, he would not propose that any Select Committee should be appointed to report upon it.

Mr. Ellis moves the first reading of the Bill to amend the Schedule annexed to Act No. XII. of 1866 (Bombay).

They would be able to consider it in detail without much difficulty in Council, and there was nothing in the principle of it that had not been already affirmed. Its object was merely to extend an Act which was passed in 1866, and by which certain of the Ameers of Sind were—not absolutely exempted from processes of Court—but were placed so far beyond the ordinary rule that all processes were to be executed only through the Commissioner of Sind, it being required that a reference should be made to him before finally dealing with their property under decrees. There was one very remarkable omission in that Act, for while the males of the Ameers' families were thus protected, no mention was made of the ladies; and as these were entitled to such protection as much as the Ameers themselves, this Bill had been introduced to amend the former Act by extending the privilege to the ladies of the Ameers' families. He would not propose to do more on this occasion than move the first reading of the Bill, and at the next meeting he would move that it be read a second time. In the meanwhile His Highness Meer Mahomed Khan would arrive in Poona, and if there was anything objectionable in the Bill, the Council would have the benefit of hearing what he had to say.

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

The Honorable Mr. ELLIS in moving for the first reading of Bill No. 5 of 1867 (a Bill for the regulation of the Police in the Presidency of Bombay), said that this and the Village Police Bill No. 6 of 1867 were intimately connected with one another, being both for the regulation of the Police of this Presidency. The first Bill was based upon Act V. of 1861, which was the law throughout the Bengal Presidency and North-West Provinces; and the other was based on the existing regulations of this Presidency for the control of the Village Police. The former Bill had for some time been a very urgent necessity. When Act V. of 1861 was passed by the Council of India it was provided that the Act should be applicable not only to the Bengal Presidency, but to all the other Presidencies, on application being made by the local Government and on the sanction of the Governor General in Council being promulgated in the *Gazette*. This sanction however was never applied for by the Government of Bombay, as it was considered that considerable amendments were needed in the Act to adapt it to the requirements of this Presidency. The Madras Government likewise, having an Act of their own for the regulation of their Police, had always declined to apply for the extension of Act V. of 1861, although their own Act did not differ very materially from it. In consequence of the opinion of this Government that some of the provisions of Act V. were inapplicable to this Presidency, other Police Bills were drafted in 1862, and

Mr. Ellis moves for the first reading of the Police Bill No. 5 of 1867.



brought before this Council by the Honorable Mr. Frere. These Bills went through several stages, but at the last moment were opposed by Mr. Inverarity (then a member of this Council) for various reasons which it was not necessary now to allude to particularly: he might state, however, that the principal reason for that opposition was that the Bills embodied various matters which did not legitimately relate to the Police. On this account the Bills remained in abeyance, and afterwards, when Mr. Frere left, they were handed to him (Mr. Ellis) to take charge of; but as he considered there was a good deal of force in the objection, that there was much extraneous matter in them which had better form the subject of separate Bills if necessary at all, he proceeded no further in the matter. There was also some slight discussion outside this Council—he meant in the Executive Council—as to the exact quantity of Act V. of 1861 which it would be desirable to import into this Presidency. These discussions were now ended, and he was able to lay before the Council a Bill which embodied the views of Government with respect to the portions of Act V. that would be proper for this Presidency. The points of difference were briefly alluded to in the Statement of Objects and Reasons, and although there were not many, they were rather essential. One great point in Act V. of 1861 was that it presupposed that any person enlisted in the Police was enlisted for service throughout the Presidency, and might be called upon to serve in any part of it, and it required him to bind himself for such service. It was obvious, however, that the Bheel, who would take service in Khandeish, might refuse altogether to take service if that service were to be in Canara; and the Beloochee, who would willingly take service in Sind, would object entirely if it was supposed that his services were to be for the Deccan or Guzerat. On the other hand there had not been the slightest difficulty found in this Presidency in moving the Police of one district to act in another when circumstances rendered this necessary, they knowing well that such service was required of them only temporarily, and that they would return to the country to which they belonged. It was universally considered by the best officers of Police that it would be highly objectionable to require men engaged in the Police in this Presidency to bind themselves for service throughout the Presidency without reference to the province in which they had been born and the language with which they were acquainted. Practically no difficulty was experienced under the present system, because whenever there was any occasion for the services of men elsewhere, they went elsewhere, but they returned to their own country, and that made all the difference in the world. There was another point of difference with regard to the appointment of an Inspector General of Police. He (Mr. Ellis) had always been strongly of opinion that an Inspector General of Police was not only unnecessary but would be mischievous in this Presidency, but all difference of opinion which had existed on the point had been got over in the present Bill by leaving it optional to the Government of the day, according to the views which might be entertained at the time to appoint an Inspector General, as there was in Bengal, or to delegate the powers of the Inspector General to the Commissioners of Police, as they were called in this Presidency. There were other points of minor importance which might be taken into consideration when the Bill was considered in detail. At present it was only necessary for him to point out the very great need of a Bill to regulate the Police, inasmuch as this Government had not applied for an extension of Act V. of 1861 to this Presidency, and inasmuch as Act XVII. of 1862, passed by the Government of India, repealed all the enactments previously existing in this Presidency, in the anticipation that an application

would be made for an extension of Act V. Owing to the circumstances he had stated, this Presidency had been since 1862 without any law whatever for the regulation of the Police. He need hardly remind the Council that the existence of a Police unsanctioned by law was not desirable, and that the discipline of the Police must suffer very considerably—and it had suffered—owing to there being no proper control over them. Therefore it was highly expedient that they should proceed to pass this Bill as soon as it might seem proper to the Council to do so. He begged leave to move that Bill No. 5 of 1867 be now read a first time.

The Bill was read a first time, and on the motion of the Honorable Mr. ELLIS it was referred to a Select Committee, consisting of the Honorable Mr. Mansfield, the Honorable Col. Marriott, the Honorable Mr. Munguldass Nuthoobhoy, and the Mover, with instructions to report to the first meeting of Council after the 15th of the present month.

The Honorable Mr. ELLIS, in moving the first reading of Bill No. 6 of 1867 (a Bill for the Regulation of the Village Police in the Presidency of Bombay), said he would not make many remarks on the Bill because it was merely an adaptation of the existing regulations to fit in with the machinery of the Bill which was now being introduced for the District Police. As he had already explained, a similar Bill was introduced in the Council in 1862, and was not proceeded with because the sister Bill for the regulation of the District Police was then abandoned. He moved that the Bill be read a first time.

The Bill was then read a first time, and was, on the motion of the Honorable Mr. Ellis, referred to a Select Committee consisting of the same honorable gentlemen as in the previous case, with instructions to report on the same date.

The Honorable Mr. MUNGULDASS NUTHOOBHAY moved that the second reading of the Town Dues Bill be postponed till the end of November next. In doing so the honorable member said he would briefly state his reasons. The honorable members were aware that since the introduction of this Bill the Municipal income had been greatly increased. Government having made over to the Municipality the revenue derivable from the duty on ganja and tobacco, it was supposed that this source of income would yield to the Municipality about Rs. 1½ lakhs every year. Government had been pleased to point out to the Government of India the injustice done to the Bombay Municipality by making it bear the whole expense of the Police, while the Municipalities of the other Presidencies contributed a portion, and had recommended that until the other Presidencies paid for the Police (and for the current year the amount had already been paid to the Municipality), Government ought to contribute a sum of a lakh and half towards the Police expenses every year. The demand being just, and having been supported by Government, they might fairly hope to obtain the sanction of the Supreme Government to the contribution. The enlarged Schedule of the Municipal License Tax which had been substituted in place of the former one in Act IV. of 1867, and which had now passed into law, was expected to yield about two lakhs more than before. Some income might also be expected on account of Vehar Water supplied to public departments. If all these calculations were found at the end of the year to be correct,

the additional amount thus realized would probably be found sufficient with economy to enable the work of municipal improvement to be carried on without resorting to fresh taxation.

The motion was agreed to.

The Honorable Colonel MARRIOTT moved for leave to withdraw the Bill for the relief of Insolvent Debtors within the Presidency of Bombay. He said he was reminded that not one member of the present Council saw the introduction of this measure, and that but one beside himself had been present at its last appearance. A short review of its history would be therefore proper. Until 1862 there was a Bankruptcy Court established for the relief of Insolvent Debtors at Kurrachee, but doubts of its legal status arose, and in consequence its operations were suspended with the intention of immediately providing for its reconstitution by regular legislative procedure. The benefits which were stated to have attended the operation of that court led to the consideration of an extension of the system to other territory, but the Governor General having declined to entertain a Bill of the nature for all India, the Bill which was prepared was restricted to this Presidency. The Bill was introduced by the Honorable Mr. Frere, having been prepared by him in conjunction with the then Advocate General—the Honorable Mr. Lewis—and was founded on, and as far as might be exactly corresponded to, the existing Acts of the English legislature. It met with no opposition then, he believed, in the Council, and it was referred to a Select Committee who, having perfected it as far as possible, noted in their report that there were one or two points which, under the Indian Councils' Act, required to be referred to the Governor General. The reply which was received from the Governor General contained no objection on the points referred, but drew attention to one or two points of detail which presented no serious difficulty to the progress of the Bill. By that time Mr. Lewis was dead, and Mr. Frere had vacated his seat at the Council, and as H. E. Sir Bartle Frere believed that it would meet with no opposition, and that it was complete in nearly all its details, and only required to be carried through its final stages, the President requested him (Colonel Marriott) to take charge of the Bill. It was only on the understanding that it was merely a formal charge that he felt justified in complying with His Excellency's request. He mentioned this much to acquit himself of the presumption, as it might seem to those who were ignorant of the history of the Bill, of his taking charge of a legislative measure which in its complicated details so specially required much professional research and experience, and the matter of which though the subject of legislative regulation from the earliest times of civilization in Europe remains to the present day with its first principles unestablished by any very general consent. The Select Committee was at that time reduced to himself and the Honorable Mr. White, then acting Advocate General. Mr. White held very strongly that there was no necessity for legislative action in the matter, and the more he (Colonel Marriott) considered the subject the more it was forced upon him that at least there was the greatest objection to such partial legislation—partial he meant in respect of its territorial reach. It seemed to him there would be the greatest inconvenience in respect of the inability to take the cognizance of property belonging to the bankrupt out of this Presidency; and the Courts of other Presidencies could not take action in such matter. Mr. White and himself therefore both felt that they could not report to the Council in favour of the progress of the Bill. Mr. White, as he had already said, thought the Bill was uncalled for; and for his own part he (Colonel

Marriott) did not pretend to have an independent opinion on the point, and was unwilling to disregard altogether the numerous opinions in favour of it which were at that time expressed. Subsequently the Governor General was again addressed with the view of ascertaining whether such a Bill might not be entertained for all India, and the result was an affirmation of the previous objections—a reference to the action then being taken by the imperial legislature for a revision of the whole law on the subject—and an intimation that the utmost the Governor General could recommend was that the Act which it was then proposed to pass in England should contain provisions for its extension to the Ports of India. So that whatever views might be entertained about the Bill, he thought it was quite clear that this Council was not in a position to entertain any such measure at present, and that it must be postponed until they should see the result of the legislative action at home, and how the Act that might be framed there would operate in the larger Port Towns of India. As there could be no idea of extending such an enactment to the Mofussil within a reasonable time, he considered it advisable that the present Bill should be altogether withdrawn.

The motion was agreed to.

The Honorable Mr. ELLIS moved for leave to withdraw the two old Police Bills Nos. 21 and 22 of 1862. He apprehended there would be no objection to these Bills being withdrawn. He had already, in introducing the new Bills, stated the circumstances under which these old Bills were first introduced in the Council, and the circumstances under which they were now withdrawn. All the provisions in them which were deemed necessary, and which were approved, had been engrafted in the Bills that were now before the Council, and the extraneous matter which seemed out of place in a Police Bill had been discarded and withdrawn. Therefore it only remained as a matter of form to move for leave to withdraw these two old Bills, which were rendered quite unnecessary by the introduction of the new Bills.

Mr. Ellis moves for leave to withdraw the old Police Bills, Nos. 21 and 22 of 1862.

Leave was given to withdraw the Bills.

The Honorable Mr. ELLIS moved that the time for presenting the report of the Select Committee on the Quarantine Bill should be extended to the first meeting of Council after 15th September next. Considerable difficulty had been found in getting the members of Committee together, owing to their absence in Bombay and their duties preventing them from being in Poona. On this account they had been prevented from preparing the report.

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

His Excellency the PRESIDENT thought it was a question which rather pressed for legislation.

The Honorable Mr. ELLIS mentioned that the Bill had actually been carried into operation already. On information having been received that serious epidemics had broken out in Mauritius and Bushire, Government took upon itself to issue notifications which could only have been legal supposing this Bill to have passed.

The motion was carried.

His Excellency the PRESIDENT adjourned the Council.

N. DANIELL,

Poona, 3rd September 1867.

Acting Under Secretary to Government.

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

The Council met at Poona, on Thursday, the 26th September 1867, mid-day.

*P R E S E N T :*

The Right Honorable W. R. S. V. FITZGERALD, Governor of Bombay, *presiding*.

The Honorable B. H. ELLIS.

The Honorable S. MANSFIELD.

The Honorable SHREENIVAS RAOJEE RAO SAHEB PUNT PRUTINIDHI.

The Honorable MUNGULDASS NUTHOOBHOY.

His Highness the Honorable MEER MAHOMED KHAN, TALPORE.

The Honorable FRAMJEE NUSSEERWANJEE PATEL.

The Honorable Colonel W. F. MARRIOTT, *C.S.I.*

The second report of the Select Committee on the Quarantine Bill presented to the Council.

The second report of the Select Committee on the Quarantine Bill was presented to the Council.

