

PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS,

1876.

VOLUME XV.

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

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

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

PRESENT.

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE GENERAL.

The Honourable MAJOR-GENERAL M. K. KENNEDY.

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

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable KHAN BAHADUR PADAMJI PESTONJI.

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

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

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

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

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

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

The Honourable Mr. GIBBS moved the first reading of Bill No. 6 of 1875—a Bill to amend (Bombay) Act II. of 1868 (The Ferries Act). He said—

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

The principal reason for bringing forward this Bill is on account of opinions which the Government have received from their law officers, that the Act of 1868 does not empower them to declare certain ferries to come within the meaning of that Act. I believe the reason is that these are not ferries from one side of a river to the other, but across the sea. This has given rise to much public inconvenience. There are some other small alterations which may be commented upon when the Bill comes a second time before the Council, and which I need not allude to now. I do not think it necessary to refer the matter to a Select Committee, and I will therefore move the first reading of the Bill.

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

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

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

The Honourable Mr. GIBBS—I think so.

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

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

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

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

Bill read a first time.

The Bill was then read a first time.

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

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

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

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

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

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

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

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

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

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

The Honourable the ADVOCATE GENERAL—Yes.

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

Bill read a first time.

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

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

The Honourable Mr. RAVENSCROFT moved the second reading of the Bill. He said—The

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

Council is aware that the present law in reference to the land revenue administration in Bombay is regulated by Regulation 19 of 1827, but this Regulation has been found not to be applicable to the City of Bombay in recent times, and therefore it has been thought advisable to introduce this new Bill. The principles of that Regulation are as far as possible carried out in this new Bill, with such alterations as the practical experience of those who have been entrusted with the revenue administration in Bombay have suggested, without in any way affecting the rights of individuals at present existing. The two main points in which this Bill differs from the existing law are in respect to the survey and regarding encroachments. What is proposed now is entirely new; and the reason why it has been deemed necessary to make these alterations in the new Bill is on account of the very great expense, both of labour and money, which was incurred in making the survey and erecting the survey boundary marks. These matters are of great importance to the landowners and also to the State, and I think it is quite fair that the rules that have been introduced into the new Bill should be made law. It has been found necessary to arm the Collector with some powers which will enable him at once to deal with recent encroachments, and also to give him power, instead of ordering abatements or removal of such encroachments, to place a double revenue on the land that has been so encroached on. This Bill, after the first reading, was referred to a Select Committee, and the Select Committee had two or three meetings, and considered all the points with the great attention the subject deserved. One of the chief things that came before the Committee was as to the advisability of investing the Collector with power to levy or to enhance assessments in certain cases; and it was desirable according to the opinion of the Committee not to introduce any harsh provision into the Act with reference to assessments. Therefore, thinking the words were not sufficiently clear as they stood, the Committee added a section by which they succeeded in guarding against the introduction of any clause into the Bill which might seem to alter the existing law in regard to this matter. The Select Committee also made an alteration in Section 3 with reference to boundary marks. The reason of this was that they thought it only fair to compel people to maintain those boundary marks only that have been erected by Government orders; but not to compel men to re-erect walls that might have tumbled down through want of care on the part of somebody else. With reference to the encroachments, there was some difficulty as to what we should take as the basis on which to declare that encroachments had been made. The survey that was carried out with very great care and attention under the superintendence of Colonel Laughton, and the accuracy of which has been testified to, not only by our Government officers but by landowners and others, was adopted by the Select Committee after a good deal of consideration as the best *prima facie* basis on which it could be determined, whether an alleged encroachment was an encroachment or not. This, I think, is a fair proposal, because it does not lay down a fixed basis of encroachment, but a *prima facie* basis which may assist any attempt to arrive at a just conclusion. With regard to Section 37, it was originally ordered that the Collector might issue summonses requiring any person to appear at his (the Collector's) office, either in person or by deputy, and to produce to the Collector all such documents as might be required by him. The Select Committee thought that was not in accordance with the usual practice in law in reference to the titles

to land. I think it is unheard of in England that a man may be compelled to bring his title deeds into a court of justice, or to produce them to any one who might take advantage of the occasion against himself. We therefore altered the words to the effect that a man might be required to bring to the Collector "such information as might be in his possession." This we thought was less harsh and would enable him to object to bring any documents which might be prejudicial to him or anybody else. There is only one other point on which I wish to make any observations, and that is in reference to the petition which the Bombay Law Society presented to His Excellency the President. We read that petition carefully, and considered it; but we did not think it was necessary on its perusal to offer any addition to the Bill as it had been already framed. But we hope—and I express the hope now—that as the Bill is being passed through Council, those portions which are discussed by the Bombay Law Society in their petition will receive the attention which they deserve. With these few remarks, I beg to move the second reading of the Bill.

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

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—There is one remark that I should like to make, as being a party to the report. I may say that I have contributed my quota to the discussion in the Committee, where I think we very carefully considered those portions that have been touched upon by the Honourable Messrs. Ravenscroft and Rogers. It is in regard to the *prima facie* basis on which encroachments are to be decided that I wish to make a remark. I think in adopting this section as it now stands we have given the Collector of Bombay a basis which will serve in future for his guidance; and for my own part, having reason to believe that this city survey was very carefully made, I have considered it only fair that this should be the basis for deciding what may be in fact titles to land in Bombay. In the future, this will be the *prima facie* evidence on which the Collector will either eject a party or on which he may be sued for having ejected a person in the High Court, or elsewhere.

The Honourable the ADVOCATE GENERAL—I understand, Sir, that it will be open to the Council, in considering the Bill in detail, to deal with those matters which have been brought to the attention of your Excellency by the petition of the Bombay Law Society. That petition, I think, is a very important one, and will be a very great assistance to the Council in determining what effect this Bill will have on the rights of owners of land in the Island of Bombay. I am quite ready to admit that the survey that was conducted by Colonel Laughton is a very valuable addition to the means of knowledge which we possess as to the position and boundaries, as they at present exist, of estates in the Island of Bombay; but it would be very unwise if we were to go one step further than the Bill has gone, as it now stands, in recognizing the authority of that survey. In the most important case in which that survey has hitherto been referred to in a court of law,—in the case respecting the land about the Parsee Towers of Silence,—it has been found to be absolutely unreliable. In the survey map, certainly land which was absolutely proved by title deeds and other evidence to belong to the defendants was included within the boundaries of a plot which belonged to the

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

His Excellency the PRESIDENT—Before the matter drops I should like to ask if in the course of the trial it was explained how Colonel Laughton had been led to embody the entirely erroneous measurement alluded to by the Honourable the Advocate General in his map, because very much of the value of the survey as *primâ facie* evidence would depend on the rules observed in carrying it out when owners of adjoining properties disputed their boundaries. What steps did he take, or was it in his power to determine authoritatively what was the boundary in such cases? In the case referred to he seems to have adopted what was found to be, according to the Honourable the Advocate

General, an entirely erroneous boundary; and if it could be shown how he was led into the mistake, it would be for the benefit of the Council that it should be stated.

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

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

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

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

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

The Honourable Mr. GIBBS—Certainly not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Honourable the ADVOCATE GENERAL—Exactly.

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

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

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

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

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

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

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

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

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

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

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

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

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

The section was then altered to read as follows:—

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

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

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

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

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

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

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

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

His Excellency the PRESIDENT—That would not do.

The Honourable Mr. GIBBS—Why not?

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

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

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

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

His Excellency the PRESIDENT—That had better be postponed.

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

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

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

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

“10. The owner or occupant of land or in his absence the person actually in possession, shall be liable in person and property for the land revenue due upon the holding.”

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

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

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

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

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

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

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

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

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

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

The section as amended reads as follows:—

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

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

His Excellency the President then adjourned the Council.

By order of His Excellency the Governor in Council,

W.-LEE-WARNER,

Acting Under Secretary to Government.

Bombay Castle, 4th January 1876.

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

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

PRESENT.

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE GENERAL.

The Honourable MAJOR-GENERAL M. K. KENNEDY.

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

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALLY ROGAY.

The Honourable KHAN BAHADUR PADAMJI PESTONJI.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK moved that for the words "not exceeding 100 Rs." in line 7, the following words be substituted :—"not exceeding Rs. 10 in case of holdings paying less than one rupee as Land Revenue, and in no other case exceeding Rs. 100,"

The Council divided :—

<i>Ayes.</i>	<i>Noes.</i>
The Honourable J. GIBBS.	The Honourable A. ROGERS.
The Honourable the ADVOCATE GENERAL.	The Honourable MAJOR GENERAL M. K. KENNEDY.
The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK.	The Honourable E. W. RAVENSCROFT.
The Honourable NACODA MAHOMED ALI ROGAY.	
The Honourable KHAN BAHADUR PADAMJI PESTONJI.	
The Honourable RAO BAHADUR BECHERDASS AMBAIDASS.	