The Honorable Mr. ELLIS moved the second reading of Bill No. 6 of 1866 (a Bill for the better sanitary regulation of the city of Bombay), and in doing so reminded the Council that the Bill which was now before them was a very different one from that which under the name of the Quarantine Bill had been laid before the Council some months ago. The main alteration was effected by the first Select Committee appointed to consider the Bill. That Committee recommended that instead of a Quarantine Bill a Bill for the better sanitary regulation of the city of Bombay should be framed as a part of the Municipal Amendment Act which was then before Council; but it would be in the recollection of His Excellency and the other members of Council that in drawing up the clauses which had been deemed by the Committee suitable for insertion in that Bill, a very important omission was made, and the people of the city became somewhat alarmed lest the intention of the framers of the Bill might be that a person should be rendered liable to be dragged from his house and carried off by the Sanitary Commissioner to some unknown place called a sanitarium. It was explained when the petition was presented to Council that this was of course very far from the intention of the framers of the Sections; but as there was undoubtedly an important omission in those Sections, the Bill was referred back to the Select Committee for reconsideration and for further report. This report had now been placed before the Council, and it would be seen that in the first place the necessary amendment had been made, and that the words—very important words—which defined the class of persons who were liable to be ordered to a sanitarium had been placed in the body of the Bill. The form of the Bill also was altered, inasmuch as the Municipal Act having passed there was no longer any opportunity of embodying these Sections in it, and a substantive Bill had therefore been framed entitled "a Bill for the better Sanitary regulation of the City of Bombay." The Bill as originally introduced was certainly a very unsatisfactory one, and he was not quite satisfied that the Bill as now presented to the Council was perfect, but there was a very important object which would be effected by it,—and that was the giving of legal powers to the Health Officer and the Consulting Officer

of Health to take such measures as might be deemed necessary for the prevention and spread of infectious disease. That object, at any rate, he hoped, would be attained by the Bill as it now stood. The principle of the Bill being, as he had stated, and the measure not being a Quarantine Bill like the one originally drafted, he begged to move that it be now read a second time. He did not anticipate that in its present form the Bill would meet with any opposition.

Bill read a second time and considered in detail.

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

In line 6 of Section 1 after the words "to life," the words "from time to time" were inserted, and in line 9 the words "from time to time" were omitted.

The Honorable Mr. ELLIS said the reason of these alterations was that it might be necessary to make a place a sanitarium which had not been one before, and to alter a sanitarium altogether.

In considering Section 2, the Honorable Mr. ELLIS said the Consulting Officer of Health was a person already defined by regulation in the Municipal Act, and that he was a Municipal Officer.

His Excellency the PRESIDENT said it was a point for consideration whether it was quite consistent to put an officer who was appointed by the Government under the control of an officer who was not appointed by the Government.

The Honorable Mr. ELLIS said the Consulting Officer would be appointed by Government, but would be paid by the Municipality.

His Excellency the PRESIDENT asked if he could be removed by Government.

The Honorable Mr. MUNGULDASS said he could, upon a representation from the Bench of Justices.

His Excellency the PRESIDENT inquired whether there should be a representation from a majority of the Justices.

The Honorable Mr. MUNGULDASS thought there must be a representation by two-thirds of the Justices in meeting assembled.

His Excellency the PRESIDENT said that if that was the case it seemed to him there was an objection to putting the Health Officer,—an officer of the Government,—under the control and direction of an officer who was paid by an independent body. And he would like to have it considered whether it was at all necessary that the Health Officer should have any other authority than over vessels in the port and persons on board such vessels; and why the sanitary regulation of the city should not be left entirely in the hands of the Consulting Officer of Health and those who might be appointed to assist him. He only threw this out for consideration.

The Honorable Mr. ELLIS thought they obtained an increase of power by having the authority of both available in both cases. The points which had to be decided on were often of an emergent character, and if one of those officers happened to be absent the other could deal with the matter; by the alteration which had just been suggested, neither of them would be able to interfere within the limits of the other.

His Excellency the PRESIDENT pointed out that they would be giving an officer of the Municipality control over the Port Officer, and thus practically giving him control over the vessels, the masters of the vessels, and the persons on board. That was a power which was certainly not ordinarily incidental to Municipal government.

The Honorable Mr. ELLIS mentioned that the Health Officer of the Port was also partly paid by the Municipality as being in medical charge of the Municipal Police. These two offices were united. He believed also that the Municipal Commissioner had expressed a fear that the Health Officer and the Consulting Officer might clash if one was not directly subordinate to the other. He remembered that the Municipal Commissioner had said so verbally if not in writing. One of those officers was to receive Rs. 2,000, while the other received Rs. 500, and it was therefore considered desirable that the officer whose pay was Rs. 500 should be held in subordination to the one who received Rs. 2,000, the duties of both being of a similar character.

His Excellency the PRESIDENT—Has the Municipal Commissioner at present any authority at all over the port or over the vessels in the port?

The Honorable Mr. ELLIS replied that he had authority so far as the port was within the limits of the city of Bombay, but that there was nothing to take him on the water.

His Excellency the PRESIDENT—Then you are giving his officers for the first time jurisdiction over the port?

The Honorable Mr. ELLIS—But the officers would be appointed by Government, and I do not apprehend any practical difficulty.

The Honorable Mr. MUNGULDASS thought there was not the slightest fear of any difficulty in that respect, and that it would be far better to have the Health Officer of the Port under the Consulting Officer.

The Honorable Mr. ELLIS thought His Excellency's suggestion would indicate a difficulty if it were proposed to place this power, not in the hands of the officer specially appointed by Government, but in the hands of his subordinates who were not appointed by Government, but, as it stood, there would be no power in the hands of any one except the Consulting Officer of Health himself, who was appointed by Government. The subordinates would be all appointed by the Municipal Commissioner, and would be Municipal officers purely, but it was not proposed to give them any power whatever.

Section 2 was then agreed to as it stood.

In considering Section 3, His Excellency the PRESIDENT asked whether it did not appear to be objectionable to leave both the Consulting Officer of Health and the Health Officer of the Port with a concurrent jurisdiction. As the Section stood, either of these officers might require a person to proceed to a sanitarium, supposing the Health Officer required that a man should be removed to a sanitarium, and there was a kind of appeal to the Consulting Officer of Health, and the latter might think the person should not be so removed; or would it not be better to word the Section "when it shall appear to the Consulting Officer of Health, or in his absence to the Health Officer of the Port," &c.?

The Honorable Mr. ELLIS said he had no objection to the alteration, he thought it would be an improvement.

In line 2, after the word "or," the words "in his absence" were added.

12 *lp*

The Honorable Mr. MUNGULDASS, in moving for the omission of the word "proper," occurring in line 6 of Section 3, and in the Schedule, said:—Sir, at the time the Bill was first introduced I took the liberty to state that when the quarantine regulations gave so much trouble and annoyance in Europe as were then described at full length by the Honorable Mr. Foggo, they were likely to cause tenfold more annoyance and trouble in India, where the religious views and social customs of the people were quite different, and where the officers who would have to carry out the Act would mostly be Europeans who, however considerate they may be in the discharge of their duties, could not be expected to have the same sympathy with and understanding of the feelings of the natives as they might have in the case of those of their own race. The Bill as amended by the Select Committee is certainly better than the first draft, and Government in their wisdom have seen the necessity of it so much that even before it has become law they have put its provisions in force. I do not, therefore, think it proper to take up the time of the Council by making any further remarks on the general principle of the measure, and only hope that when it is passed it will be so mildly and considerately carried out as to cause the least amount of privation to those who may have the misfortune to come under its operation. I also hope, Sir, that before the law is enforced, Government will first provide the proper sanatoria, quarters, &c., to meet the religious views and usages of the native subjects. A few months ago, certain sanitary clauses were added to the Municipal Bill which was then before the Council, empowering the Health Officer to remove any one from his house to the sanitarium, if he thought that the person was suffering from any contagious disease. It then created a great deal of alarm among the native community,—of which Sir, Your Excellency, as well as the honourable member in charge of the Bill, are well aware. The honourable member was then good enough to assure the Council that the clauses were only intended to get rid of vagrants and pilgrims, who had neither residence, nor lodging, but who lived either in the open air, Pinjrapole, or in the compounds of different religious places. It will certainly be an act of humanity to remove one dying in the street, uncared for, and unattended to, to a place where he will be fed and taken care of; but if the word "proper" be retained, the result would, I am afraid, be that not only such persons would be liable to be removed, but that thousands of other persons who came to Bombay as temporary sojourners, either for the purpose of trade or seeking employment, and either with or without their families, would also be equally liable. They stay in Bombay during the fair season, and leave it during the monsoon. People belonging to the higher castes or classes generally stay with their relations, friends, agents, or leading castemen, who are bound by the customs of the country to feed and lodge them, generally free of charge. The law as at present worded would apply to these people, and they will be liable to be removed on the *ipse dixit* of the Health Officer, who has only to certify that their lodging is not proper, and they might be bundled off from their relations and friends. I would go further, and say that, if Webster does not deceive me, lodging means not only temporary residence, but even *apartments*. Now, three-fourths of the native population reside (not because they prefer such small and wretched places, but their limited income compels them to reside) in such apartments, and they would be liable to be carried away. As long as we have our present energetic, but at the same time considerate, Health Officer, we may be free to a certain extent from such an apprehension, but any future Health Officer might think differently, and might tear such people from



their nearest and dearest friends and relations, and march them to a sanitarium. As regards all other municipal offences, the Magistrate, who is an independent officer, is the judge between the alleged offender and the Municipal Officer who prosecutes him, and he alone is empowered to interpret the Act and judge of facts; but in this measure now before us, the Health Officer is made both the complainant and the judge, who has only to give orders which the Police are bound to carry out. According to the religious notions of the Hindoos, a Hindoo ought not to be touched after his death by any one but by his own relations and friends, and his corpse must be burnt by them, his own son or next of kin taking the lead in the ceremony. I am afraid this will be an interference with the religious notions of the people, and would submit it for your consideration whether we can, without the previous sanction of the Government of India, make such a provision. Past experience shows how unwilling the Hindoos and others are to go to and live in the hospitals which have been established for their benefit by the Government and charitable persons, and where every provision is made to meet their religious observances. For these reasons I would move that the word "proper" be omitted from the sixth line, third Section, and that the word "proper" be omitted in the Schedule. The word is a small one, but it will, I fear, lead to a great embarrassment hereafter.

The Honorable Mr. ELLIS said the honorable member who had last spoken had very justly expressed an anxiety that the Bill should be so framed that there could be no apprehension on the part of the people of Bombay that they were liable to be hurried from their homes to some unknown place at the discretion of the Health Officer; and in order still further to remove the possibility of doubts arising on this point, he (Mr. Ellis) proposed as an amendment on what the honorable member had moved, to insert in line 6 which was now under discussion, after the word "being," the words "in the public streets or thoroughfares, or in a place of public resort, such as dhurumsalas, temple enclosures, and the like, and" (without proper lodging or accommodation, &c.) He had not given notice of this amendment, but he had no doubt it was one which the Council might at present take into consideration, and its object was, as he had said, to remove any fears on the part of the inhabitants that any one, poor or rich, might be liable to be taken out of his house and carried off to a sanitarium. As the Bill stood there was certainly an element of uncertainty in the language in respect to that point, but the amendment he had proposed would quite guard against the possibility of such an apprehension in the future, inasmuch as the Section would empower the Health Officer to remove only such persons as were in the public thoroughfares or in any place of public resort, and who were without proper lodging. At the same time he hardly saw any necessity for the alteration which had been proposed by the honorable member, for the word "proper" was in the English Act, and he could not conceive that any interpretation but the ordinary interpretation would be put upon it, or that the word "proper" would be so stringently construed as the honorable member apprehended. As it was on the English Act 6 of Geo. IV. cap. 78 that this Section had been framed, he would very much prefer retaining the wording of the English Section to leaving out any words which might in future times be judged to be essential when the matter came before a Magistrate.

The Honorable Mr. MUNGULDASS quite agreed to the amendment proposed by the Honorable Mr. Ellis if it meant that only a person who was in a public place could be removed.

His Excellency the PRESIDENT said the person must be in a place of public resort, and without proper lodging or accommodation. Both these conditions must be fulfilled.

The Honorable Mr. MUNGULDASS was quite satisfied with the alteration.

The amendment proposed by the Honorable Mr. Ellis was agreed to, and the motion of the Honorable Mr. Munguldass was withdrawn.

His Excellency the PRESIDENT asked the Honorable Mr. Ellis whether he did not consider that the power which it was proposed to give to the Health Officer ought not properly to be given only to a Magistrate, to whom the Health Officer should be empowered to apply at any time for an order for the removal of any person suffering from an infectious disease. It was a thing in its nature rather judicial, and there was great responsibility attaching to it, and, besides, it was proposed that it should be exercised by an officer over whom the Government had got very little power. He thought the power was always, under the (English) Lodging House and Infectious Disease Act, given to a Magistrate, without whose order nobody could interfere. That Act was enforced over all England.

The Honorable Mr. ELLIS pointed out that the present Bill had nothing to do with lodging houses, and he expressed the opinion that there would be very great difficulty in carrying out the measure if it were always necessary to go before a Magistrate in order to obtain a warrant. There was nothing in the Bill which enabled the Consulting Officer of Health, who might not himself see the infected person, to take evidence upon oath, or do anything which would be the foundation of the issue of the warrant. He would judge from his own knowledge of the disease whether there was disease or not. It was a purely medical question; if a medical officer stated on oath before a Magistrate that a person was suffering from infectious disease, the Magistrate would believe him.

His Excellency the PRESIDENT said there was nothing to enable the Consulting Officer of Health or the Health Officer of the Port to act except in a case where he himself was present and saw the man at the moment.

The Honorable Mr. ELLIS conceived that the man would be brought to the hospital, and that one of those officers would see him there. It would be necessary (on the present proposal) to take the sick man from the hospital to the Magistrate's Court, accompanied by the Health Officer, and the infectious disease would follow him. There would be many difficulties in the way if a warrant was necessary.

His Excellency the PRESIDENT—But what power is there to remove a man to the hospital before the Consulting Officer has seen him? None whatever.

The Honorable Mr. ELLIS thought it was the ordinary course when a man was taken ill to bring him to the hospital.

His Excellency the PRESIDENT asked if there might not be a dhurumsala, or some place of that kind, where the sick man might be left lying. He saw no reason why it should be supposed that the person would be taken to the hospital. It seemed to him there was no means of putting the Act into force as it stood now, unless the Consulting Officer himself saw the person who was suffering; whereas the Consulting Officer might receive information from the Police, and upon the evidence so obtainable being laid before a Magistrate, he would be enabled to put the law in force.