—Carried.

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

The Honourable RAO SAHEB—I think it might be left out with great advantage.

The section was accordingly struck out.

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

The Honourable RAO SAHEB—I think so; we should make the seller liable, and, failing him, the purchaser.

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

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

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

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

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

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

The section was accordingly omitted.

The Honourable the ADVOCATE GENERAL suggested that with reference to the word “occupant,” the best way would be to define the person to whom Government would look finally for the payment of land revenue as the “superior holder,” and then in the interpretation clause they could define the words “superior holder” to signify the person having the highest title under Government to the land in respect of which land revenue was payable.

Accordingly, the word “occupant” was changed to “superior holder” throughout the Bill, and an interpretation clause to that effect inserted.

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

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

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

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

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

The Honourable RAO SAHEB—The only point I wish to refer to is that of the execution of the Mámlatdárs' decrees, and the question that was considered by the Select Com-

mittee whether special officers should be appointed for that purpose, or whether their execution should be entrusted to the village authorities. With reference to the statistics quoted by the learned Advocate General, the only point that occurs to me is to show how misleading they can be, for though the number of the decrees may have gone on increasing, their effect has not been proportionate. At present there is no machinery for enforcing them.

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

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

Bill read a second time and considered in detail.

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

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

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

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

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

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

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

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

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

The section was accordingly allowed to stand.

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

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

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

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

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

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

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

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

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

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

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

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

By order of His Excellency the Governor in Council,

W. LEE-WARNER,

Acting Under Secretary to Government.

Bombay Castle, 5th January 1876.

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

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

PRESENT.

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE GENERAL.

The Honourable MAJOR-GENERAL M. K. KENNEDY.

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

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable KHAN BAHADUR PADAMJI PESTONJI.

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

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

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

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

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

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK—I made some remarks at starting on this subject, and I think if we are going to improve the Mámlatdárs' Courts, we ought particularly to consider what the effect of the decrees will be. I think there are several very serious objections to their being entrusted to the village officers, who might be parties to a suit. Neither should the decrees be left to the parties themselves independently, though there are many considerations why the patels might be made to act as a check on the special bailiffs. That the decrees should not be entrusted altogether to the parties

themselves seems to me a matter of great importance. With regard to the village officers, first of all they would not be specially paid agents, and they are already a hard-worked and underpaid class, as has been clearly acknowledged by Government. Again, they might be dealing largely with land, &c., in their villages, and might have to act as bailiffs in cases in which they were themselves concerned. The duties they have to perform are laid down very definitely in Regulation 16 of 1827, Sections 21 and 22. Nearly everything in the whole village economy has to be done by the Patel, from keeping the land registers down to showing numerous civilities to travellers. Now, I submit it is of the last importance that an overworked and underpaid officer like that, and also one who may be the owner of land himself and may be a party to the decree he has to execute, should have nothing to do with the execution of decrees. There would be little or no check on him: but in the case of a bailiff coming from the Mámlatdár's Courts, the Patel will act as a check upon him, as he does on the bailiffs of the civil courts. In all decrees as to land at present, the Patels are required to attend all sales, so that they may act as a check, and that is a proper office for them to serve. I don't see, if parties wish to get their decrees executed, why they should not be made to pay to keep one or more bailiffs to each court for that purpose. If the number of suits increases, as we see it has been doing, it is of the last importance that this should be carried out at once, because as the business increases the number of bailiffs may be increased, but the number of Patels cannot be increased. I therefore submit it for the consideration of the Council that the Mámlatdárs should have power to have their decrees executed in such manner as they may deem fit. I think that will meet the matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Honourable Mr. RAVENSCROFT—The Mámíatdár only appoints a special peon to execute the decree.

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

The Honourable Mr. RAVENSCHOFF—That is what it is proposed to do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Council divided:—

Ayes—3,

The Honourable J. GIBBS.
The Honourable E. W. RAVENSCROFT.
The Honourable RAO SAHEB VISHVANATH
NARAYAN MANDLIK,

Noes—5.

The Honourable A. ROGERS.
The Honourable the ADVOCATE GENERAL.
The Honourable MAJOR-GENERAL M. K.
KENNEDY.
The Honourable KHAN BAHADUR PADAMJI
PESTONJI,
The Honourable RAO BAHADUR BECHERDASS
AMBALDASS.

The amendment was accordingly lost.

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

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

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

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

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

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

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

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

The Honourable Mr. GIBBS—It simplifies matters, because the Mámíatdár better understands recovering as a revenue demand.

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

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

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

The Honourable Mr. ROGERS observed that if the Mámíatdárs were allowed to award costs, surely the third clause of the 18th section should be omitted.

After some discussion the clause was struck out.

With reference to Section 21, the Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK proposed that the words “of the inquiry” in the 13th line should be omitted, and the words “of the Mámíatdár’s decision” substituted.

The Honourable the ADVOCATE GENERAL—Suppose the Mámíatdár wants to screen a man, and he does not decide to give the permission before the month is over; what about that?

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK proposed that the words “or of some other Revenue officer to whom such Mámíatdár is ordinarily subordinate” should be omitted;—the amendment was agreed to.

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

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK—I have known that occur in a case tried on the merits. I would suggest that instead of giving the month’s time we say “at the time of the Mámíatdár’s decision.”

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

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

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

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

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

The Honourable the ADVOCATE GENERAL—Why not leave out these sections, and do not suggest prosecutions for perjury under this Act at all.

The Honourable Mr. GIBBS—The Penal Code is perfectly well known.

The Honourable the ADVOCATE GENERAL—Then let them take advantage of it, if they are so disposed.

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

The Honourable Mr. ROGERS—I must dissent from that.

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

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

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

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

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

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

The Schedules and the preamble were approved.

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

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

Mr. Rogers moves the Second Reading of Bill No. 7 of 1875.

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

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

Bill read a second time and considered in detail.

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

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

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

Bill read a third time and passed.

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

His Excellency the President then adjourned the Council,

By order of His Excellency the Governor in Council,

W. LEE-WARNER,

Acting Under-Secretary to Government,

Bombay Castle, 7th January 1876.

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 23rd March 1876, at noon.

PRESENT.

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

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ACTING ADVOCATE GENERAL.

The Honourable MAJOR-GENERAL M. K. KENNEDY.

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

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable KHAN BAHADUR PADAMJI PESTONJI.

The Honourable DONALD GRAHAM.

The Honourable RAO BAHADUR BECHERDAS AMBAIDAS., C.S.I.

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

Affirmation of office, &c., taken by the Acting Advocate General.

The following papers were presented to the COUNCIL:—

Letter from the Secretary to the Government of India, dated 1st March 1876, returning with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend (Bombay) Act VIII. of 1867.

Reports from certain officers regarding the probable effect of the proposed alteration in the Bombay Ferries Act of 1868 on the coasting trade.

Letter from the Bombay Chamber of Commerce regarding the proposed alterations in the Bombay Ferries Act of 1868.

His Excellency the PRESIDENT:—The first business before us is the resumption of consideration in detail of Bill No. 2 of 1875,—“a Bill to amend the law relating to the Land Revenue administration of the City of Bombay.” When this Bill was last before the Council, I believe the resolution of the Council was that the Bill should be printed as amended and brought up on some future day for further consideration in detail. Unless further amendment is necessary, it may now be put down for the third reading. I am not aware that any suggestions regarding further amendments have been received.

The Bombay City Land Revenue Bill re-considered.

The Honourable the ACTING ADVOCATE GENERAL:—Perhaps I might offer a suggestion in reference to the 34th section of the Bill. I think there might be some slight verbal alteration made. At present the section runs thus:—“Whenever any dispute or question shall arise with respect to the making or completion of any transfer of title to

any land, house, or other immoveable property, subject to the payment of land revenue to Government, the Collector shall summon all the parties interested in such transfer," &c. ; and I apprehend the proceedings before the Collector take place only for the purpose of having properly entered in the Collector's books the name of the party who may be liable to pay land revenue to Government. For that purpose, it seems to me that the words " or completion of any transfer of title " might be more than sufficient, and might possibly give ground hereafter to the idea that the Collector has power to adjudicate summarily on a question of title arising between two parties. In order to obviate any difficulty arising under that head, I would suggest that the section be slightly altered by making it run thus :—" Whenever any dispute or question shall arise with respect to the making or completion of any entry or transfer in the Collector's books relating to any land," &c. I think that would still carry out the intention of the section, while leaving the words free from any possible misconstruction hereafter.

The Honourable Mr. GIBBS :—If I remember rightly, this section was considerably altered at the suggestion of Mr. Scoble, made in consequence of an application from the Bombay Law Society.

The Honourable the ACTING ADVOCATE GENERAL :—I have looked at the former proceedings, and I find there was not very much alteration made in this section.