The Honorable Mr. ELLIS said that the largest number of cases would probably occur on board ship. The Health Officer of the Port would go on board, and every man on board would be inspected by him. But if all these persons were to be taken to the Magistrate, it would be impossible to carry out the Act at all.

His Excellency the PRESIDENT thought it would have been better to keep the port and the city distinct.

The Honorable Colonel MARRIOTT said His Excellency's objection might be met by providing that the Health Officer should be able, on personal inspection, to give any order for the removal of the person, and that the Magistrate should be able to give the order on an inspection having been made by any one else.

His Excellency the PRESIDENT said that would answer perfectly. As the matter stood there must be personal inspection by one or other of the Health Officers, and what he wished was to meet the case where that was impossible.

The Honorable Mr. ELLIS said it would strengthen the hands of the Health Officer if another course of proceeding were allowed. As he understood the Section at present it only contemplated the case where the Health Officer or the Consulting Officer saw the man who was suffering from infectious disease.

The Honorable Mr. MANSFIELD said the Health Officer could not act on the report of other people without seeing the infected person himself.

His Excellency the PRESIDENT said that was so as the Bill stood, and he thought that would cause a delay which would make the Act inoperative. If the Health Officer was unable to go himself, but received information that a person in a place of public resort had an infectious disease, then medical and other evidence might be produced before one of the Magistrates, who might give the same order which the Consulting Officer would be able to give upon his own authority.

The Honorable Mr. MUNGULDASS said the Health Officer had no medical assistant, and that he might send his clerks, whose evidence would not be proper evidence.

His Excellency the PRESIDENT said the Magistrate would not issue an order on such evidence as that.

The Honorable Mr. MUNGULDASS added that Bombay was such a small place, and the hospitals and other places of that kind were so few, that they could all be visited by the Health Officer within an hour.

The Honorable Colonel MARRIOTT asked if it would not be better to give the power of issuing the warrant to the Health Officer and not to the Magistrate.

His Excellency the PRESIDENT knew of no case whatever of such a power having been given.

The Honorable Mr. MUNGULDASS thought it would be very injudicious.

His Excellency the PRESIDENT did not know of a single Health Officer at home having got that power.

The Honorable Mr. ELLIS referred to an English Act (29 and 30 Vic.) by which that power was given to "nuisance authorities" constituted under the Act.

His Excellency the PRESIDENT said he had alluded to the Act which he had been accustomed himself to putting in force—viz. the Lodging House and Infectious Disease Act. He presumed the regulation quoted by the honorable member referred to the case of a proclamation by Privy Council.

The Honorable Mr. ELLIS replied in the affirmative.

His Excellency the PRESIDENT said he did not wish to propose any alteration in the Section, he merely pointed out the objection.

The Honorable Mr. ELLIS thought it would be desirable to make such an alteration as had been suggested, but that the warrant should only be issued upon the evidence of a medical practitioner.

His Excellency the PRESIDENT said it might be left to the discretion of the Magistrate as to whether there was proper evidence.

The Honorable Mr. ELLIS said the same English Act which he had already referred to gave power also to Justices to order the removal of a person to a hospital on a medical certificate.

Section 3 of the Bill was adopted as it stood, and a new Section (to come after Section 3) to provide for the removal of the diseased person on a medical certificate and for the penalty in case of non-compliance was proposed.

In considering Section 4, the Honorable Mr. ELLIS asked what would be the legal effect of the words "in his absence." Might it not be held to mean his absence from duty, and that the Health Officer of the Port would not be competent to act except during such absence?

His Excellency the PRESIDENT said he thought not.

The Honorable Mr. ELLIS added that he had asked the question with the view of ascertaining whether the legal authorities would construe the words widely or strictly,—whether, when the occasion arose, they would take it to mean simply absence from the spot.

His Excellency the PRESIDENT thought that would be the ordinary meaning of the words,

The Honorable Mr. ELLIS said that if it were construed to mean absence from duty, it would make a very great difference.

The Honorable Mr. MANSFIELD did not think there would be such a meaning attached to it as that suggested by the honorable member.

The Honorable Mr. ELLIS said the Honorable Mr. Bayley\* might be asked on the point before next meeting.

His Excellency the PRESIDENT asked if the Honorable Mr. ELLIS could define the meaning better, but was afraid that any attempt to define it would only raise doubts.

The Honorable Mr. ELLIS did not see how it could be better defined.

His Excellency the PRESIDENT said that if there was any doubt upon the point it would be better not to put in the words, because if the narrow meaning that had been suggested was attached to them it would make the Health Officer of the Port a mere nonentity.

The Honorable Mr. ELLIS said the doubt had occurred to him, but that if all the other members were agreed he was willing that the words should remain as they were.

His Excellency the PRESIDENT said that for his part he had no doubt about it.

The words "in his absence" were inserted in line 7 of Section 4 after the word "or" and before the words "the Health Officer."

His Excellency the PRESIDENT observed that he would have preferred to see the Consulting Officer acting on shore and the Health Officer acting for the Port.

In considering Section 5, His Excellency the PRESIDENT asked what power the master of a vessel had got to remove a person suffering from infectious disease to a sanitarium, pending the orders of the Health Officer of the Port.

The Honorable Mr. ELLIS said he must either do that "or take other suitable precautions," such as by putting the person in a cabin by himself, or in a boat by the ship's side.

In considering Section 6, the Honorable Colonel MARRIOTT asked what was the meaning of the limitation "between sunrise and sunset."

The Honorable Mr. ELLIS said the object was to prevent the officer from going on board during the night.

The Honorable Colonel MARRIOTT suggested the case of a person having some particular reason to come ashore.

The Honorable Mr. ELLIS said that he had no objection to the words being struck out.

The Honorable Mr. MUNGULDASS spoke in favour of the words being retained.

The Honorable Mr. ELLIS said that a ship might arrive a little after sunset, and that all the people on board might be compelled in consequence of that provision to remain in the ship till next day.

The Honorable Colonel MARRIOTT moved that the words should be omitted. He did not see any necessity for them, and thought they might give rise to great inconvenience.

The Honorable Mr. MUNGULDASS said he would have no objection to the time being extended to 7 or 8 o'clock P.M., but he thought it would be objectionable for persons to have authority to go on board at 12 o'clock at night, when all the people were asleep.

His Excellency the PRESIDENT did not think it was likely that a Health Officer would be found who would go on board a ship at 12 o'clock at night merely for the purpose of annoying the people.

The Honorable Mr. MUNGULDASS said he might send a subordinate.

The Honorable Mr. ELLIS replied that that was impossible, and that the Health Officer must go himself.

His Excellency the PRESIDENT said he would not be at liberty to send any one except some person who was authorised by Government to exercise the same powers as himself.

The Honorable Mr. MUNGULDASS said that if the Health Officer had to go himself he did not object to the Section, but if the duty was to be entrusted to clerks—paid perhaps not more than Rs. 40 a month—he thought it would be highly objectionable. Vessels commanded by European captains might not be affected, but in the case of native vessels the system might be a source of great annoyance. He believed it was contemplated to give the powers of the Health Officer to a number of his subordinates.

The Council divided on Colonel MARRIOTT's amendment:—

*Ayes—4.*

The Honorable Colonel MARRIOTT.  
The Honorable PUNT PRUTINIDHI.  
The Honorable MEER MAHOMED KHAN.  
The Honorable S. MANSFIELD.

*Noes—2.*

The Honorable MUNGULDASS NUTHOOBHAY.  
The Honorable FRAMJEE NUSSEERWANJEE.

The amendment was accordingly carried.

In line 7 the word "local" was omitted, and the word "Port" substituted for the word "City."

In line 6 of Section 7 the word "local" was omitted, and the word "Port" was substituted for the word "City."

In considering Section 7, His Excellency the PRESIDENT said he did not see what power the master had to do that which was required of him, in the event of the man resisting.

The Honorable Mr. ELLIS said the Section would justify the master.

His Excellency the PRESIDENT pointed out that the Section omitted to give him the power to remove a man who resisted.

The Honorable Mr. ELLIS had no objection to an alteration giving him express power.

After the words, "the master or commander shall be bound to obey such requisition," were added the words "and is hereby authorised and empowered to enforce such removal."

His Excellency the PRESIDENT pointed out that in Section 5, in part of Section 8, and in other parts of the Bill, it appeared that the Health Officer of the Port was the only person to act in certain cases.

The Honorable Mr. ELLIS said that had been intended. It was to the Health Officer that the master was to report, but if either the Consulting Officer or the Health Officer went on board, the master of the vessel must obey him. Power was given to either of these officers to go on board, and either of them could give directions on board; but when a report had to be made by the master or commander it was to be made to the Health Officer of the Port, and the disinfection of a vessel was a matter about which the Health Officer alone was to be consulted.

In line 7 of Section 8 the word "local" was omitted, and the word "Port" substituted for the word "City."

In Section 9, line 9, the word "or" was substituted for the word "and."

In considering Section 12, the Honorable Mr. MUNGULDASS moved that in line 8 the following words should be added, "shall be a properly qualified medical man, and." The honorable member remarked that very large powers were given by the Bill, both to destroy personal property and to take away a person's liberty; and that only a medical man was fit to judge whether it was necessary to do so.

His Excellency the PRESIDENT asked what was the "proper" qualification here.

The Honorable Mr. MUNGULDASS said what he meant was, that the person should be a Surgeon or Assistant Surgeon in the Government service, or a member of the College either here or at London, or a Licentiate of Medicine, or a Graduate of the Grant Medical College.

The Honorable Mr. ELLIS—You would not accept Mr. Anderson ?

The Honorable Mr. MUNGULDASS said Mr. Anderson was only an apothecary, but had had great experience, and he was an exception to the general rule.

The Honorable Mr. ELLIS said that in the English Act the words “legally qualified” were employed, but as there was no legal qualification here, he thought “properly qualified” would be sufficient.

His Excellency the PRESIDENT asked the Honorable Mr. Munguldass if his motion might take that form.

The Honorable Mr. MUNGULDASS inquired if the words “properly qualified” would go so far as to include apothecaries.

His Excellency the PRESIDENT thought it would.

The Honorable Mr. ELLIS said it would not go so far as hospital assistants.

The Honorable Mr. MUNGULDASS said he would not like to go lower than a sub-assistant surgeon.

His Excellency the PRESIDENT—Provided he is in the service of Government ?

The Honorable Mr. ELLIS did not think that would be necessary. He proposed that the words “shall be a properly qualified medical practitioner of rank not less than an apothecary” should be added.

The Honorable Mr. MUNGULDASS repeated that he would prefer to make it “not less than a sub-assistant surgeon.”

The Honorable COLONEL MARRIOTT—Is not “sub-assistant surgeon” merely a Government term ?

The Honorable Mr. MUNGULDASS altered his proposition so as to make the new words—“shall be a covenanted medical officer, or licentiate or member of any College of Physicians or Surgeons in the United Kingdom or of India, and shall.”

The Honorable Mr. ELLIS said that would not include sub-assistant surgeon.

The Honorable Mr. MUNGULDASS said it would include them if they were members of the Medical College.

The amendment proposed by the Honorable Mr. Munguldass was adopted, the Honorable Mr. Ellis, Colonel Marriott, and the Honourable Mr. Mansfield dissenting.

His Excellency the PRESIDENT suggested that there should be a Schedule annexed to the Bill, giving the form of the requisition to be served upon the commander of a vessel in case of infected persons being found on board.

The following form was adopted :—

#### SCHEDULE B.

Whereas A. B., at present on board the vessel, within the limits of the Port of Bombay, is suffering from an infectious disease dangerous to life (or shows premonitory symptoms of a disease dangerous to life, as the case may be), these are to require you to remove

the said A. B. to (here designate the sanitarium or other place on shore where in the opinion proper lodging and accommodation are available); and for enforcing the said removal this shall be your sufficient warrant.

Consulting Officer of Health.

(Signed)

Health Officer of the Port.

(Addressed) to the Master or Commander of the Vessel——

Name——

The Bill to amend Act XII. of 1866 read a second and third time, and passed.

The Bill to amend the Schedule annexed to Act XII. of 1866, was read a second and a third time, and was passed.

The Honorable Mr. ELLIS moved the second reading of Bill No. 12 of 1866 (to amend the law relative to the sale of spirituous and fermented liquors in the city of Bombay), and remarked that this Bill, like the one which the Council had dealt with at an earlier period of that day's meeting, had undergone very considerable modifications from the form in which it had been originally laid before the Council. When the Honorable Mr. Erskine moved for leave to introduce a Bill to amend the law relative to the sale of liquor licenses within the city of Bombay, he stated that the objects desired to be attained by the Bill were twofold. In the first place it was desired to limit the number of retail licenses for each locality, and to improve the system under which charges upon those licenses were assessed; and in the second place it was desired to impose restrictions on the so-called sellers of liquor by wholesale, who really sold in large quantities by retail. The first object was proposed to be attained by putting up the licenses for sale by public auction. The second object it was proposed to attain by charging a heavy fee to all wholesale dealers, in the hope that those whose transactions were of a petty character would be deterred by the heaviness of the fee from taking out licenses at all. When the Bill was entrusted to him (Mr. Ellis) he entertained very grave doubts whether either of these plans would be found effective, and when the Bill was referred to a Select Committee he found that all his colleagues in the Committee were of the same opinion, they unanimously decided that the Bill should be recast and put before the Council in an altered and modified form. Both classes of objectors to the Bill—the retail liquor sellers on the one hand and the wholesale sellers on the other hand—were represented before the Committee by counsel, and they had the fullest opportunity of expressing their views upon the questions involved in the various clauses of the Bill. After hearing all that they had to say the Committee came to the conclusion that a Bill in the form in which it was now presented to the Council would be most likely to effect the objects desired as enunciated by Mr. Erskine in moving for leave to introduce the Bill; and he believed he might say that even the liquor sellers were now not greatly dissatisfied, for the petition they had since sent in contained very few points which called for notice or remark from him. The only objection which they made in this second petition, as regards the mode proposed for the future issue and regulation of licenses, was that they would desire Government to be restricted by law from reducing the number of licenses and from raising the amounts which were to be charged, but he need hardly say that it was quite out of the question to place any restrictions upon the charge which was to be made for licenses; that was a matter obviously for disposal by the executive Government; and as the population and circumstances of different districts



varied from time to time, it would be inexpedient to take from Government the power of altering the charge for the licenses according to a change in circumstances. In regard to the reduction of the number of licenses, it was evident that the licenses which had been so very freely given of late years were in excess of the real requirements of the place. It had been described at a previous stage how very largely, under different influences, the number of licenses in some of the localities had increased, and it was owing to this very large increase, and to the alarm felt by respectable people lest there should be still further increase, that the idea of improving the system for granting licenses had been first suggested. The number of licenses and the charge for them must be matters which the Executive Government should decide, and he would not propose that the legislature should in any way restrict the power of Government in these matters. There was one other minor objection in the petition, which pointed to an amendment in some respects reasonable. The petitioners requested that the punishment of forfeiture of licenses should be left to the discretion of the Magistrate, and not made imperative. By the 4th of the conditions under which licenses were to be granted, given in Schedule A annexed to the Bill, the infliction of any penalty, however small, would involve a forfeiture of license; and although he did not think it was exactly for the Magistrate to withdraw the license, he not being the authority who granted it, yet he considered it was not necessary to make the forfeiture of license imperative in the case of every offence, and that it was quite reasonable to leave it discretionary to the authority who granted the license to revoke it or not according to the offence committed or the number of offences of which the party might have been guilty. He would therefore make a small alteration at the proper time, with a view to giving effect to these remarks. It would be seen that, with regard to the second portion of the Bill, which dealt with the so-called wholesale sellers of spirits, the Select Committee had abandoned the idea of realising large revenue from the imposition of a heavy fee upon *bond fide* wholesale dealers, and they had divided the various classes of persons who sold spirituous and fermented liquors in the city of Bombay into four classes; of which two classes would not require licenses at all, and the other two classes would take out licenses according as they might sell only occasionally by retail or be professed retail sellers. Class 3, which was the first of these two latter classes, would have to pay merely a nominal fee to cover incidental expenses, and as a slight check upon people taking out licenses without wanting to use them. The Select Committee had fixed upon a fee of Rs. 25 for this class. It would be observed that a discretion was given to the Commissioner of Police to give or refuse a license under class 3. By this means the Commissioner would be enabled to prevent those persons who, under the pretence of being wholesale sellers, were really retail dealers, from taking out licenses at all; while on the other hand, it would enable those who were really wholesale dealers to continue their trade even if the Commissioner of Police should refuse them licenses, because as purely wholesale dealers they would be enabled to carry on their calling under classes 1 and 2, and would not be compelled to take out licenses, the only deprivation to which they would be subjected being in respect of the sale in single bottles, and of that little retail business which they would have claimed to be at liberty to carry on under class 3. The alteration in the 4th class he had already alluded to in referring to the petition of the retail dealers, and he thought that by the amendments introduced this class would be brought better under regulation, and that the position in

which they would be placed would be far more satisfactory than it had been before. With these preliminary observations he begged to move that the Bill as amended by the Select Committee be read a second time.

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

In line 4 of Section 5 the word "may" was substituted for the word "shall," and in line 9 the word "shall" was substituted for the word "may."

His Excellency the PRESIDENT asked if selling by the bottle was considered selling in retail.

The Honorable Mr. MUNGULDASS said he thought not, and that to sell in retail was to sell by the glass.

The Honorable Mr. ELLIS—"There is a definition given at the end of the Bill."

His Excellency the PRESIDENT inquired whether it was intended that a man should lose his license merely because it was wished to reduce the number in a particular locality, though he had behaved himself well.

The Honorable Mr. ELLIS said that was a matter which would depend upon the action of Government. If, owing to complaints in a particular locality that the number of licenses was too great, and that great drunkenness prevailed, Government should take upon itself to reduce the number, it would of course be necessary in doing so to be guided partly by the behaviour of those who had held licenses, and partly by the dates on which the licenses had been granted.

Section 6 was altered as follows:—"The Commissioner of Police shall annually on 1st September, or as soon after as convenient, submit to Government, through the Collector of Bombay, a list of the places under class 4, as defined in Section II. theretofore licensed for retail sale of spirituous or fermented liquors, and shall submit at the same time the number and localities," &c. to the end.

In considering Section 10, the Honorable Mr. ELLIS proposed to omit in line 5 the words "besides forfeiture of license," and after "rupees" in line 7 to add the words "and, at the discretion of the Commissioner of Police, shall involve also the forfeiture of license," and also, after the word "licensed" in line 8 to add the words "and the license may be forfeited." The object was, as he had said, to let the license remain, in spite of the fine, at the discretion of the Commissioner of Police, if the offence was a small one.

His Excellency the PRESIDENT said the proposed alterations were not a very clear way of attaining that object. The legal way would be to give the Commissioner of Police power of revoking the license. His Excellency suggested that the words "besides forfeiture of the license" should be omitted in line 5, and that the following words should be added at the end of the Section:—

"Provided always that it shall be lawful for the Commissioner of Police, and he is hereby empowered, for any such breach as aforesaid, to revoke the license of the person so convicted, notwithstanding that a fine shall have been imposed under the provisions of this Section."

The alterations suggested by His Excellency were agreed to.

The Honorable Mr. MUNGULDASS expressed a wish to be informed who up to this time had had the power of revoking or forfeiting licenses. Was it the Commissioner of Police or the Magistrate?

The Honorable Mr. ELLIS said that hitherto the very breach of the conditions entailed forfeiture of the license at once. This would be seen from the form of License.

Referring to the proviso at the end of Section XII., His Excellency the PRESIDENT said this gave a very wide power, and might produce very much the same state of things as had existed in Scotland, where the consequence of such a provision was that apothecaries' shops became public houses, and he asked how "in reasonable quantities" was likely to be interpreted.

The Honorable Colonel MARRIOTT said that any quantity would be a reasonable one, if evidence was given that it had been sold for medicinal purposes. But he thought the words "in reasonable quantities" were perfectly superfluous.

These words were omitted.

In Section XIV. the words "sale or" were omitted in lines 2 and 3.

In clause 3 of the conditions contained in Schedule A the words "or Superintendent" were added after the words "or Deputy Commissioner."

In line 13 of Schedule B the words "or Deputy Commissioner or Superintendent" were added after the words "the Commissioner."

In the last line but two of Form 1, Schedule B, the words "and also at the discretion of the Commissioner of Police" were added before the words "with forfeiture of license," and in the last line but 5, the words "below that rank" were inserted after the words "Police Officer."

In page, 9, line 1, after the word "Commissioner," the words "or Deputy Commissioner or Superintendent of Police" were inserted, and in the last line but two of the same page, the words "and also at the discretion of the Commissioner of Police" were added before the words "with forfeiture of license."

In line 16 of page 10, the words "or Deputy Commissioner or Superintendent of Police" were added after the word "Commissioner."

In the last line but one of the same page, after the words "European soldier," the words "or any Native soldier in uniform or any Police Officer in uniform" were added.

In the last line but three of page 11, the words "and also at the discretion of the Commissioner of Police" were added before the words "with forfeiture of license."

On the motion of the Honorable Mr. ELLIS the time for presenting the Reports of the

Time for presenting the Reports of the Select Committees on the Police Bills Nos. 5 and 6 of 1867 was extended till next meeting of Council.

His Excellency the PRESIDENT then adjourned the Council.

N. DANIELL,

Acting Under-Secretary to Government.

Poona, 26th September 1867.

15 lp

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

The Council met at Poona, on Thursday the 10th October 1867, at Midday.

**PRESENT:**

The Right Honorable W. R. S. V. FITZGERALD, Governor of Bombay, *presiding*.  
 His Excellency Lieutenant-General Sir R. NAPIER, K.C.B.  
 The Honorable B. H. ELLIS.  
 The Honorable S. MANSFIELD.  
 The Honorable the ADVOCATE GENERAL.  
 The Honorable SHREENIVAS RAOJEE RAO SAHEB PUNT PRUTINIDHI.  
 The Honorable MUNGULDASS NUTHOOBHOY.  
 The Honorable G. FOGGO.  
 His Highness the Honorable MEER MAHOMED KHAN, TALPORE.  
 The Honorable FRAMJEE NUSSEERANJEE PATEL.  
 The Honorable Colonel W. F. MARRIOTT, C.S.I.  
 The Honorable A. BROWN.

The Report of the Select Committee on the District and Village Police Bills presented to the Council.

Petition from certain Liquor sellers of Bombay regarding the Liquor License Bill presented to the Council.

Bill for the better Sanitary Regulation of the City of Bombay.

The Report of the Select Committee on the District and Village Police Bills was presented to the Council.

A petition from certain Liquor sellers of Bombay regarding the Liquor License Bill was presented to the Council.

Before reading a third time the Bill No. 6 of 1866 (*A Bill for the better Sanitary regulation of the City of Bombay*) the following amendments were made:—

After Section IV. the following Section was inserted as Section V. :—

It shall be lawful for any Magistrate of Police on the certificate of a covenanted Medical Officer of Government, or of any Member or Licentiate of any College of Physicians, or Surgeons of the United Kingdom or of India, as to the nature of the disease, and on such evidence as may be thought by him sufficient in regard to the other conditions recited in Section III. of this Act to make requisition as in the said Section, and any person refusing or voluntarily neglecting to obey such requisition, shall be liable to the penalties provided in Section 269 of the Indian Penal Code.

In reference to Section XII. the Honorable Mr. Foggo proposed that at the end of the third line of the Section, the words "or persons" should be added ; and that in the third line from the bottom, the word "Health Officer" should be inserted instead of the word "person." The Honorable member said it seemed to him that without some such alteration, there was likely to be confusion.

The Honorable the ADVOCATE GENERAL observed that by the General Clauses' Act (Act X. of 1866) it was provided that words in the singular, should be taken to include those in the plural.

The Honorable Mr. ELLIS thought there was no reason for altering the Section.

His Excellency the PRESIDENT expressed the opinion that the Act referred to by the Honorable the Advocate General did not apply.

The Honorable Mr. ELLIS reminded the Honorable members that what it was proposed to do under the Bill, was to empower the Government to appoint additional Officers of Health.

His Excellency the PRESIDENT said it seemed to him the point would require a little looking into, that the simplest way would be to insert the words "or persons."

The Honorable Mr. ELLIS said he had no particular objection to the alteration, although the provisions of the General Clauses' Bill might be sufficient.

His Excellency the PRESIDENT—That would hardly give the necessary powers.

The Honorable the ADVOCATE GENERAL said it would perhaps be safer to insert the words "any one or more persons."

The Honorable Mr. ELLIS said he had no objection to the proposed alteration, although it seemed to him that the same meaning was conveyed by the Section as it at present stood.

The words "one or more" were then inserted after the word "any" in the third line.

The Honorable the ADVOCATE GENERAL inquired whether it was intended to pass the Section without further alteration.

His Excellency the PRESIDENT said the General Interpretation Clauses' Act provided that the singular should be held to mean the plural also, but he did not think it could be held that in the present case the words "any person" meant the plural as well as the singular; for if for instance there was an Act authorizing the Government to appoint a new Bishop of Bombay, they could not say that the Act authorized the appointment of several Bishops. It could not be therefore, that wherever a singular was mentioned the plural should be included. The meaning of such a provision was very limited.

After some discussion the Section was further amended by inserting the word "every" after the word "that," and before the word "such."

In Section XIV. (the Interpretation Clause) the word "term" was omitted, and the word "word" inserted in its place.

The terms of Schedule B, which provides the form of the notice to be served on the master or commander of a vessel, were considered.

His Excellency the PRESIDENT said that some amendment seemed to be required in the words of the Schedule, as they only referred to a Sanitarium "or other place on shore."

The Honorable the ADVOCATE GENERAL said the Section would not authorise the segregation of infected persons in a separate vessel, supposing the Government should think it advisable to direct their being kept on board a vessel appointed for the purpose.

The Honorable Mr. ELLIS said the difficulty might be met by their leaving out the words "on shore," and substituting "any Sanitarium or other place."

His Excellency the PRESIDENT said that would not do, as the requisition to the Master of a vessel was framed in accordance with the provisions contained in Section VII.

The Honorable Mr. BROWN thought that in some cases it might be very useful to have a floating Sanitarium.

The Honorable Mr. ELLIS said this provision might be omitted from the Schedule. It would be very desirable to give the power of removing a person to a ship instead of to the shore in some cases, and he still thought that they would get all that was required by the omission of the words "on shore." The words were not absolutely necessary.

The Honorable the ADVOCATE GENERAL observed that it might be stated in the Interpretation Clause that the Sanitarium might be on shore or afloat.

The Honorable Mr. FOGGO said that in that case it would be necessary to take care that there was no detention of the suffering person on board the ship in which he arrived, as that would seriously affect the principle of the Bill.

His Excellency Sir ROBERT NAPIER inquired why it was necessary to make special provision that the Sanitarium should either be on shore or afloat. It might be wherever Government chose to establish it.

The Honorable Mr. FOGGO said that was exactly why he proposed to call the attention of the Council to Section XIII.

His Excellency the PRESIDENT said Section I. did not in strict terms require the Sanitaria to be on shore, because it said :—"It shall be lawful for Government, with a view of providing for the segregation of persons suffering from any infectious disease dangerous to life, from time to time to establish by notification, for the purposes hereinafter specified, one or more places to serve as Sanitaria for the City of Bombay." Now that was not intended to apply to a vessel, but there was nothing to absolutely prevent a ship being made a Sanitarium.

The Honorable the ADVOCATE GENERAL observed that as the matter was one which affected the liberty of the subject, it was very desirable that the provisions should be as clear as possible, so as to put the matter beyond all doubt; and he thought it would make the matter clearer if they stated that the Sanitarium should be either on shore or on board ship.

The Honorable Mr. FOGGO said he should object to the alteration, because it would affect the principle of the Bill, for it seemed to him the alteration had a strong tendency to isolation.

His Excellency the PRESIDENT suggested whether that was not a very good tendency.