The Honourable Mr. GIBBS :—Of course, any investigation by the Collector is simply held in order to get the names of the proper persons entered in his books, so as to secure to Government the payment of the revenue.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK expressed approval of the alteration suggested by the Honourable the Advocate General, and said :—The latter part of the section means that the Collector shall give full force to the decree. His own process is simply for the determination of the name of the party who has to pay the Government rate ; and if a party who is affected by the summary process can maintain his right and title in the Civil Court, the Collector must then alter his record in accordance with such Court's decree.

The Honourable Mr. GIBBS :—Will not the 35th section want altering also ? We have the word " title " there.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK :—If I recollect aright, that was put in because it was stated that certain persons had pleaded that the Collector having transferred certain lands to their names he could not afterwards raise any obstacle as to the rights of Government. A memorandum is now added to every entry of transfer stating that it is not to militate against the rights of Government if any dispute arise. It was to avoid repeating that with the entry of each name in the Collector's books that this section was inserted in the Bill.

The Honourable Mr. GIBBS :—The 35th section may stand as it is, because it does not affect the other section. It is merely when the Collector hears a dispute between A and B and enters either of their names, to prevent them turning round afterwards and saying—" You are a Government officer, and if Government had any right to the property, you ought to have entered it then." That, I understand, is now put at the bottom of every transfer, and this clause is simply to render that unnecessary.

The section was finally amended as follows :—

“ Whenever any dispute or question shall arise with respect to the making or completion of any entry or transfer in the records of the Collector of or relating to any land, house, or other immoveable property, subject to the payment of land revenue to Government, the Collector shall summon all the parties interested in such entry or transfer, and shall call for such evidence, and examine such witnesses, as he shall consider necessary, and shall thereupon decide summarily what entry shall be made in his records in respect of such land, house, or other immoveable property. If at any time a certified copy shall be produced to the Collector of an order of a competent court determining the title to any such land, house or other immoveable property, the Collector shall amend his records in conformity with such order.”

The Honourable Khan Bahadur PADAMJI PESTONJI observed that under the present law, namely, Section 6, Clause 1 of Regulation XVII. of 1827, made applicable to Bombay by Regulation XIX., the owner of property can, if he choose, throw up his ownership, and refuse to pay the assessment ; and from this Bill that section is omitted.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK :—It has practically remained a dead letter for the last 50 years. Surely no one would be so mad as to throw up land in Bombay.

After some further conversation it was agreed that the clause need not be inserted.

His Excellency the PRESIDENT :— I propose that “ the Bill to amend the law relating to the Land Revenue administration of the City of Bombay ” be read a third time.

Bill read a third time and passed.

The Bill was then read a third time and passed.

The Council next proceeded to resume consideration in detail of “ Bill No. 5 of 1875, a Bill to consolidate and amend the law relating to the powers and procedure of Mámlatdárs’ Courts.”

The Mámlatdárs’ Courts Bill re-considered.

The Honourable Mr. ROGERS :—This Bill has already been considered in full Council, and it has been before a Select Committee, and before the public also for the last two months and a half, and no objections have been made to it except one which I will now put before the Council. This objection comes from Mr. Robertson, the Collector of Dharwar, who objects to the use of the words “ roads to fields ” in Section 4, and wishes the words “ right of way to fields ” to be restored. He says that in many places there are no roads at all, and ryots have by prescription the right to pass through fields or among the crops.

The Honourable Mr. GIBBS :—“ Right of way ” is rather a different thing to the “ use of a road.” We particularly put in the word “ use ” because we wanted to get rid of the legal term “ right of way.” We might say “ the use of ways to fields,” either “ ways ” or “ roads.” It was not intended, of course, that there should be regular macadamised roads, with ditches at the sides or anything of that kind ; but the term was used because there is a perfectly well known custom in villages, that a man whose field is in the middle of a lot of other fields has the use of some way by which he gets to his own field. To define this, instead of using “ right of way,” which is a legal term, and might be capable of misconstruction, we used the words “ the use of roads to fields ” in lieu of it.

The Honourable Mr. ROGERS suggested “ the use of ‘ passages ’ to fields.”

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK :—The words “roads to fields” were taken from the old Regulation XVII of 1827 (Section 31, Clause 4) and the term has always been understood to mean the very kind of road to which Mr. Robertson alludes. It may be that our ideas have changed, but in 1827 “roads to fields” was a very well understood expression; and I think it has been ruled in the High Court that there may be a road at certain seasons only through fields, and that is what is meant by Mr. Robertson evidently. There may be roads for the use of cultivators only at certain seasons. If the word “roads” is objectionable we might substitute “ways” for it.

His Excellency the PRESIDENT :—We might say “the customary ways to fields.”

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK :—Yes, that would be still better. Supposing there was a crop of sugar-cane in a field, the road to another field might be by one way, and when there was a crop of rice, by another.

The Honourable Mr. ROGERS proposed “the use of roads or customary ways to fields.”

This amendment was adopted.

The Honourable the ACTING ADVOCATE GENERAL :—It seems to me that the 4th section hardly carries out the intention of the illustrations attached to it. The illustration appears to me to intend that the Mámlatdár should be able to give decisions in certain cases of the tenancy being held over, but the words of the section are that the Mámlatdár shall give immediate possession of all lands, &c., “to any party who is dispossessed of the same otherwise than by due course of law.” I think that means in the case of a person being put out of possession illegally, and has no reference to the case of the person who is entitled to possession in the event of a tenancy being held over. I would suggest that some words to this effect should be introduced, viz., “to any party entitled to such possession by reason of the termination of any tenancy,” &c.

The section was then amended so as to read as follows:—“It shall be lawful for Mámlatdárs’ Courts within the territories in their revenue charge to give immediate possession of all lands, premises, trees, crops, fisheries, as well as of the use of water from wells, tanks, canals, or water-courses, or of the profits thereof to any party entitled to such possession by reason of the determination of any tenancy, or who shall have been dispossessed of the same otherwise than by due course of law, and also in cases in which a disturbance of the possession of any lands, premises, trees, crops, or fisheries, or of the use of water from any well, tank, canal, or water-course, or of the use of roads or customary ways to fields is attempted by any party, to issue an injunction to such party to refrain from such disturbance: Provided that application be made to them by the party aggrieved within six months from the date of the determination of such tenancy, or of such dispossession, or of such attempted disturbance.”

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK :—I wish to call the attention of the Council to clause 2 of Section 3. The words as they stand at present are :—“The words ‘plaintiff’ and ‘defendant’ shall include the recognised agents of a plaintiff or defendant, as defined in section 17 of the Code of Civil Procedure (Act VIII. of 1859).” Since this Bill was last before the Council, a case has been before the High Court, from the published proceedings regarding which it appears that the provisions of this section (which, I believe, appeared in a similar form in the old Act,) are not properly understood,

or, if they are understood, are not, at any rate, properly carried out. There is a class of practitioners who practise in some of the Criminal Courts, and who also try to practise in the Mámíatdárs' Courts, and who are known by the name of Mukhtyars. These are a class of men who were at one time called Revenue agents. The Revenue agents ceased to exist after the repeal of certain provisions of Act XVI. of 1838, in 1866, by this Council, but the Mukhtyars still exist in some parts of the Presidency; and I believe the provisions of this clause are intended to prevent that class of persons practising in the Mámíatdárs, Courts. They are a class of men who are subject to no professional restrictions. In any case there is no guarantee either of professional qualifications, of social position, or of general character. In the particular case I refer to, a Mukhtyar attempted to bring a suit in a Mámíatdár's Court, and made away with two rupees that were entrusted to him for that purpose; a criminal prosecution arose out of those two rupees, and the Mámíatdár was eventually sued by the Mukhtyar for damages at the sum of Rs. 2,000. The case was tried by the District Judge of Tanna, and subsequently came up in appeal before the High Court, where the Mámíatdár succeeded in defending himself against the attack of the Mukhtyar. I noticed this case, and seeing that the Mukhtyar was not a person entitled to practise in these courts, and considering that the provisions of the section are likely to be defeated in the future as they have been in the past, I was of opinion that perhaps we might make the intention of the clause more specific, which can be done either by adding an illustration, or by making the wording of the section clearer than it is at present. If it be the desire of this Council that the provisions of section 17 of the Code of Civil Procedure should be rigorously followed, we should say so in so many words, and prohibit this anomalous class of persons from appearing before the Mámíatdárs. Under Section 17 of the Code of Civil Procedure only general attorneys can appear for parties who are not within the jurisdiction of any Court, and under this Bill all who are within the jurisdiction must appear before the Mámíatdár in person. At present the intention of the Bill is evidently not understood by all the Mámíatdárs, because, as is shown by the case I have referred to and by other cases that have come before the superior Courts, these Mukhtyars are still allowed to practise in the Mámíatdárs' Courts. I appeal to the members of the Council who have had a good deal of Mofussil experience to say whether these men should be still permitted to practise in those Courts.