The Honorable Mr. FOGGO explained that what he meant was that a Sanitarium afloat would be more out of the control of the Government than it would be if on shore; and he added that it certainly never was contemplated by the Committee that there should be any Sanitarium except on shore, although by Section XIII. Government had full power to do anything.

His Excellency the PRESIDENT said the power reserved to the Government by the Section only extended to cases in which there was an "expected introduction of an infectious disease dangerous to life," as the plague or any thing of that kind. The Council were not now making general rules, but dealing with ordinary cases, and considering whether an individual on board ship, suffering from such a disease as small-pox, might be removed to a floating Sanitarium in the harbour instead of to the shore. At present, it did not seem to him that there was any power in the Bill to establish such a floating Sanitarium.

The Honorable Mr. FOGGO remarked that as the Section stood at present the Government might make any orders they chose.

The Honorable Mr. ELLIS deprecated any re-opening of the discussion as the Section was already passed. The present discussion arose, not on the Section, but on the words of Schedule B.

His Excellency the PRESIDENT expressed his concurrence with the Honorable member (Mr. Ellis), but said the words "on shore" were strictly in accordance with the rest of the provisions of the Bill.

The Honorable Mr. ELLIS said the words "on shore" did seem to restrict the Government from appointing a ship as a fit and proper place as a Sanitarium, but he was not sure whether it would be advisable to retain such a restriction, because it might be very desirable to have a vessel for such a purpose.

His Excellency the PRESIDENT concurred, and said that at present no powers for appointing a vessel as a Sanitarium seemed to be given to the Government.

The Honorable Mr. ELLIS said he did not think it was intended to restrict the power of the Government in the matter. The point had never been discussed in Committee, that he would answer for. It was quite true the Schedule had been drafted according to Section VII., but the question was, whether it was necessary to retain the words in the Schedule; he had no objection to their being struck out.

His Excellency the PRESIDENT said that if the words were struck out in the Schedule, it would be insufficient, for they were embodied in Section VII. which had already been passed. If the change was made it must be in the whole Bill, and they must go back.

The Honorable Mr. ELLIS did not think there was any question of principle involved in the alteration, and said he should not object to an alteration by which they could remedy the oversight of restricting the Government from directing the use of ships as Sanitaria. He did not think the Council were at liberty to alter the principle of the Bill now, but any amendment might be made, if not involving an alteration in the principle of the measure.

The Honorable Mr. FOGGO said the Honorable member (Mr. Ellis) was very jealous of Section XIII. being referred to, but he would ask whether it did not empower Government to remove people to a Sanitarium, either upon shore or afloat in the harbour?

The Honorable the ADVOCATE GENERAL thought that Section XIII. must be looked at in connection with the other clauses; and that Section VII., which directed that a person might be taken to "a Sanitarium, or other place on shore," seemed to negative the power of deporting people on board ship.

His Excellency the PRESIDENT said Section XIII. was in extension of all the other powers given by the Bill, and, therefore, under the particular circumstances which were contemplated by that Section, he had no doubt, for his own part, that Government could cause either a floating hospital or a floating Sanitarium to be established in the harbour; but that could only be done in the immediate expectation of some epidemic disease or under some exceptional circumstances. And that then it was, that the Government could, by notification in the *Government Gazette*, direct that in consequence of say, cholera, being prevalent in some other port, all vessels coming from the particular port, would be put in a particular part of the harbour, and kept there for a particular time, and the persons affected on board the vessels, removed therefrom and segregated on board another vessel appointed for the purpose, but those powers would not meet the difficulty which had been suggested, in ordinary cases, as for

instance the case of a passenger suffering from small-pox; it might be advisable instead of taking him on shore to put him on board a vessel in the harbour; and there was no such power given to Government in the Bill.

The Honorable the ADVOCATE GENERAL said he thought this was merely a question of detail, and that the difficulty might be removed by striking out the words "or other place on shore" in the twelfth and thirteenth lines of Section VII.

His Excellency Sir ROBERT NAPIER asked whether the words "or other place on shore" were necessary?

The Honorable Mr. ELLIS said the Sanitarium must be a place formally set apart for the purpose by the Government; therefore it was advisable to retain the words "or other place." He thought they might adopt the alteration suggested by the Honorable the Advocate General, and leave out the words "on shore," that was if the Right Honorable the President did not think that by so doing the principle of the Bill would be violated.

The Honorable the ADVOCATE GENERAL repeated that he thought the matter was merely one of detail.

The Honorable Mr. FOGGO said he had understood hitherto, that in the deliberations on the Bill the word "Sanitarium" had simply been a modern word for hospital; and he certainly thought that no hospital with proper accommodation for suffering patients, could be fixed on board ship in a tropical climate.

His Excellency the PRESIDENT said the shortest way to deal with the matter would be by the introduction of a separate clause, because Honorable members would find the Council would have to alter a large number of the Sections as they stood. That would be so with Sections III., IV., and V.

The Honorable Mr. ELLIS thought the best way would be to insert a clause at the end of Section VII. stating:—"and the word Sanitarium shall be held to include any vessels specially set apart by Government, for the purposes of this Act."

The Honorable Mr. MANSFIELD said as he understood it a person residing in Bombay would not be liable to be confined on board a ship appointed as a Sanitarium.

The Honorable Mr. ELLIS explained that Section VII. had reference exclusively to persons already on board ship.

The Honorable Mr. BROWN said he thought it would be advisable to divide the Bill into two parts; one to be applicable to the shore, and one to the harbour.

The Honorable Mr. MUNGULDASS NUTHOORHOY said he had always understood up to that point, that the Sanitarium would be on shore. No native would like to be taken on board a vessel and kept there.

The Honorable Mr. ELLIS said the provision for detaining persons on board a vessel set apart as a Sanitarium merely referred to those persons who were already on board other ships.

The Honorable Mr. MUNGULDASS NUTHOORHOY observed that Mr. Framjee joined with him in saying that taking natives on board a vessel of the kind and detaining them there would be very objectionable to their religious feelings. He did not mean to raise any objection to the principle of the Bill, but he had heard doubts expressed with regard to the power of the Council to make such a provision without having previously obtained the sanction of the Council of the Governor General, and as Honorable members were aware there was



a great question going on, on the Appellate side of the High Court, arising out of the Talookdars' Act, which the Council passed two years ago, and by which the jurisdiction of the High Court was interfered with. And there would be a question here, because under the provisions of the Bill, people would be taken away from the jurisdiction of the High Court.

His Excellency the PRESIDENT asked whether the Honorable member would point out in what respect any of the powers of the High Court would be affected by the Bill, or in what way the religious feelings of natives would be offended.

The Honorable Mr. MUNGULDASS NUTHOOBHOY replied that in the first place Hindus had strong prejudices, and although the Council might call it a stupid objection, it was a fact, that bigoted Hindus would not drink water on board a ship.

His Excellency the PRESIDENT observed that they must take care not to make the Bill so general as to apply to all persons on shore, but Schedule B was only applicable to persons already at sea.

The Honorable Mr. MUNGULDASS NUTHOOBHOY said he had no objection to that, but if it was intended to remove persons from shore on board a ship, he should object.

The Honorable Mr. ELLIS said the Honorable member was under a misapprehension; it was never intended to remove persons from the shore to a floating Sanitarium.

His Excellency the PRESIDENT said it was never intended, but they were giving power for it to be done, and therefore the Honorable member (Mr. Munguldass Nuthoobhoy) was right in taking the objection.

The Honorable Mr. ELLIS said the sole object of Schedule B was to refer to persons who were already on board ship, and to none others. The amendment he had last proposed was in the form of an addition to Section VII., which applied exclusively to persons on board ship.

The Honorable Colonel MARRIOTT suggested that it would be a very unusual thing to introduce a Section for the definition of one Section only.

The Honorable Mr. ELLIS thought they might revert to his original proposal and leave out the words "on shore" in Section VII. and in Schedule B. By doing that, they would interfere with no other part of the Bill whatever.

The Honorable Mr. BROWN said Section I. was a general one, and therein Government were empowered to establish "one or more places to serve as Sanitaria for the City of Bombay, and to notify the local limits of such Sanitaria." Would it not be necessary to insert a clause at the end of the Section empowering Government to establish Sanitaria in the harbour as well as on shore for the reception of persons who were on board vessels, and suffering from dangerous diseases?

The Honorable Mr. ELLIS thought it would not be necessary, because such Sanitaria would come within the clause which provided for the removal of such person as in the opinion of the Health Officer should be removed.

His Excellency the PRESIDENT observed that all the other clauses, such for instance as the one giving power to the Superintendent of a Sanitarium, whoever it might be, to detain persons in the Sanitarium, would have to be altered in order to make them completely applicable, otherwise there would be no power at all to detain a man on board.

The Honorable MR. ELLIS said it would perhaps be better to suffer the inconvenience of being unable to establish a floating hospital, and leave out the proposed alteration.

His Excellency the PRESIDENT observed that that would be a great omission. Did the Honorable member propose that no alteration should be made?

The Honorable Mr. ELLIS said that there were so many difficulties in the way of carrying out any alterations, that he did not propose to make any.

His Excellency Sir ROBERT NAPIER said there was a clause in Section VII. which seemed to empower the Consulting Officer of Health, or the Health Officer to take any other person from on board, besides those who were suffering from diseases dangerous to life; the Section provided that "if it should appear to the Consulting Officer of Health or the Health Officer of the Port, that any person on board a vessel within the limits of Bombay is suffering from any infectious disease dangerous to life, he may require the master or commander of the vessel to remove such person or any other person who shows premonitory symptoms of such disease to a Sanitarium."

The Honorable Mr. BROWN thought it was a very great omission indeed to leave out the power to appoint vessels as Sanitaria, for it sometimes cost a man's life if he had to be taken from a ship to the shore.

The Honorable Mr. MANSFIELD concurred with Mr. BROWN.

His Excellency the PRESIDENT pointed out that if there were so many difficulties in the way it would be necessary to re-commit the Bill.

The Honorable Mr. ELLIS observed that His Excellency was aware the Bill had been before the Council for a long time already, and he did not know whether the Council would think it necessary to re-commit the Bill, and go over all the matter again.

The Honorable the ADVOCATE GENERAL believed the Bill was introduced in August 1866.

The Honorable Mr. ELLIS remarked that he did not think it was given to this Legislative body or any other to produce a perfect Bill.

The Honorable Mr. MANSFIELD thought that when a serious omission was discovered it was as well to supply it. He therefore moved that the

The Honorable Mr. Mansfield moves that the Bill be re-committed. Bill be recommitted. The question was then put to the vote.

*Ayes—4.*

The Honorable Mr. MANSFIELD.  
His Excellency Sir ROBERT NAPIER.  
The Honorable COLONEL MARRIOTT.  
The Honorable Mr. BROWN.

*Noes—7.*

The Honorable Mr. ELLIS.  
The Honorable Mr. FOGGO.  
The Honorable the ADVOCATE GENERAL.  
The Honorable Mr. MUNGULDASS NUTHOO-  
BHOY.  
His Highness the Honorable MEER MAHO-  
MED KHAN, TALPORE.  
The Honorable SHREENIVASS RAOJEE RAO  
SAHEB PUNT PRUTINIDHI.  
The Honorable FRAMJEE NUSSEERWANJEE  
PATEL.

The amendment was therefore lost.

The Honorable Mr. Foggo said that before the Bill was passed he should wish, with the permission of His Excellency, to make a few brief observations on it, as he was prevented being present at the last meeting of the Council when the Bill was read a second time. It would be in the recollection of some Honorable members, that in September of last year when the Bill was introduced in its original form, he entered fully into the reasons which had led him to consider that it would not be wise to concur in the principles or expedient to sanction the provisions of that Bill, but he was glad to have this opportunity of expressing his cordial concurrence with the first report of the Committee—of which he was a member—on the Bill, dated 15th April last, and in which it was stated that “The Bill as now presented to the Council does not take the form of quarantine regulations to be enforced, with reference to all vessels entering the harbour of Bombay under certain circumstances, but is rather designed to empower the executive when infectious and dangerous disease has actually manifested itself, to take measures to check the spread of such disease by removing the infected persons to a Sanitarium, and by enforcing the disinfection of their personal property, and of the vessels in which the disease may have appeared.” The Council had so very recently gone through the clauses of the Bill that it was unnecessary for him to refer to them, further than to say a comparison between the clauses of this Bill and the clauses of the Bill as originally introduced, would show that there was a very great difference between the two measures. Instead of, as in the first Bill providing that all ships arriving in the port under certain circumstances and from certain places, should be placed in quarantine, the present Bill, as now approved by the Council, provided only that persons suffering from any epidemic diseases should be removed to a Sanitarium, subject to this special proviso, that in all cases they must be persons unprovided with proper lodging and accommodation. There was not, as there was under the old quarantine regulations, any provision for the detention of sick and healthy persons together, either on board the ship in which they arrived, or in a Lazaretto, but provision was made in this Bill for the removal of actual sufferers, always, with the proviso just mentioned, to healthy and airy situations on shore. By a few simple clauses the establishment of Sanitaria were provided for and a Health Officer of the Port was appointed who was empowered to remove persons unable to take care of themselves, whether on ship or on shore, and to enter any vessel and question the master; and a master was bound to give notice to the Health Officer of any person on board his vessel suffering from any infectious disease, and the master might be required to remove such person. Power was also given for the cleansing of vessels and for the detention of persons in the Sanitarium until they were well enough to be discharged by competent authority. That was, that instead of detaining all vessels arriving from ports which were or might be supposed to be infected, it was proposed to remove only persons in an actual state of ill health from epidemic disease, whether at sea or on shore, to places where they could be supplied with proper lodging and accommodation. Such were the main provisions of the measure; and as he had previously said, he cordially concurred in the report of the Committee; and he included in that concurrence, though not so cordially, Section XIII. of the Bill. That clause, as the Council were aware, empowered the Executive Government under exceptional circumstances and on special and emergent occasions, by notification in the usual public manner, to issue rules and regulations. The Section ran “Whenever it should appear to the Government that owing to the expected introduction of any infectious diseases dangerous to life, or owing to other exceptional circumstances, the ordinary precautions authorised

by the Act are insufficient to prevent the spread of such diseases, it shall be lawful for the Government by notification to make such orders, and from time to time to vary the same as it should deem expedient, for the enforcement of sanitary measures with respect to any vessel arriving at or being within the limits of the port of Bombay, or in regard to any persons on board any such vessel, or their personal property." That was to say, in the case of a ship arriving in the port of Bombay with persons on board suffering from infectious diseases dangerous to life, the Government might upon their own responsibility issue certain regulations beyond the provisions of the bill. Now he did not mean to say that Government should not possess such powers, or that there might not arise cases where common humanity and common prudence might require that they should exercise it. Such a case occurred a year or two ago with respect to H. M. S. *Octavia*, which arrived at Bombay after one of her voyages with a number of her crew suffering from small-pox. With the sanction of Government the ship was anchored off Butcher's Island, and those who were suffering from the disease were removed to Butcher's Island, where they quickly recovered. But what he wanted to bring to the notice of the Government was that this was an extraordinary power, and he trusted that it would be used with all due moderation. He feared that it would not do to entrust such a power to any other body than the Executive Government; he hoped that it would not be considered necessary when cholera or any other epidemic disease might be more than usually prevalent in any particular part of the country, that vessels arriving from such part should simply for that reason be subjected to any special regulation beyond what was provided for in the Bill. The Health Officer should naturally pay more than usual attention to such cases; but let that suffice; let nothing approaching to the old quarantine regulations be resorted to. He would put it to the Government whether any real good was likely to follow from detaining passenger steamers for 12 or 18 hours before allowing the passengers to land upon their arrival in the port of Bombay. He was credibly informed that recently upon the *Indus*, a steamer was detained for five or six days because it was reported—officially he supposed—that cholera was more than usually prevalent in Sind. Mr. Crawford, the Municipal Commissioner of Bombay, had called attention to the fact, and had complained that certain representatives at the great Cholera Conference had spared no pains to fix upon Bombay the unenviable notoriety of exporting cholera westward. It was very natural that Mr. Crawford, who had a strong feeling on behalf of the Municipality, should write as he had done, but he (Mr. Foggo) would remind the Council and the public that this was an old tale, for cholera and all other epidemics had from time immemorial been looked upon as an introduction, and not as a native epidemic. Constantinople had always been accused of introducing cholera and plague, but had always attributed such epidemics to Egypt, and Egypt again had accused Ethiopia. This notion of considering epidemics as a foreign and not a domestic evil, was based on the principle that it was always more satisfactory to accuse one's neighbour, than, as the Chinese proverb said, "to sweep the snow from before one's own door."

His Excellency the PRESIDENT reminded the Honorable member that the question now before the Council was that the Bill do pass. He apprehended that the Honorable member's observations rather tended to urge upon Government the careful administration of the powers given to it under this clause; the remarks were scarcely applicable to the question actually before them.

The Honorable Mr. Foggo, in continuing said, that His Excellency had permitted him to make these observations, as he had not had an opportunity of making them before,

and he should not be long. He was about to say that he had ventured to call the attention of the Executive Government prominently to the subject-matter of the clause, because when he read some of the papers with which the members of the Legislative department had been favoured during the last year on the subject, in spite of his confidence in the consideration of the Government, they created some misgivings in his mind. There were officers, high in the Medical and Sanitary department, who spoke of the importation of disease much in the same fashion as a merchant in Bombay would speak of the importation of a case of piece goods, or possibly as King Theodorus might at that moment be speaking of the invasion by the British army. Now he had always thought it a matter of regret that the Government had paid so much deference to, and been so much guided by, medical authority on this question. He was not inclined to treat lightly, or to undervalue or depreciate medical and scientific authority of any kind, and were it a question of the investigation of the nature and the causes of disease, or of the mode of treatment of any special disorder and of all the circumstances connected with a special predisposition to any particular disease, then he could understand medical authority being deferred to, but the question whether quarantine regulations were efficacious, or on the contrary really useless and impotent, was not a question of science or a question of physic, but a question of evidence; and the testimony of the most unprejudiced and enlightened inquirers, went to the latter conclusion. It was only the other day that he read in the *London Times*, which by the way was now opposed to quarantine, an article which quoted a report by Dr. Sutherland, one of the Commissioners appointed to inquire into the circumstances of epidemic cholera at Malta and Gozo, in the year 1865. In that report Dr. Sutherland stated that from the 1st August 1865 to the 31st December 1866 no fewer than 1008 vessels entered Malta and Gozo in quarantine. The aggregate burden of those vessels was 502,000 tons; their crews numbered 28,662, and their passengers 1,662. It would naturally be supposed that among all those people a large number of them, doubtless coming from infected parts, many cases of cholera would be found. But what did the Council suppose was the actual result? That after all that irrational derangement of commerce, all that cruel interference with national intercourse and commercial arrangements, there were positively among all those 28,000 or 30,000 persons, but two vessels, each with but a single case of cholera; and those, moreover, were not placed in quarantine, but positively sent away from Malta altogether, where all that time the plague was raging with fearful severity on the island. Similar evidence was supplied too; under their own eyes, in Bombay. In a report by Mr. Dunlop, the Assistant Commissioner of Police, who had charge of the harbour, it was said that among 80 small Arab vessels in the harbour—the class of vessels most likely to be infected, there was only one man suffering from epidemic disease, namely, small-pox, and there was positive proof that this man had caught the disease in Bombay, where he had been ashore among his friends and relatives. Mr. Dunlop said that in an experience of 20 years, he had never found one case of small-pox on board a vessel in the harbour. Now under those circumstances, and upon such evidence, he (Mr. Foggo) did trust—and he hoped he had not trespassed beyond the limits of due respect to his Excellency and the other Honorable members in stating his views—he did trust that the Government would not on any occasion return to the old quarantine regulations. Such regulations would be exploded in Europe were it not for the prejudices of ignorant peoples and ignorant Governments. He hoped that although under the Bill such large powers were entrusted to the Government, they would exercise them with every discretion, consideration, and moderation; and although he felt that the Government would do so, he had thought it not right to let the Bill pass without expressing

his general opinion on the subject. He had no hesitation in saying 'Aye' to the third reading of the Bill.

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

The Honorable Mr. ELLIS moved the third reading of Bill No. 12 of 1866: (*A Bill to amend the law relative to the sale of spirituous and fermented liquors in the City of Bombay*). The Honorable member said that in moving the third reading of this Bill he would take the opportunity of saying a few words on a petition from several highly respectable wholesale shopkeepers in Bombay, which at a previous stage of that day's proceedings had been ordered to be laid on the table. The petitioners at first had been very strongly opposed to the Bill as it originally appeared, and in deference to their views the Committee had made considerable alterations, and had submitted a Bill in a modified form. The present petition from these persons was couched in very different language from that in which they first approached the Council, for whereas the first petition was a strong protest against the Bill, the petitioners had now little to say which could not be answered and disposed of. The chief objection put forward by the petitioners was, that they were especially singled out for taxation; but this was hardly the case. The Bill, as now framed, divided those persons who were supposed to sell liquor in any shape into four classes. The first class consisted of those who were distinguished as not breaking bulk at all, and who sold packages as received. The second class were those who dealt purely in wholesale, and who sold no quantity less than one dozen quart bottles. About the first two classes there must be no pretence of their selling in small quantities. The third class was those who usually and professedly sold in large quantities, but who also sold by the bottle, and inasmuch as they did so sell by the bottle, they must to a certain extent be considered retail dealers. It was not desired to raise a revenue from this class, and the provisions of the Bill showed that a fee of only Rs. 25 was to be taken, therefore it could hardly be supposed that they had been specially selected for taxation. One objection raised by the petitioners was that it was not suitable to the position of persons of their class of life to be required to take out a license; but that was a mistake, and he might mention that one Honorable member of the Council had stated that he himself would have no objection to take out a license under this Bill in order to do the class of business to which class 3 referred. There was nothing at all derogatory to the dignity of these persons therefore, nor could they be supposed from that fact, to come under the class of persons mentioned in the fourth class. Then in regard to the petitioners having been singled out for unnecessary interference and surveillance on the part of the police, their fears were quite illusory. There could be no such interference or surveillance, for if they studied the provisions of the licenses issued to them, and those of the licenses issued to retail dealers—who formed the fourth class under the Bill—they would see that in the case of the former no provision was made for the access of the police to their premises beyond such access as they were already entitled to by Law; whereas in regard to the latter class it was well known that the police had constant access at all times only to grog shops and other places of common resort, and under the proposed Bill, the special powers of the police would be similarly restricted to this class. The fear therefore expressed in this petition was unfounded. No respectable shopkeeper in Bombay should have the slightest hesitation or difficulty in complying with the provisions of the Act.

The Honorable Messrs. MUNGULDASS NUTHOOBHOY and FRAMJEE NUSSERWANJEE quite concurred with what had been said by the Honorable member. The Honorable Mr. Munguldass believed that the liquor sellers had received the greatest consideration from the Committee, and he did not think they would suffer any inconvenience from the provisions of the Bill.

The Honorable Mr. Foggo called attention to Section XII. of the Bill, under which chemists and druggists using spirituous or fermented liquors "for medicinal purposes only" were exempted.

The Honorable Mr. ELLIS said he was quite aware that there was a chance of the clause being abused, but in the present constitution of Bombay he should prefer to leave the Section as it stood; if however there was any fear on the part of the Council that it would be extensively abused, he had no objection to an amendment. For his own part he did not apprehend a class of small druggists springing up who would pretend to sell medicines, but who would actually sell liquors.

The Honorable Mr. Foggo observed that in the eighth paragraph of their petition the petitioners referred to the danger of such shops springing up.

The Honorable Colonel MARRIOTT said he confessed the matter had escaped his attention when the Bill was considered in detail, but it had since occurred to him that the words: "Provided that nothing in this Section shall apply to the sale of spirituous or fermented liquors in any druggist's or chemist's shop for medicinal purposes only" were superfluous. He thought the Section as it stood was liable to abuse.

His Excellency the PRESIDENT said there was no amendment before the Council.

The Honorable Mr. ELLIS said he had been anxious to obtain the views of Honorable members on the subject, and should have no objection to the introduction of a proviso.

His Excellency the PRESIDENT observed that in strict terms under Section XII., without the proviso, a chemist who sold spirits of wine without a license, would be liable to a fine of Rs. 500.

The Honorable Colonel MARRIOTT observed that that would not be so if the spirits of wine were made up in a prescription.

His Excellency the PRESIDENT put it to the Honorable member what would be the case if the chemist sold the spirits of wine for medicinal purposes but unmixed.

The Honorable Colonel MARRIOTT said he should never have supposed the provision could have applied to what a chemist sold *bona fide* under a prescription; but with a view of getting rid of the difficulty he would suggest that the proviso should be retained with the addition of the words "on a prescription," which would prevent people from going to a druggist's shop merely to tiddle.

The Honorable Mr. ELLIS asked if it would meet the objection to add the words "mixed with other drugs?"

His Excellency the PRESIDENT said a druggist who sold liquor for tipping purposes was not protected by the proviso. It only affected those persons who sold for strictly medicinal purposes.

The Honorable the ADVOCATE GENERAL said they might add the words "in good faith," the words which were used in the Poisons Bill.

Bill read a third time and passed.

The Bill was then read a third time and passed, without amendment.

The Honorable Mr. ELLIS moved the second reading of Bill No. 5, of 1867: (*a Bill for the Regulation of the District Police in the Presidency of Bombay*). The Honorable member said it might be necessary for him to remind the Council of what he had stated on a previous occasion when the Bill was before the Council,—that this Bill was nothing more than the application of the Bengal Act (V. of 1861) to this Presidency, with such modifications as seemed to be required by local circumstances. The principle of the Bill, therefore, might be said to have been already affirmed by the Council of the Governor General, inasmuch as the Act which was passed as Act V. of 1861 contained provisions for its extension to this Presidency, or to any other Presidency, if the Presidency Government should see fit to ask for it. There were some points, however, upon which it had been deemed necessary and expedient to make alterations, and he thought the Council would accept the modifications and alterations made as improvements on the original Bill. It seemed not to have been generally understood by the writers in the Native press and by others who had commented on the Bill, that the Council were not now initiating any new principle, but that the Bill would merely carry out the principles of police administration which had been found successful in other parts of India, and especially in Madras, where a similar Police Code under a local Act had for some time been in force. The remarks which had been made upon the Bill in some instances showed considerable ignorance. It was of course one of the chief objects of the Bill to provide for the discipline and control of the police by laws which did not at present exist and owing to the want of which the discipline and efficiency of the police were seriously affected. The old Act contained provisions for the punishment of police officers for abuse of their authority, or neglect of their duty, but they had been repealed by the Government of India on the supposition that Act V. of 1861, or some similar measure, would be passed to supply all deficiencies with regard to the regulation of the police in this Presidency; but up to the present day, no such Act had been passed, and the consequence was that a great want was felt by the Magistrates, the officers of Police, and the public generally. Among the principal objections which had been taken to the provisions of the present Bill might be noted the objection to granting the powers of a Magistrate to officers of Police, but it seemed to have been entirely overlooked by those who had commented upon this provision, that the same powers were already exercised by these officers. Every Superintendent of Police and Assistant Superintendent of Police was, as soon as he was appointed, made a Magistrate; but his appointment as a Magistrate at present conferred on him judicial powers, which it was not considered expedient for him to exercise, and accordingly he was prevented by a departmental order from exercising such powers. The present Bill would place the same restrictions, and they would have the force of law, instead of only a departmental order. It would be seen that the Sections giving powers to these officers, merely gave them powers for the purposes of the Act, and for other than judicial proceedings; the powers so given were necessary in a country like India, where magistrates were few and far between, and where the preliminary steps for bringing a person to justice had to be taken at once, whilst the magistrate, who under ordinary circumstances would issue the warrant, might be at a considerable distance from the spot. Another provision to which objection had been taken was Section XVIII. of the Bill, which had been taken from Act V. of 1861, and the object of which was to give power on an emer-



gency, to enrol persons as special constables. That had been construed by some to mean that the Police might drag weak persons of any age or sex to serve as special constables, and it was supposed in case of such persons refusing to act that they became liable to the penalties of the law. The Honorable member certainly did not share in the apprehensions of evil results of that kind arising, but he thought that the provisions contained in the Section were unsuited to the circumstances of India, and accordingly the committee had amended the Section in a way, which he hoped would meet with the approval of the Council. Another Section which had caused some discussion, and in regard to which he regretted to say, his Honorable colleague, Mr. Munguldass Nuthoobhoy, did not quite agree with the rest of the Committee, referred to the employment of special police in cases where such police might be required, owing to local disturbances. It had been thought by the majority of the Committee, that the rule should be adopted which was of universal application in England, namely, that when from local disturbances, extra police were required, the increased cost should be met by local contribution, and should not be thrown upon the general revenues of the country; but Mr. Munguldass on the other hand, thought it was the duty of the State from the State resources to provide for the cost of these extra police; in other words, that the cost should be paid from the taxes paid by the community generally. The Honorable member had very little doubt that the principle affirmed by the majority of the Committee was a correct one. There were other modifications of Act V. of 1861 besides those he had mentioned; one of them was of some importance as regarded the course to be adopted with respect to Europeans as compared with natives committing similar offences. Under Act V., the process in case of distraint was, that if the person distrained could not provide the means required, and he was a European, he should be proceeded against as if it were a civil action, but in the Bill now before the Council, it was provided that such a person should be proceeded against by the Magistrate, or a Justice of the Peace, for the recovery of the penalty as laid down in the Act 53 of Geo. III. Cap. 155, Sec. 105, in cases of assault.