The Honourable Mr. GIBBS:—I believe that the class of men now called Mukhtyars is entirely distinct from the old class of Mukhtyars who existed many years ago as Revenue agents under the old law, when there were Revenue Courts under the Collector in existence. After those Courts were abolished, I believe on some recommendation of the Sudder Court it was suggested that these men, their occupation being gone, should be looked upon with an eye of favour and allowed to appear in the Magistrates' Courts and in the Session Courts to defend prisoners: A prisoner under the Criminal Procedure Code could employ anybody he liked to defend him. It was found after the old class of original revenue Mukhtyars had died out, that a lot of very questionable men under the title of Mukhtyars used to appear in the Session Courts and in the Magistrates' Courts to defend prisoners; and they were very often men who had experience of gaol to add to their other experiences, and were looked upon as a very low and undesirable class of persons to be in any way connected with the Courts, or with the proceedings of any trial. In consequence of this there was a very strong representation made to the Government of India, in the Legislative Department, when the New Criminal Procedure Code was under consider-

ation, and (I speak under correction, but) I think the new Criminal Procedure Code provides that a prisoner may be defended by a friend, or an agent only if the Judge or the Magistrate consents thereto. It therefore gives the Magistrate or the Session Judge the power of refusing to allow a prisoner to be represented by an agent if he thinks from the agent's character he is not a proper person. I consider myself it is very necessary that the rights of the poor cultivators should be protected in the same manner; and I quite agree that common Mukhtyars should not be allowed to appear in Mámlatdárs' Courts, - and in cases of this nature more especially, as the object of the Act is that the man interested should, wherever he can, attend himself. It is often the case in these Courts, when the parties appear before the Mámlatdár, the proceedings are conducted in a sort of conversational manner between the three, and the Mámlatdár gives his decision on the spot. I think that is the best way of working the Act, and that Mukhtyars should not be allowed to appear. It is easy to make the clause run thus:—"Shall include the recognised agent of the plaintiff or defendant, as defined in Section 17 of the Code of Civil Procedure, and no one else, viz.," and then set out the section. If Mámlatdárs are not supposed to carry a Civil Procedure Code about with them, and I suppose they are not, it would be advisable to append the 17th section in full.

The Honourable Mr. ROGERS:— I think it might interfere with the working of the section, and might inconvenience the parties themselves. A person, instead of employing a professional man, might give a power of attorney to his own brother. As the matter is provided for by law, it is a mere question of departmental management to see that the law is carried out.

The Honourable Mr. GIBBS:— But he could not do that under the Bill as it at present stands unless he was living beyond the jurisdiction of the Mámlatdár's court.

His Excellency the PRESIDENT:— If the Bill refers the Mámlatdárs to the positive law to decide who are to be recognised agents, then it lies with the High Court, or some other authority, to see that the law is properly administered.

The Honourable Mr. GIBBS:— The Mámlatdárs' Courts are not under the High Court. The only supervision over them is in the hands of the Collector, if he chooses to examine them.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:— It is only in the exercise of its extraordinary jurisdiction that a matter of the kind I referred to can come before the High Court; and it involves a very cumbrous mode of procedure.

The Honourable Mr. ROGERS:— My personal experience is that these Mukhtyars are the greatest nuisances possible, and very often prove what they do not want to prove; and I think we may safely leave the Mámlatdárs to see that they do not appear in their Courts.

The Honourable Rao Saheb VISHVANATH, NARAYAN MANDLIK:— But the case I have cited is only one of a very large number, and it only shows that they really are allowed to appear. That particular case occurred within ten miles of Tanna, and the matter was decided only a few months ago in the High Court. The recognised agents under the Code of Civil Procedure are specified in Section 17 of the Code, and they do not include the brother or other relative of the party, as the Honourable Mr. Rogers suggests.

His Excellency the PRESIDENT :—What does the honourable member propose to do with this section, to get over the difficulty ?

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK :—There are four classes of agents recognised under the Code, as entitled to appear for parties not residing within the jurisdiction of a court, viz., persons holding powers of attorney; persons carrying on a trade, or business, for and in the name of the parties; persons being *ex officio* authorised to act for Government in any suit; and persons specially appointed by order of Government, at the request of any sovereign prince, and so on. A party may be represented by either of these, or by a pleader duly appointed to act on his side. It will be necessary to quote Section 16 of the Civil Procedure Code also.

The Honourable Mr. GIBBS :—Yes, because the Wakil comes under Section 16, and Section 17 is an exemplification of Section 16. Suppose we alter the section so that it will read : “The words ‘plaintiff’ and ‘defendant’ shall include a pleader duly appointed to act on their behalf, and the recognised agents of a plaintiff or defendant, as defined in Section 17 of the Civil Procedure Code.”

This suggestion was agreed to, and the clause was altered accordingly. No other amendment being suggested the Bill was read a third time and passed.

The Council next proceeded to the consideration of “Bill No. 6 of 1875, a Bill to amend (Bombay) Act II. of 1868 (The Ferries Act)” which was put down for second reading. The Honourable Mr. GIBBS said :—With regard to this, Sir, there have been reports received from the Collectors of several districts—Ahmedabad, Ratnagiri, Colaba; from the Commissioner of Customs and the Revenue Commissioner of the Northern Division; from the Collector of Surat, the Collector of Salt Revenue, the Collector of Broach, and from Mr. Nairne, the First Assistant Collector in charge at Tanna. The opinions vary considerably, and Mr. Nairne’s especially is very distinctly against the Bill. The questions which have arisen are of very considerable importance, and we are still without some of the information which the Honourable Rao Saheb asked for, viz., with regard to the traffic that is carried between certain places which under the proposed Bill would become regular ferries; and I think that under the circumstances, instead of moving the second reading, I would prefer, with your Excellency’s permission, referring the Bill which has been read a first time to a Select Committee. I think the objections which have been raised to the Bill are of very considerable importance, and can be very much better discussed by a Select Committee than by a Committee of whole Council. If your Excellency and the Council will agree to the Bill being so referred I will nominate the Committee.

His Excellency the PRESIDENT :—There is also the letter, received to-day, from the Chamber of Commerce.

The Honourable Mr. GIBBS :—Yes. I have not seen that yet.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK :—When this Bill was before the Council on the last occasion, I said that I had some doubts as to the propriety of certain portions of it, and having since, with your Excellency’s permission, seen a good deal of

the correspondence on the subject which has led to the drafting of this Act, I must confess that my doubts have been considerably strengthened. I think, Sir, that this Bill will require a great deal of mature consideration, and seeing not only the diversity of the views of those officers who have reported upon it, but seeing also the actual working of the ferries for the last twenty years, I must confess that I look upon some of the provisions of this Bill with great misgivings. I think, Sir, that this Council will agree with me that we should be the last, as far as possible, to interfere with a trade which is only now growing into popular favour, viz., the coasting trade, of which we had very little a short time ago, and which is now rising into some importance. I trust that in the interests of the public we may see some way for protecting those interests, and for not allowing any monopoly whatever to damage those interests. If the Bill is referred to a Select Committee, I shall then move for certain information besides those returns to which I alluded on the last occasion, and which I think will be very necessary before we can model these provisions so that all legitimate protection will be given to the coasting trade, which is a rising branch of the public commerce.

It was then agreed that the Bill should be referred to a Select Committee composed of
 Bill referred to a Select Committee. the Honourable Mr. Rogers, the Honourable Major-General Kennedy, the Honourable Rao Saheb Vishvanath Narayan Mandlik, the Honourable Nacoda Mahomed Ali Rogay, and the mover.

His Excellency the PRESIDENT :—When does the honourable member propose to receive the Committee's Report?

The Honourable Mr. GIBBS :—I know the details of the trade have not yet been received, and it will take some little time to get them. We shall not be able to bring up the Report until the Council meets in the monsoon, at Poona. I should think we can get through with it by the 1st of July, and I suppose the Report should be published and circulated before it is taken before the Council. That is the usual course.

His Excellency the PRESIDENT :—Then certainly the 1st of July is not too soon.

The 1st July was then agreed to.

It was agreed that the report of the Select Committee need not be translated.

The Hon'ble the Acting Advocate General placed on the Select Committee on the Bombay Revenue Officers and Land Revenue Code Bill.

The Honourable the Acting Advocate General was placed on the Select Committee on the Bombay Revenue Officers and Land Revenue Code Bill in place of the Advocate General, Mr. Scoble.

His Excellency the President then adjourned the Council.

By order of His Excellency the Governor in Council,

G. C. WHITWORTH,
 Acting Under-Secretary to Government.

Bombay, 23rd March 1876.

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 5th September 1876, at noon.