The Bill read a second time and considered in detail.

The Bill was then read a second time.

In reference to Section XV. which provides for the appointment of additional force in the neighbourhood of railway and other works, His Excellency the President asked whether it was intended that in the case of a man having a set of uproarious workmen whom he was unable to control, and danger being apprehended, and where the police were called in, he was to pay the cost of the police so required.

The Honorable Mr. ELLIS said that as the employer got the profits from the labour of the uproarious workmen, it was not unfair or unreasonable that he should be made to pay for the police called in. Not long ago, there was a case in which Messrs. Nicol and Co. imported a large number of Chinese labourers into this country, but they were obliged to get rid of them as they were unmanageable; extra policemen were called in to keep order among the Chinamen at Elephanta Island, and the cost of the police was paid by Messrs. Nicol and Co.

His Excellency the PRESIDENT observed that there might be cases where it was fair and reasonable that the employers should pay, but on the other hand there might be cases where the employer should no more be called on to pay for the services of the extra police, than a man whose house was broken into, and who required police assistance.

The Honorable Mr. ELLIS explained that the provision was meant for special cases; such cases for instance as one that occurred on the Bhoré Ghaut Railway works, where the Contractor, Callianjee Sewjee, paid for the services of the extra police required to keep his workmen in order.

His Excellency the PRESIDENT observed that the powers given under the Section were very large: "The cost of such additional police shall be defrayed by a local rate, charged on the part of the country described in the notification, and the Collector, on the requisition of the Magistrate of the district, shall levy the amount by an equitable assessment on the inhabitants thereof."

The Honorable Mr. MUNGULDASS NUTHOOBHOY said he thought the provision was a necessary one in the case of large Companies, such as Railway Companies, which were rich and employed more than a thousand men. But he quite agreed with his Excellency that the wording of the Section was so loose, that if the Commissioner of Police chose, he might compel a man who was merely building his own house and employing but a small number of workmen, to pay for the police required to look after the men. He hoped the Honorable member would agree to some amendment. He would propose that the Section should state "provided the workpeople exceed the number of one thousand."

The Honorable Mr. ELLIS reminded the Honorable member that the making of the charge did not rest with the Commissioner of Police, as he would first have to go to Government for consent, and a paternal Government would not allow an unfair charge to be made. It would only be on special occasions that the Section would be put in force, for the Commissioner would not make the requisition in a small matter.

The Honorable Mr. FOGGO thought that the provision might be limited to the case of public works.

The Honorable Mr. MUNGULDASS moved that the following clause should be placed at the end of Section XV.: "Provided that no person shall be called upon to pay for the extra force so rendered necessary unless he shall employ more than 1000 persons at the same time."

This amendment was lost, and the Section was passed unamended.

With reference to Section XVI. the Honorable Mr. MUNGULDASS NUTHOOBHOY said the Honorable Mr. Framjee Nusserwanjee had written the following in reference to this Section, and begged him (Mr. Munguldass) to read it:—

"With your Excellency's permission I shall allude to a Section which in my opinion demands consideration. Section 16 of Bill No. 5 provides for the cost of additional police employed in a disturbed place being paid for out of the Municipal Fund, and that any additional tax necessary for the purpose shall be assessed by the Municipal Commission. This is in the event of the disturbed district being within the limits of a town where there is a Municipal Commission under Act XXVI. of 1850, or other Act in force; but if not, then the cost of such additional police must be defrayed by a local rate charged on the part of the country described in the notification, and the Collector, on the requisition of the Magistrate of the district, shall levy the amount by an equitable assessment on the inhabitants thereof. I do not think it is fair to saddle innocent people with the cost of any police force specially employed in consequence of a disturbance created by the rioters. The latter only may be justly punished by being made to bear the expense to which Government may be subjected in consequence of their conduct. If the disturbers are men of no substance to bear

the charge, it should be paid out of the State revenue, and should not fall on the innocent."

The Honorable Mr. MUNGULDASS said they had a long discussion on this Section in Committee, and he was sorry to say they could not agree on the point. It was quite fair to require the payment of the rate for the services of the extra police, or any expense which Government might incur by persons who were riotous or rebellious, but it was very unfair to tax persons who took no part in a disturbance. Ten or fifteen years ago he remembered the Mahomedans of Bombay ill-treated the Parsees, and even persons dressed like Parsees were ill-treated in the streets. The Government, on that occasion, ordered about two hundred horses down from Poona, and it would have been hard if the Parsees of Bombay had been called upon to pay the expense. The people who committed themselves ought to be made to pay if they were able, if not the Government ought to bear the expense, for it was, he thought, one of the first duties of Government to protect the lives and property of their subjects. As to what had been said by the Honorable member (Mr. Ellis) about the people of England paying for the cost of extra police, he quite agreed with him, but then there was this difference, that in England, the people taxed themselves, whilst in this country Government taxed the people; and in addition to that, there was no limit stated in Section XVI. to the extra cost which the inhabitants of a village might be put to. He had no objection to the provision if the whole country was made to pay. In Bombay the people paid for the whole expense of the Police; they had the satisfaction of knowing that they could not be made to pay more than three per cent. But in this Bill the power to tax was unlimited. He did not suppose that by a considerate Government like the present, unlimited taxation would be allowed; but in the case of a village where there were disturbances, supposing fifteen or twenty sepoy were quartered on it, and the expense had to be paid by the village, its whole fortune might be required. In any case he said there ought to be some limit to the amount that could be imposed upon the rate-payers, say Rs. 100 or Rs. 500 or so, in proportion.

His Excellency the PRESIDENT said he wished to ask Mr. Ellis what was meant by the words "the Collector, on the requisition of the Magistrate of the district, shall levy the amount by an equitable assessment," &c.

The Honorable Mr. ELLIS explained that at one time it was proposed to insert the words "assessment according to means" but to that the Honorable member (Mr. Munguldass) had objected still more strongly, on the ground that there might be other considerations, and thereupon the words "equitable assessment" were introduced, it being left to the Collector to ascertain what the amount would be. But he (Mr. Ellis) had no particular desire to retain the words if better could be introduced.

The Honorable Mr. MUNGULDASS said, that at present the rate-payers would not have to pay according to their offence, for in some towns or villages loyal rich men might have to pay the whole cost, because a few bad men had been rioting. If the Council was of opinion that the charge should be paid by the village or district, he would consent, although reluctantly, on condition that the amount should not exceed three per cent. on their income.

The Honorable Mr. MANSFIELD thought that what Mr. Munguldass said was very fair, and that where there was a municipality the expense should be paid by the town, but that where there was no municipality the cost should be borne by an extra rate.

The Honorable Mr. MUNGULDASS hoped the Honorable members would agree with him that it was not proper, but against the tendency of legislation, to give power for making unlimited taxation. There ought to be some fixed limit, for it was preposterous to require a

man to pay half his fortune, as might be the case here. If necessary, he (Mr. Munguldass) would have no objection to even increasing the limit, where there were no municipalities, the amount would have to be recovered from the holders of land and house property.

His Excellency the PRESIDENT inquired whether the Honorable member proposed to limit the amount leviable on municipalities as well as on villages?

The Honorable Mr. MUNGULDASS replied in the affirmative.

His Excellency the PRESIDENT said that in that case there would be a good deal of difficulty.

The Honorable Mr. ELLIS expressed the opinion that it would be impossible to work the Section if the Honorable member's proposition was embodied in it. Take the case of a village where there was a boundary quarrel. Do what they would they could not keep the villagers from fighting, perhaps, and then it might be necessary to quarter extra police in the village. Now supposing it was necessary to keep them in the village for three months, and there was this restriction that the amount leviable should not exceed three per cent. on the land revenue; on what was the assessment to be made, on the whole of the year's revenue? or on the amount levied in the three months, or on one-fourth of the year's revenue? Innumerable difficulties would arise. If, however, the villagers were made to pay the cost, they would soon make up their disputes, and their quarrels would be stopped by the disputants being bound over to keep the peace.

The Honorable Mr. MUNGULDASS NUTHOOBHOY observed that if the Honorable member would consent to an alteration, so that the whole extra cost might be recovered from those who caused the disturbance, he (Mr. Munguldass) would not oppose the Section. If people committed themselves they should be held liable, and he must say it appeared very unjust to tax innocent persons; in some cases an innocent man, because he happened to live in a certain village, might be made to pay the whole of his fortune for the misconduct of others.

The Honorable Mr. BROWN thought there was a good deal of force in the Honorable member's (Mr. Munguldass) objection; but that the difficulty might be met if provision were made for an appeal from the decision of the Collector to some higher authority.

The Honorable Mr. ELLIS reminded the Honorable members that there might be cases in which it would not be necessary to levy under the Section.

It was then proposed that the words "shall levy the amount by an equitable assessment on the inhabitants thereof," should be altered to "shall levy the amount by such an assessment on the inhabitants thereof as the Collector shall in his discretion think just."

His Excellency Sir ROBERT NAPIER said that in many villages which came within his knowledge there was such an evil disposition on the part of the generality of the villagers, that it would be impossible to detect evil doers, and although the proposed principle of taxation might not be consistent with the modes of punishment adopted in more civilized districts, it might be very desirable in wild districts.

The Honorable Mr. MUNGULDASS NUTHOOBHOY had no objection to exclude wild districts, but said that in a place like Poona the Section ought not to apply.

His Excellency Sir ROBERT NAPIER said it might be a question whether in wild districts where there were boundary disputes, the inhabitants might not consider it quite worth their while to have a fight, if in the event of an extra police force being sent to the district, they only had to pay a percentage of the cost.

His Excellency the PRESIDENT thought that the great objection to the Honorable member's (Mr. Munguldass) proposition was this: that he put the limit at too low a rate. In the case of a village or district only assessed at Rs. 1,000, the small percentage of the cost of the police that would have to be paid would be a mere nothing.

The Honorable Mr. MUNGULDASS said he was quite willing to say "not exceeding ten per cent.," for it would be far better to have even a limit as high as that, than none at all.

The Honorable Mr. ELLIS observed that the land revenue was too light in some districts to base the rate on.

His Excellency the PRESIDENT suggested that the limit might be fixed at an amount equal to one year's land revenue.

The Honorable Mr. MUNGULDASS NUTHOOBHOY was willing to agree even to that.

The Honorable Mr. ELLIS alluded to the difficulty that would be found in assessing the amount in the case of an Inam village.

The Honorable Mr. BROWN moved that in line 14, after the word "Police," the word "shall" be omitted; and the words "may wholly or in part," inserted before the word "be."

This was agreed to.

The Honorable Mr. MUNGULDASS said that as there was so unanimous a feeling against his proposition, he would agree to leave the matter to the discretion of the Government.

His Excellency the PRESIDENT observed that at present the matter stood thus: the Collector must levy the amount as soon as he was called upon by the Magistrate; and there was nothing to prevent the Magistrate from saying that the whole amount should be levied.

The Honorable Mr. ELLIS thought the difficulty might be met by adding the words "at the discretion of Government" after the words "wholly or in part."

Section XVI. as amended was then passed, as follows:—

"It shall be lawful for Government, by notification and in such other manner as may to it seem fit, to direct the employment of any Police Force in excess of the ordinary fixed complement quartered in any part of the Presidency which shall be found to be in a disturbed or dangerous state, or any part thereof, in which, from the conduct of the inhabitants, Government may deem it expedient to increase the number of Police. The cost of such additional Police may wholly or in part at the discretion of Government be defrayed by a local rate charged on the part of the country described in the notification, and the Collector, on the requisition of the Magistrate of the District, shall levy the amount by such an assessment on the inhabitants thereof, as the Collector shall in his discretion think just. Provided, however, that when the part of the Presidency so notified is within the limits of any town in which there is a Municipal Commission under Act XXVI. of 1850, or other Act in force, the said charge shall be defrayed from the Municipal Fund, and any additional tax necessary for the purpose shall be assessed by the Municipal Commission."

The Honorable Mr. ELLIS said he had an amendment to propose to Section XVIII., the object of such amendment being to bring the clause in accordance with the similar

clause of the Code of Criminal Procedure, which said: "Every person is bound to assist a Magistrate or Police officer demanding his aid in the prevention of a breach of the peace, or in the suppression of a riot or an affray, or in the taking of any other person whom such Magistrate or Police officer is authorized to arrest." The Section which he proposed to substitute for the present Section XVIII. was, as he had said, in accordance with the Section of the Criminal Procedure Code, and gave power to the officer to make the demand which the person or persons were under the Criminal Procedure Code obliged to obey. The amendment he proposed was as follows: "It shall be lawful for a Magistrate or Police officer to demand aid from any person within his own jurisdiction to assist the police in the place in which such person is at the time for prevention of a breach of the peace, for the suppression of a riot or an affray, or for the taking of any other person whom such Magistrate or Police officer is authorised to arrest. Under this Section it would not matter whether the person making the demand was a constable or a chief constable; but he (Mr. Ellis) had restricted the power of the officer or Magistrate to make the demand on a person within his own district.