P R E S E N T :

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

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ACTING ADVOCATE GENERAL.

The Honourable MAJOR-GENERAL M. K. KENNEDY.

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

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable DONALD GRAHAM.

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

The Honourable SORABJI SAPURJI BENGALI.

The Honourable COLONEL W. C. ANDERSON.

The following papers were presented to the Council :—

Papers presented to the Council.

Report of the Select Committee appointed to consider and report on the Bombay Revenue Officers and Land Revenue Code Bill, No. 1 of 1875, on the first five Chapters of the Bill.

Letter from the Secretary to the Government of India No. 369, dated the 31st May 1876, expressing the regret of His Excellency the Viceroy and Governor-General that, owing to a serious flaw in Section 6 of the Bill to amend the Law relating to the Land Revenue Administration of the City of Bombay, he is obliged to withhold his assent to the Bill as passed by the Bombay Legislative Council, and suggesting that the Bill may be re-passed in a correct form and then sent for the assent of the Governor-General.

Letter from the Secretary to the Government of India No. 365, dated 29th May 1876 stating that His Excellency the Viceroy and Governor-General has carefully considered the provisions of the Bill to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts and has reluctantly come to the conclusion that he cannot give his assent thereto, communicating the reasons which have led His Excellency to withhold his assent, and suggesting that the Bill be re-passed with certain modifications.

Report of the Select Committee appointed to consider and report on the Bill No. 6 of 1875, being a Bill to amend Bombay Act II. of 1868 (The Ferries' Act).

The Honourable Mr. RAVENSCROFT :—Your Excellency will remember that some time ago we passed a Bill to amend the law relating to the Land Revenue Administration of the city of Bombay. This Bill was sent for the approval of His Excellency the Viceroy and Governor-General in Council, and in the letter from the Secretary to the Government of India, Legislative Department, dated 31st May 1876, it is pointed out that there was no objection to the general principle of the Bill, which in all respects met with the concurrence of the Government of India, but that in Section VI. there was a flaw which compelled His Excellency the Viceroy to withhold his assent. The flaw referred to was in these words :—The third paragraph of the 6th Section ran—“ Subject to the previous sanction of Government, the Collector may delegate any of his powers under this Act, or under any other law for the time being in force, to any of his assistants,” &c. The words “ under any other law for the time being in force ” were the words taken objection to, and therefore, to meet that objection, we have altered the sentence to this—“ under any law which the Governor in Council is able to repeal or affect.” This is the only alteration which exists in the present Bill upon that which has been passed by the Council; and His Excellency the Viceroy having expressed his willingness to pass the Bill if those words were altered, it only remains for me to move that the Bill be now read a first time. The details and the principle of the Bill having been considered carefully when we went through the Bill in the spring, I do not think it is necessary to go through them again.

The Bill read a first time.

The Bill was then read a first time.

The Honourable Mr. RAVENSCROFT—As it is a mere formal matter of the alteration of half a dozen words, it seems unnecessary that the Council should postpone the further consideration of the Bill to another meeting, and unless there is any objection, I propose that the standing orders be suspended so that the Bill may be passed through its different stages at the present time.

Mr. Ravenscroft moves that the Bill be passed through its various stages at the present meeting.

As it is a mere formal matter of the alteration of half a dozen words, it seems unnecessary that the Council should postpone the further consideration of the Bill to another meeting, and unless there is any objection, I propose that the standing orders be suspended so that the Bill may be passed through its different stages at the present time.

The Bill read a second and third time and passed.

The word “ alter ” was substituted for “ affect ” in the amended sentence, and the Bill was read a second and third time and passed.

The Honourable Mr. ROGERS :—The Council are aware that on the 23rd of March last we passed a Bill No. 5 of 1875, a Bill to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts; and when this Act went up for the sanction of the Government of India they objected to certain provisions in it. The letter from the Secretary to the Government of India in which the objections were stated has been produced before the Council. The chief objections taken were that some of the sections of the Bill, as the local Council had passed it, were not exactly in accord with the Criminal Procedure Code. I beg now to introduce Bill No. II. of 1876, which will amend all those sections that the Government of India have taken objection to; and I beg to propose that, as there are one or two questions which it would be advisable to discuss more in detail than they could be discussed before the whole Council, a Select Committee should be appointed to consider it and to discuss those particular subjects. At present, I move merely that the Bill be read a first time.

Mr. Rogers moves the first reading of the amended Mámlatdárs' Courts Bill, No. II. of 1876.

The Bill read a first time and

The Bill was then read a first time.

The Honourable Mr. ROGERS :—I now beg to move that a Select Committee be appointed to consider this Bill in detail and present their report to the Council as soon as possible, the Committee to consist of the Honourable Messrs. J. Gibbs, V. N. Mandlik, the Advocate-General, and the Mover.

The Bill was referred to the Select Committee named with instructions to report within seven days.

The Honourable Mr. GIBBS :—I have to move that Bill No. 6 of 1875, being a Bill to amend (Bombay) Act II. of 1868 (the Bombay Ferries' Act), be withdrawn. I make this motion in accordance with the recommendation of the Select Committee. The Council will remember that the object of this Bill was to enlarge the powers which were given under the old Act, and to include certain coasting ferries, if one may so call them, or, rather, to make certain existing voyages into ferries; and the Select Committee found that there were such practical difficulties in the way of extending the meaning of the word "ferries," used in Act II. of 1868, in the manner set forth in the second section of the Bill, that they were quite satisfied it had better be withdrawn. For instance, it was proposed to declare that there was a public ferry between Bombay and Bankot, and the Committee found the steamer that performs the journey only goes, I think, every alternate day. Considering that fact, and the time the journey takes, it would be an immense hardship to prevent all other boats carrying passengers, which was the object with which this Bill was brought in. Without saying anything with regard to goods, the interference with the passenger traffic alone, even if there was daily communication, would be simply creating a enormous hardship on the people inhabiting the Bankot district, and no public convenience could be conferred which would anything like compensate for it. It was also wished to declare the run between Surat and Gogo to be ferry, and the Committee came very much to the conclusion that we might just as well declare the voyage from Bombay to Aden, or from Bombay to Southampton, to be a ferry. These are some of the practical difficulties the Committee met with at the outset, and which quite satisfied them that the Bill had better be withdrawn, and that if legislation were necessary for the improvements of the ferries—for instance, those across the harbour of Bombay—some fresh proposal should be brought before the Council to effect such improvements. Therefore, in accordance with the recommendation of the Select Committee, I beg now formally to move that Bill No. 6 of 1875 be withdrawn.

The Honourable Rao Bahadur BECHERDASS AMBAIDASS :—I have great pleasure in supporting the recommendation of the Select Committee, and the motion of my honourable friend Mr. Gibbs, to withdraw the Ferries' Bill No. 6 of 1875. In cases like those contemplated by this Bill, I think it would in all probability be more advantageous and convenient to follow the free-trade system throughout the Presidency, and as regards other ferries, to rest content with the existing law, Act II. of 1868. I think we should not extend monopolies which are opposed to public interests. I have the sanguine hope that other honourable members will concur in this view and do away with the Bill altogether.

Mr. Becherdass Ambaidass seconds the motion.

The Bill was then withdrawn.

On the motion of the Honourable Mr. ROGERS, the Honourable Colonel Anderson, and the Honourable Messrs. V. N. Mandlik and Mahomed Ali Rogay were re-appointed members of the Select Committee appointed to consider and report on the Bombay Revenue Officers and Land Revenue Code Bill (No. I. of 1875).

Re-appointments of members to the Select Committee on the Revenue Code Bill.

His Excellency the President then adjourned the Council until Wednesday, the 20th of September, at noon.

By order of His Excellency the Governor in Council,

Poona, 5th September 1876.

G. C. WHITWORTH,
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 Wednesday, the 4th October 1876, at noon.

P R E S E N T :

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

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ACTING ADVOCATE GENERAL.

The Honourable MAJOR-GENERAL M. K. KENNEDY.

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

The Honourable NACODA MAHOMED ALI ROGAY.

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

The Honourable SORABJI SAPURJI BENGALI.

The Honourable COLONEL W. C. ANDERSON.

Paper presented to the Council.

The following paper was presented to the Council :—

Report of the Select Committee appointed to consider and report on the Bill to consolidate and amend the law relating to the powers and procedure of the Mámlatdárs' Courts.

The Honourable Mr. ROGERS said that the Government of India, in their answer to the Select Committee's inquiries respecting the Mámlatdárs' Courts Bill, No. 2 of 1876, had referred them to Section 6 of Act IX. of 1871, which laid down that—"When, by any law not mentioned in the schedule hereto annexed, and now or hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is specially prescribed for any suits, appeals, or applications, nothing herein contained shall affect such law." The difficulty regarding Section 21 of the Bill, which limited the period during which suits could be brought to a period of three years, had therefore been got over, and there would be no difficulty in passing that section as it stood. In going through the Bill again, it was pointed out that it would be advisable to make certain alterations, which, however, referred entirely to matters of detail, and he did not think there would be any necessity on that account to refer the matter back again to the Select Committee. He could bring forward the amendments before the Council, and the Council could pass them without any difficulty. There was another difficulty, which was of a more serious character. When the Supreme Government considered the first Bill that was passed by the Council, they pointed out that the Council had no power whatever to modify any portion of the Indian Councils Act. The Council were aware that in suits in the Mámlatdárs' Courts the fee prescribed was only 8 annas. That limit of fee was laid down in Section 4, Schedule 2, of Act VII. of 1870, where a distinct reference was made to Act V. of 1864. If they passed this Bill, repealing Act V. of 1864, and wished to lay down that the reference in the 4th Section of Schedule 2 of Act VII. of 1870 was to be

read as if made for the Act they were now about to pass, the Government of India would say they were modifying their Act, and had no power to do so. It had been, therefore, suggested that the matter should be referred back to the Select Committee in order to consider this point; but before moving the adoption of this course he would beg leave to ask the Honourable the Advocate General if he could point to any other way out of the difficulty.

The Honourable the ADVOCATE GENERAL said he was afraid there was no other way out of the difficulty. The Court Fees Act, which levied a fee of 8 annas upon plaints presented in Māmlatdārs' Courts, referred to the Acts which were proposed to be repealed by the present Bill, and made no provision for any Act which might be substituted for them; and any provision in the present Bill providing that it shall be considered the Act referred to by the Court Fees Act, instead of Act V. of 1864, or making any substantive provision for the levying of a fee, would be considered by the Government of India as a modification of their Court Fees Act. It appeared to him that the difficulty was insuperable.

The Honourable Mr. GIBBS :—There is also another reason why the Bill had better be referred back to the Select Committee. When the Select Committee met the other day to consider the objections taken by the Government of India to the Bill as it was passed in the last year's Council, they directed the Secretary to write a letter to the Government of India, pointing out the difficulties which had arisen, and also drawing attention to Section 21 as drafted in the new Bill; asking, at the same time, whether if this Council, in passing a Bill, repealed a previous law the number and date of which had been quoted in an Act of the Government of India subsequent to the passing of the Indian Councils Act, they could provide that wherever, in previous Acts, "Act II. of 1866" is met with, "Act I. of 1876 is to be read instead," or whether this is a modification of such a nature that this Council is prevented from making it. If so, this Council seems to be perfectly helpless to pass any Bill amending a previous Act of this Council which has been alluded to in any of the general Acts, as the Court Fees Act or the Limitation Law, or to any of the late Acts which have been published by the Government of India. We put this question distinctly to the Government of India in our letter. We have received no answer to the letter, but we have received a telegram to the effect that there is no objection to Section 21 as amended, and on that we made our report, and proposed that the Bill should be passed. After the report had been sent in, I happened accidentally to speak to Mr. Naylor the other day on the subject of this Act, and the result was that on looking at the Bill this difficulty as to the Court Fees Act arose. It is a very difficult question, and seems likely to affect every Bill this Council may bring in. Therefore, I think it much better that the Bill should be referred back to the Select Committee, where when we receive an answer to our letter from the Government of India, the matter can be fully and freely discussed.

The Honourable Mr. ROGERS :—I have no objection to refer it back, except that I cannot see what the Select Committee can do with the question.

The Honourable Mr. GIBBS :—When we get the answer from the Government of India we can consider it.

The Bill referred back to the Select Committee.

The Bill was then referred back to the Select Committee.

His Excellency the PRESIDENT :—I apprehend there will be nothing seriously out of order if we now permit the Honble Mr. Ravenscroft to move for leave to bring in a Bill to amend the Act referring to the Cotton Department. He is not going to move the first reading, but desires the Council to give him an opportunity of bringing forward some points he wishes to explain.

The Honourable Mr. RAVENSCROFT :—Your Excellency, under Section 13 of the Rules and Regulations of this Council, I beg to move for leave to bring in a Bill to amend the law for the prevention of fraudulent adulteration of cotton—that is, Bombay Act IX. of 1863. Perhaps it may be advisable on this occasion to give a slight history of the laws

Mr. Ravenscroft moves for leave to bring in a Bill to amend the Cotton Frauds Act of 1863.

which have been passed by the Government of this Presidency, with a view to preventing and punishing the fraudulent adulteration of cotton. The earlier Acts of the Legislature to which I have referred are those which were passed prior to 1863. These were chiefly limited to the province of Guzerat, where a large proportion of the cotton exported from this Presidency is grown. These laws, which were passed prior to 1863, were found admirably efficacious for some time. About that time, however (1862), a very great stimulus was given to the cotton trade in this Presidency,—cotton which previously ranged in price from four to six pence per pound suddenly running up to eighteen and twenty pence per pound. The stimulus, of course, which I refer to, was that caused by the American war, which, by closing all the Southern ports of America, compelled the spinners of Europe to look elsewhere for that supply which the slave-holding districts had yielded up to that time. The effect of the sudden rise in the price of Indian cotton—from four to six pence to from eighteen to twenty pence per lb.—of course excited great feelings of competition in the minds of all growers. The consequence was that every man who had cotton to sell was anxious to make it go as far as he could; and it is with great regret I am compelled to state that at this time deterioration so spread throughout the cotton-growing districts of this Presidency that the cotton which was exported from India became a by-word in the mouths of Manchester and other European spinners. So notorious was this failing that representations were made from many parts of Europe both to the India Office and to the Government of this Presidency,—especially to the Government of Sir Bartle Frere, who took very great interest in the preservation of what he knew to be one of the most important branches of the trade of British India. Of course those who were interested in the maintenance of this fraudulent practice did their best to throw discredit on those reports, and said matters were not so bad, and were not very different from what they had been a couple of years previously. With a view, however, to testing these statements, His Excellency Sir Bartle Frere, at the suggestion and with the approval of many of the respectable Native and European merchants of Bombay, requested some of the leading merchants of the city, at the close of 1862, to make a tour through Guzerat and other cotton-growing districts, and report to him privately what the condition of the cotton grown and exported actually was. This deputation consisted, as far as I recollect, of Mr. Michael Scott, one of the leading merchants of Bombay, and who was also a member of this Legislative Council; Dr. Forbes, Cotton Commissioner for the whole Presidency, a man who knew all about cotton from his long connection with the trade; and some other leading men whose names I forgot at this moment, Native and European, who very fairly represented the cotton interests of Bombay. At that time, I

had been connected with Guzerat for many years, and was then acting for my honourable friend Mr. Rogers as Collector of Surat, which was the first place where the Committee commenced their investigations, and I was appointed to act with them. This occurred at the close of 1862. We made a careful investigation into the condition of numerous bales of cotton, and we found that the reports, instead of being exaggerated, were understated, and that there was scarcely a bale of cotton that did not contain substances such as stones, dirt, and all sorts of rubbish, which had evidently been put in, not by accident, but with the fraudulent intention of increasing the weight of the bale and defrauding the purchaser. The committee went on from Surat to Broach, and from Broach to other parts of the Presidency, and in each of the districts where they went they found a similar state of things. They returned to Bombay, and explained all these matters to the mercantile community of Bombay, and with the full concurrence of the mercantile community of Bombay, and after communication and correspondence with England, the Government of Sir Bartle Frere drew up with much care the present Act IX. of 1863, which is the law now in force for the prevention of fraudulent adulteration of cotton throughout these districts. Early in 1864 the Government determined to bring this Act into operation, and His Excellency Sir Bartle Frere was good enough to entrust me with the duty of carrying the law into effect, and gave me large discretion as to the manner in which I should carry it out. In accordance with his permission I visited the districts where cotton was grown, and appointed a certain number of Inspectors and Sub-Inspectors for carrying on the work of inspection under the Act. I was so employed for about ten months or a year. From that date the improvement in the staple was very marked, and whereas the adulteration and deterioration of cotton were previously so notorious that Bombay cotton was a by-word and a reproach in the markets of Europe, it has from that date gradually improved; so that at the present time it competes—not, of course, in quality, but in purity—with the best American cotton. Of course, this very satisfactory state of things has given rise to a great deal of discussion. Shortly after the Act came into operation, there were two parties formed, one of whom declared the Act to be very efficacious, the other declaring that it was inefficacious, and that the improvements, which everybody allowed had been effected, had been caused not by the operation of the law, but the construction of railroads, the introduction of telegraph conveniences, and the new mode of conducting business which then became general. Which of the two parties was right in their manner of accounting for the change it is impossible positively to say; but about one fact there is no dispute, viz., that whereas the cotton was formerly deteriorated and adulterated, it now fairly competes, as I before said, in purity with American cotton of good qualities. So things went on for years till, in about 1870, 1872, or 1873, the mercantile community of Bombay were a good deal pressed, and naturally looked about for any and every means of reducing fees and taxation which either directly or indirectly pressed upon them in the conduct of their business. One of the means by which they thought they might reduce local taxation, which in their eyes injured trade, was by inducing the Government of this Presidency to annul this Bombay Act IX. of 1863, and thereby cause a remission of the small fees now levied on all bales of cotton exported from Bombay. They stated, fairly enough, their opinion that it was then time this Act should be cancelled as the use for it, owing to the changes which I have previously mentioned, no longer existed. The Government of His Excellency Sir Seymour FitzGerald was not inclined to pay attention to this recommendation. Sir Seymour FitzGerald was strongly interested in the