His Excellency the PRESIDENT thought it would be better to follow the exact words of the Code. The request to call upon any person to aid the police was only requiring that which a person was bound to do under the Common Law. Under this amended Section of the Bill, however, a Magistrate might say to a man, "I have got authority to arrest A. B., and if A. B. comes into your neighbourhood, I call upon you to arrest him." Now that was not the object of the Section in the Code at all, which really was intended to extend the Common Law of England to this country. Under the Common Law, in case of an affray or riot, if it was necessary to arrest a man upon the spot, a police officer was entitled to call on any one to assist him. By this Section of the Bill, however, a Magistrate would be entitled to call upon any person within his own jurisdiction, the limits of which might be 50 miles away from the home of the person on whom he called.

The Honorable Mr. MUNGULDASS expressed the opinion that the Section was objectionable in the form proposed, as it would place undue authority in the hands of police sepoy and enable them to get money out of people who would rather pay than suffer unnecessary inconvenience. For instance, a sepoy might go to a person and say there was a drunken man to be taken into custody, and that the person must either help him to secure the man or give him Rs. 2. The Section was then amended, as follows:—

"It shall be lawful for a Magistrate or District Superintendent, or Assistant District Superintendent of Police, or for any Police officer to demand the aid of any person in the prevention of a breach of the peace, or in the suppression of a riot, or an affray, or in the taking of any other person whom such Magistrate, or District Superintendent, or Assistant District Superintendent of Police, or Police Officer is authorized to arrest."

In reference to Section 29 the Honorable Mr. MUNGULDASS said he thought Rs. 200 was an excessive amount.

The Honorable Mr. ELLIS said he did not see why the amount should be diminished. The persons who would have to pay were generally the heads of castes.

The Honorable Mr. MUNGULDASS quite agreed that for the 27th Section the fine was not too high, but said that for the 28th Section it was too large.

The Honorable Mr. ELLIS said he had no objection to alter the Section and provide that one class should be liable to a fine of Rs. 200, and those under Section 28 to a penalty not exceeding Rs. 50.

Section XXIX was then amended and passed as follows :—

“ Every person opposing or not obeying the orders issued under the last two preceding sections shall be liable to a fine not exceeding two hundred Rupees, or in default of payment to imprisonment of either kind for a period not exceeding six months on conviction thereof before a Magistrate, if such order shall have been issued under Section 27 of this Act, and to fine not exceeding fifty Rupees, or in default of payment, to imprisonment of either kind for a period not exceeding two months on conviction before a Magistrate, if such order shall have been issued under Section 28 of this Act.”

In Section XXXI., Clause 4, the following alterations were made:—After the word “ person ” in the 70th line, the word “ for ” was omitted, and in the 71st line, the words “ or for ” were inserted before the word “ the, ” and after the word “ money ” the word “ or ” was omitted, and the word “ exposes ” inserted.

In the marginal note to Section XLVI. the words “ applicable to Sind but ” were inserted after the word “ Act.”

In Section XLVI. the word “ of ” was omitted after the word “ Act ” in the third line.

In the Form (page 24) the following alteration was made in the last line. After the word “ Bombay ” the word “ District ” was inserted, and after the word “ Act ” the figures “ 1867 ” were inserted.

His Excellency the PRESIDENT adjourned the Council to next day (Friday) at 11-30 A.M.

N. DANIELL,  
Acting Under Secretary to Government.

Poona, 10th October 1867.

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

The Council met at Poona, on Friday, the 11th October 1867, at half-past eleven o'clock A.M.

*P R E S E N T :*

The Right Honorable W. R. S. V. FITZGERALD, Governor of Bombay, *presiding.*  
 The Honorable B. H. ELLIS.  
 The Honorable S. MANSFIELD.  
 The Honorable the ADVOCATE GENERAL.  
 The Honorable SHREENIVAS RAOJEE RAO SAHEB PUNT, PRUTINIDHI.  
 The Honorable MUNGULDASS NUTHOOBHOY.  
 The Honorable G. FOGGO.  
 His Highness the Honorable MEER MAHOMED KHAN, TALPORE.  
 The Honorable FRAMJEE NUSSERWANJEE PATEL.  
 The Honorable Colonel W. F. MARRIOTT, C.S.I.  
 The Honorable A. BROWN.

The Honorable Mr. ELLIS in moving the third reading of the Bill for the Regulation of the District Police in the Presidency of Bombay, said that the Bill had been fully discussed in every part, and that there was no objection to its being read a third time and passed.

The Honorable Mr. MUNGULDASS said he had no opposition to offer.

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

The Honorable Mr. ELLIS moved the second reading of Bill No. 6 of 1867: (*a Bill for the Regulation of the Village Police in the Presidency of Bombay*). The Honorable member said it was not necessary for him to take up the time of the Council with any observations, as there was very little that was new in the Bill, it being merely a re-enactment of portions of Regulation XII. of 1827, which related to the Police, with such modifications as were necessary to fit the provisions of that Regulation into the system which had been approved and settled by the Council in the Bill which had just been read a third time and passed. A comparison of the provisions of this Bill with those repealed would show how very nearly it resembled the old Regulations. He thought the matter required no further remarks from him, and he begged to move that the Bill be read a second time.

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

In Section II. Clause 1, the word "both" was inserted after the figures LIII. and before the word "inclusive."



The Honorable Mr. ELLIS said that he had to propose an amendment to Section V., and the reason for his doing so was, that as the clauses of the Section originally stood, the meaning was not very clear, and there appeared to be some fear that there might be a collision between the provisions of one clause and those of another, and besides he had not felt at all satisfied that the whole would fit into the requirements of the Hereditary Officers' Act. On the latter score indeed, he was not quite sure that the Section as amended would be wholly free from objection, for the fact was that the present state of the law as regarded hereditary officers, was in many respects very defective, and it was hardly possible to frame any clauses in this Bill which might not be found difficult to work in some respects in connection with the Hereditary Officers' Act. But the question of any change in the law in that respect could not of course be considered here; it was a separate question which must be taken up by itself, as he hoped before long it would be taken up. Under the amendments as he had now framed them, there would, he believed, so far as could be foreseen, be no difficulty in making the appointment of efficient Patels. But there was just a chance that difficulties might arise with respect to the provisions of the Hereditary Officers' Act, and if that was the case, it might be possible to remove the difficulties by means of a provision in any Bill hereafter introduced, to amend generally the law relating to Hereditary Officers. He begged to move the substitution of the following for Section V. of the Bill:—

“CLAUSE 1.—The Village Police in each village shall be under the charge of such person as the Magistrate of the District shall, subject to the approval of the Police Commissioner, appoint in writing to be Police Patel, and unless the Commissioner of Police, owing to the size of the village or other good cause, see fit to separate the appointments, the Magistrate of the District shall appoint the person conducting the duties of Revenue Patel to be Police Patel.”

“CLAUSE 2.—In making the appointment the said Magistrate shall have due regard to the provisions of Act XI. of 1843 (*an Act for regulating the Service of Hereditary Officers under the Presidency of Bombay*), or other Acts in force for regulating the service of Hereditary Officers so far as the same may be applicable; but when the Revenue Patel is not appointed Police Patel, and more persons than one claim by reason of hereditary right to perform the duties in rotation or otherwise, it shall be lawful for the Magistrate of the District to appoint the most fit from among their number.”

“CLAUSE 3.—In any town or place in which the duties cannot be efficiently performed by one Police Patel, the Magistrate of the District may, with the consent of the Commissioner of Police, appoint a sufficient number of Police Patels, for the different divisions of the town or place.”

The amendment was agreed to.

In Section XI. the Honorable Mr. ELLIS moved that in line 51 (clause 3), after the word “situated,” the following words should be inserted: “or one of his subordinates deputed by him.” The Honorable member explained that this amendment was required in order to prevent inconvenience arising from the absence of the Police Officer.

The amendment was carried.

When considering Section XV. the Honorable SHREENIVAS RAOJEE RAJ SAHEB PUNT PRUTINIDHI said that he had an amendment to propose to the first clause, with the view of getting a portion of the 44th Section of the Code of Criminal Procedure embodied in a clause under the present Act.

The Honorable Mr. ELLIS explained, that the 44th Section of the Code of Criminal Procedure would be applicable without any mention of it in the present Act. This Section empowered a Magistrate to give part of the fine levied to the person injured to the extent of Rs. 2.

His Excellency the PRESIDENT inquired whether the Honorable the Punt Prutinidhi had any amendment to offer.

The Honorable the PUNT PRUTINIDHI said that after the explanation given by Honorable Mr. Ellis, he should not propose that Section 44 of the Code should be inserted in the Act.

The Honorable Mr. ELLIS said it might probably be necessary to make some provision for the withdrawal of the commission if it was not used properly by the Patel. The question was whether the fact of the Magistrate of the district being empowered to issue a commission to the Patel entitled him to withdraw it if the Patel exercised his power unduly or improperly; and probably it would be necessary to insert at the end of the Section a provision to the effect that the Section did empower the Magistrate to withdraw the commission if it were mis-used by the Patel.

His Excellency the PRESIDENT said he should say that it resulted from the authority given to issue the commission that the Magistrate had power to revoke it.

The Honorable Mr. ELLIS said that was exactly what he wished to ask the Advocate General; whether the power to grant a commission also gave the power to the Magistrate to withdraw it.

His Excellency the PRESIDENT said that it would depend upon the wording of the commission.

The Honorable the ADVOCATE GENERAL expressed his opinion that the commission might be withdrawn at any moment.

The Honorable Mr. ELLIS said that it might be sufficient if they had it upon record that the Section did give power to the Magistrate to withdraw the commission; but it would be very inconvenient for the Government to be informed at some future time when the Patel might use his power improperly that even the Government could not withdraw his commission because there was no provision in the Act.

His Excellency the PRESIDENT said that the shortest way would be to amend Section 16, and say that the commission should be during the pleasure of the Government.

The Honorable Mr. MANSFIELD: Or state that in the commission.

The Honorable Mr. ELLIS: "During good behaviour" would do.

His Excellency the PRESIDENT differed from Mr. Ellis—the introduction of those words would defeat the object he had in view.

The Honorable the ADVOCATE GENERAL said that it might do to issue a commission in such terms as the Government might think fit.

The Honorable Mr. ELLIS objected that if it were put in that way the matter might be forgotten.

The Honorable the ADVOCATE GENERAL asked if there were any other Section which proposed to give power to Government to issue a commission.

The Honorable Mr. ELLIS said there was not. Power was given to the Commissioner of Police by an order in writing to authorize any Magistrate of a district to issue a commission.

His Excellency the PRESIDENT said that surely the maxim of law was that any authority that might be delegated under a commission might be withdrawn on cause being shown.

The Honorable Mr. ELLIS observed that the Courts had a habit of construing Acts very strictly. However he merely wished to call the attention of the Advocate General to the matter so that it might not be said hereafter that the point had been overlooked by the Council. He thought a provision might be inserted at the end of Section XVII.

His Excellency the PRESIDENT said that a proviso ought only to be a modification of a particular clause, and Clause 1 of Section XV. provided that the commission should be issued to the Patel, who should have power to do certain things. A provision might be inserted to the effect that it should be lawful for the Commissioner of Police to withdraw and cancel a commission issued under the authority of Section XV. That seemed the simplest plan.

The Honorable Mr. ELLIS thought that it would be safe to insert some such provision. They might now proceed to Section XVI. and make a new Section XVII. afterwards.

His Excellency the PRESIDENT said that the best thing would be to make the matter perfectly clear, and insert the words "as long as he shall be empowered," because he supposed they meant that the power they gave the Patel was to expire with the commission.

The Honorable Mr. ELLIS: Certainly.

The words "and as long as he shall be" were inserted in line 1 of Section XVI. after the word "when."

His Excellency the PRESIDENT asked whether the withdrawal of the commission would rest with the Magistrates or the Commissioner of Police?

The Honorable Mr. ELLIS said he thought that they had better leave it with the Commissioner.

The Honorable Mr. MUNGALDASS NUTHOORHOY expressed the same opinion.

New Section added to the Bill.

The following Section was then introduced as Section XVIII.

"It shall be lawful for the Magistrate of a District, with the sanction of the Commissioner of Police, by an order in writing, to cancel either in whole or in part any commission granted under Section XV. of this Act."

In reference to Section XX. the Honorable Mr. ELLIS proposed that in line 6, the words "his nearest" be omitted, and the word "a" substituted. The honorable gentleman said the Section as it stood provided that the Police Patel in case of accident should

appoint his "nearest" competent kinsman to act for him. It was thought, however, that there might be a difficulty in determining who the "nearest" competent kinsman was, and he therefore proposed that it should be competent to the Patel to select any one who was competent, without reference to a genealogical table.

The amendment was agreed to.

In reference to Section XXI. the Honorable the ADVOCATE GENERAL inquired whether it was meant to apply this Act to Sind.

The Honorable Mr. ELLIS said they had not the same village system in Sind, and he did not think it necessary to make the Act applicable to that Province; but he did not know whether the Honorable Mr. Mansfield would agree with him.

The Honorable Mr. MANSFIELD did not think it would be necessary to apply the Act to Sind.

The Honorable Mr. ELLIS observed there might be just a doubt as to whether the Act was or was not applicable to Sind, and unless it were specially mentioned that it was applicable, it might not be thought to be so.

His Excellency the PRESIDENT asked if there were Patels employed in Sind.

The Honorable Mr. MANSFIELD said no; the local officers in Sind were called *Wuttumdars*, but some few persons had been temporarily appointed as Patels.

His Excellency the PRESIDENT asked whether there was any reason why the Act should not apply to Sind?

The Honorable Mr. MANSFIELD replied that the village system was not universal in Sind. There were village communities there, but not village establishments.

On the motion of the Honorable the ADVOCATE GENERAL the following Section was added to the Bill, and numbered XXIII.

"This Act or any portion thereof may from time to time be applied to the Province of Sind by notification by Government, and the application of the same or of any portion thereof to the said Province may from time to time by the same authority and in like manner be revoked."

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

His Excellency the President adjourned the Council.

N. DANIELL,  
Acting-Under Secretary to Government.

Poona, 11th October 1867.