cotton question, and from travelling through the districts, and conversing with the authorities, he was of opinion that if the Act was withdrawn or placed in abeyance, the old condition of things would return. Subsequently, however, the merchants and others interested in the cotton trade continued to press their views on the Government, and in 1873 they were particularly persistent in expressing their wish that Government would reconsider the subject and, if possible, withdraw the taxation under this Act. The Government then, early in 1874, appointed a Committee, of which the Honourable Mr. Rogers was president and of which I also was a member, and the duty of this Committee was to take evidence and report to Government whether, in the opinion of the Committee, it was advisable that the Act should be either modified, or placed in abeyance, or repealed. We sat for some months, and though (I regret to say) the mercantile community were very persistent in their representation to Government praying that the Act should be done away with, and stating that they would be ready at any time to produce evidence in support of their petition, they did not think proper, as a body, to give us any assistance whatever. Instead of the chief men coming forward and explaining fully the grounds on which they based their request to Government, they contented themselves with writing to the newspapers; and as I have before said, few, very few, of the leading members of the Bombay mercantile community chose to come forward and give evidence before the Committee in this matter in respect of which they had persistently stated that they were prepared to do so. Well, the evidence, such as it was, we took, and to the best of our ability we considered it. The Committee, after fully discussing and weighing everything they could think of on both sides, were of opinion that the time had arrived for placing the Act in abeyance, that is to say, the Honourable Mr. Rogers and the rest were of that opinion. I was opposed to that view, and I wrote a separate memorandum stating that in my opinion the Act had not only proved efficacious, but was necessary to be continued, and that if any attempt was made to modify it materially or to place it in abeyance, the state of fraud and adulteration, which previously made our cotton a disgrace and a by-word in Europe, would be again established. The report of the Committee was submitted to the Bombay Government, and the Bombay Government, concurring therewith, recommended to the Secretary of State that the Act should be placed in abeyance. The Secretary of State, however, after weighing the whole matter, came to the conclusion that the weight of evidence was on the other side, and directed this Government to maintain the Act as it then existed, modifying it slightly in those portions where modification seemed desirable, and also making it more stringent where increased stringency was manifestly necessary. Further representations were made by the Chamber of Commerce, protesting against this decision of the Secretary of State, but he again carefully perused the papers and then caused it distinctly to be understood that his previous order was final. Accordingly, the Act was not cancelled, but the wishes of the Marquis of Salisbury were, by the orders of H. E. the Governor in Council, carried out, and a draft Bill has been prepared, which I now request the Council's permission to introduce. There being a few alterations in the Bill modifying the Penal Code, the sanction of the Government of India is necessary. It has been applied for, but I am sorry to say the answer has not been received. It is, however, a mere matter of form, and will come, of course, in due time. His Excellency the Governor has been good enough to allow me to make these remarks at the present time, in order that they and the Act may be before the public, and that when the Council meets in Bombay, this question, which affects the mercantile community, may be considered and

discussed at the place where the mercantile interests will best be able to make any representations on this important matter. With these preliminary remarks I will conclude, and request the permission of the Council to introduce a Bill to amend Bombay Act IX. of 1863.

The Honourable Mr. ROGERS :—With reference to the Honourable Mr. Ravenscroft's remarks, I presume the Council understands his proposal is more to be allowed to bring in a Bill than *the* Bill which has been printed and laid before the Council. There are several matters on looking over the Bill—matters of principle—which I think are not only wrong but contrary to the instructions of the Secretary of State himself. If we are now to discuss the principles of this Bill—

His Excellency the PRESIDENT :—I don't think so. I understand the Honourable Mr. Ravenscroft to move for leave to bring in a Bill. The Bill, if leave be given, I suppose will be published in the *Government Gazette*, according to rule, a certain number of days before it is to be discussed by the Council. What the Bill is to be, we do not at present know.

The Honourable Mr. ROGERS :—If that is understood, I have nothing further to say ; but as the Bill stands now, there are several matters to which I strongly object.

The Honourable Mr. GIBBS :—The 13th section of the rules provides that any member may move to bring in a Bill, and state as concisely as may be the scope of the Bill and his reasons in support of it, and "if the motion be carried in the affirmative he shall send the Bill to the Secretary with a full statement in writing of its objects and reasons and such other papers as he may consider necessary." If he has leave to bring in a Bill, then he may send the Bill to the Secretary.

The Honourable Mr. ROGERS :—If that is understood, I offer no further opposition.

His Excellency the PRESIDENT :—Our position is peculiar. The Bill is intended to carry out the intention of the Secretary of State.

The Honourable Mr. ROGERS :—I think I can show that the Bill as it at present stands is not in accordance with the views of the Secretary of State.

His Excellency the PRESIDENT :—I believe his desire is that the Bill should be made more efficient and less disagreeable ; and the Honourable Member and the Honourable Mr. Ravenscroft differ apparently as to the mode of attaining that object.

The Honourable Mr. ROGERS :—At present, I think, the result would be to make it more disagreeable and less efficacious.

His Excellency the PRESIDENT :—I understand, then, there is no objection to give leave to the Honourable Mr. Ravenscroft to bring in the Bill, and it may be sent to the Secretary and published in the *Government Gazette*, with its objects and reasons. The motion for the First Reading can then be made in Bombay.

Leave to introduce the Bill is granted.

The Council then adjourned.

By order of His Excellency the Governor in Council,

G. C. WHITWORTH,

Acting Under Secretary to Government.

Poona, 4th October 1876.

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 27th October 1876, at noon.

P R E S E N T.

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

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable MAJOR-GENERAL M. K. KENNEDY.

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

The Honourable SORABJEE SHAPOORJEE BENGALLEE.

The Honourable Colonel W. C. ANDERSON.

Paper presented to the Council. The following paper was presented to the Council :—

Letter from the Secretary to the Government of India, dated 17th October 1876, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend the law relating to the land revenue administration of the city of Bombay.

The Honourable Mr. ROGERS said—I have the honour to propose the first reading of Bill No. 3 of 1876, the object of which is to secure payment to Government of certain sums of money by the Municipal Corporation of the City of Bombay. These sums consist of two items, one of 36 lakhs and one of 6 lakhs, on the whole 42 lakhs of rupees, which the Municipality of Bombay have taken up as a loan from the Government of India,—the first, or larger sum, for the carrying out of the scheme for a new water supply from the Tulsi Lake, and the smaller sum of 6 lakhs for the purpose of improving the surface drainage of the town of Bombay. The Council are aware that by Act II. of 1872 the repayment to Government of the 15 lakhs of rupees lent for the Vehar water-supply and of the 4 lakhs of rupees lent for the improvement of the water-supply by the construction of a reservoir at Tulsi is secured. The instalments laid down in that Act have been regularly paid up, and a certain sum of money, the amount of which it is not necessary to state at present, is outstanding on that account. The Government of India, at the request of the Municipality, have now consented to combine the balances of these loans with the new loans that they have recently consented to give the Municipality, and they have instructed the Local Government to secure the repayment of the whole of the sum thus accumulated by 60 half-yearly instalments and at the rate of $4\frac{1}{2}$ per cent. interest. This Bill is merely meant to secure that object. Act II. of 1872 is repealed, and provision is made for the repayment of the whole accumulated sum. I beg now to propose the first reading of this Bill.

Mr. Rogers moves the first Reading of Bill No. 3 of 1876, —the Bombay Municipal Loan Bill.

His Excellency the PRESIDENT said that the Bill appeared to have the complete consent of all parties interested.

The Honourable SORABJEE SHAPOORJEE BENGALLEE :—A meeting of the Corporation was held on 25th February 1876, and it was resolved :—“That the terms offered by the

Government of India for loans of 36 lakhs and 6 lakhs of Rupees respectively, be accepted with the cordial thanks of the Corporation."

The Honourable Mr. ROGERS :—There will be no occasion to ask for a Select Committee to go through the details of this Bill, I think, and I propose now, if it is consented to read the Bill a first time, that we should form a Committee of the whole Council and consider it in detail.

His Excellency the PRESIDENT :—There are reasons, are there not, why it should go through all its stages as rapidly as possible so as to receive the assent of the Governor General in Council before the 2nd of November? I am afraid that will not be found practicable, but as far as we are concerned, we may proceed with the Bill through all its stages to-day, as there seems to be no sort of opposition and no objection to it.

The Bill read a first time.

The Bill was then read a first time.

Standing orders suspended and the Bill read a second time and considered in detail.

His Excellency the PRESIDENT :—I propose now that the standing orders be suspended, and that the Bill be read a second time and considered in detail in Committee.

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

His Excellency the PRESIDENT said it was improbable that the Viceroy's assent could be obtained by the 2nd November and that therefore Section 1 required alteration. After some discussion it was resolved that for the words "the 2nd November 1876" in the 6th and 7th lines of the section, should be substituted "such date as may be notified by the Governor in Council in the *Bombay Government Gazette*"; and the section was passed as amended.

Section 2 was passed as it stood.

His Excellency the PRESIDENT, with reference to Clause (c) of Section 3, said :—That makes it imperative on the Corporation to accept the calculations of the Accountant General, about which they have been differing.

The Honourable Mr. SORABJEE SHAPOORJEE BENGALLEE :—There is no difference now.

His Excellency the PRESIDENT :—Act II. of 1872 requires the Corporation to pay so many thousand rupees every month, and the question arose between Mr. Pedder, the Municipal Commissioner, and the Accountant General, whether out of that monthly payment interest should be taken and the balance only carried to the diminution of principal, or whether the whole of the monthly payment should be applied to diminish the principal, leaving the interest to be paid at the end of the year.

The Honourable Mr. SORABJEE SHAPOORJEE BENGALLEE said he was informed at the Municipal Office that that had been settled; and suggested that the clause might run "the Accountant General and the Municipal Commissioner."

His Excellency the PRESIDENT said that would not do.

The Honourable Mr. GIBBS :—Mr. Pedder told me that he and the Accountant General had settled the difference between them on this point. The only question is whether the date "2nd November 1876" in Clause (c) is to stand. I think it may. This Act does not grant the loan. It merely applies to the repayment.

The Honourable Mr. ROGERS said the calculations must be made as if the Act did come into force on the 2nd November.

The word "still" in lines 30 and 37 was struck out and the section passed.

The Honourable Mr. ROGERS, in reference to the blanks left in lines 13, 14, and 15 of Section 4, proposed to insert "January" and "July".

This was done and the section passed.

The Honourable Mr. ROGERS, with reference to Section 5, said he had received a letter from the Municipal Commissioner, which, perhaps, he had better read to the Council, as it explained matters. The Municipal Commissioner said, and he (Mr. ROGERS) thought correctly, that the amount of the instalments as stated in the draft copy of the Bill was not quite accurate and he wished to have another item substituted for it. Mr. Pedder's letter was as follows:—

"I observe that in Section 5 of Bill 3 of 1876, it is proposed to enact that 'in order to ensure the repayment of the consolidated loan with interest' (within 30 years) 'the Municipal Commissioner shall pay half-yearly the sum of Rs. 1,80,158-7.'

"I would beg respectfully to point out that this figure has been transferred from the Resolution of the Government of India No. 3028, of 20th December 1875, para. 2, and that it is the sum which would pay off in 60 half-yearly instalments the new loan with the balances of the 15 lakh and 4 lakh loans as they stood on 1st January 1876, or, as estimated by the Government of India, Rs. 59,00,000. The date taken in the Act is, however, 2nd November 1876, and the Municipality has been paying instalments of sinking fund on the 15 lakh and 4 lakh loans for the intervening 11 months. .

"The real balances due it will be found (by the mode of calculation adopted in the Accountant General's memo. of 19th January 1872, according to which the Government agreed to advance, and the Municipality to receive, the 15 lakh and the Tulsī 4 lakh loans, *vide* Government Resolution 3215, of 13th October 1876) are as follows:—On the 2nd November 1876—

				Rs.	a.	p.
15 lakh loan...	...	...	...	12,66,162	0	2
4 ,, ,, ...	...	...	...	3,73,649	8	11
				<hr/>		
				16,39,811	9	1
Add—amount of new loan	...	...	...	42,00,000	0	0
				<hr/>		
			Total ..	58,39,811	9	1

or say Rs. 58,40,000.

"By the mode of calculation adopted by the Government of India (Controller General's Circular No. 145, of 10th May 1873, forwarded to this Office with the Bombay Government Resolution 3300, Financial Department, of 12th September 1873) the half-yearly instalment necessary to pay off with interest at $4\frac{1}{2}$ per cent. in 30 years a sum of Rs. 58,40,000 amounts to Rs. 1,78,326-2-6, which sum, I request, may be substituted for the sum of Rs. 1,80,158-7-0 now entered in the Act.

"I have already (my No. 6820 of 20th instant) had the honour of addressing you with reference to the dates of interest and instalment."

The figures it is now proposed to substitute for the amount stated in the draft Bill has not been calculated by the Accountant General, but a calculation has been made by proportion, and the amount is approximately correct, within a few annas. Mr. Pedder's calculation is worked out according to the Accountant General's formula.

The Honourable Major-General KENNEDY :—I think we may accept Mr. Pedder's calculation.

The Honourable Major-General KENNEDY :—Who made this calculation of Rs. 1,80,000 ?

The Honourable Mr. GIBBS :—The Government of India. They calculated it from the beginning of the year and the Municipality have since made payments, which, of course, reduce it.

The 21st and 22nd lines of Section 5 were struck out, and the words " One lakh, seventy-eight thousand, three hundred and twenty-six rupees, two annas, and six pies " were substituted. The section was further amended by the insertion in the blanks of the word " January " after " of " in the 19th line, and of " July " after " of " in the 20th line.

Section 5 was then passed as amended.

Section 6 was passed without alteration.

Section 7, as drafted, having been read,

His Excellency the PRESIDENT said—Is the " Chief Accountant of the Municipality " the proper person to make such a report? That would be asking one subordinate officer of the Municipality to report against another. The officer who should receive the money on behalf of Government ought to be the person to report default of payment to the Chief Secretary.

The Honourable Major-General KENNEDY :—It is possible to conceive that a Municipal Commissioner might draw a cheque and still might not pay the money into the Treasury.

The Honourable Mr. ROGERS :—Then the Accountant General would be the proper person to report.

His Excellency the PRESIDENT :—He would have knowledge, of course, of any payment into the Bank of Bombay.

The 5th and 6th lines and the words " that capacity " in the 7th line of Section 7 were struck out, and the words " Accountant General " substituted : and Section 7 was passed as amended.

With reference to Section 9, His Excellency the President said that Government paid a large sum for public buildings.

The Honourable Major-General KENNEDY :—And for water-rates, too.

The Honourable Mr. ROGERS asked if it was necessary to state in what manner the attachment should be effected.

The Honourable Mr. GIBBS said the power was given to the Governor and he might take any means he liked and by such officer as he might direct. It was quite sufficient to give the Governor in Council power to attach.

His Excellency the PRESIDENT :—I suppose the Municipal fund will always be in the Bank, and to be found there.

The Honourable Mr. GIBBS :—Yes, the Corporation are bound by the Act to keep everything in the Bank.

The Honourable Major-General KENNEDY—And they are bound by the Act to keep a certain balance there, too.

His Excellency the PRESIDENT said he did not understand the meaning of the first part of the third portion of the section.

The Honourable Mr. GIBBS :—That only refers to debts already fixed by law. For instance, there is a debenture loan on the House Tax, and that cannot be touched unless the claim upon it be first discharged. But we have a prior claim as against all other creditors.

Section 9 was then passed without alteration.

Sections 10, 11, and 12, and the preamble were also passed without alteration.

His Excellency the President then moved that the Bill should be read a third time and passed.

The Bill read a third time
and passed.

The Bill was accordingly read a third time and passed.

The Council then adjourned.

By order of His Excellency the Governor in Council,

G. C. WHITWORTH,

Acting Under Secretary to Government.

Poona, 27th October 1876,

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

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

P R E S E N T :

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

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ACTING ADVOCATE-GENERAL,

The Honourable MAJOR-GENERAL M. K. KENNEDY.

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

The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable DONALD GRAHAM.

The Honourable RAO BAHADUR BECHERDAS AMBAIDAS, C.S.I.

The Honourable SORABJI SHAPURJI BENGALI.

Paper presented to the Council.

The following paper was presented to the Council :—

1. Second report of the Select Committee appointed to consider and report on the Bill to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts.

The Honourable Mr. ROGERS :—Sir, I beg to propose the second reading of Bill No. 2

Mr. Rogers moves the second reading of the Mámlatdárs' Courts Bill (Bill No. 2 of 1876).

of 1876,—A Bill to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts. The Council will recollect that on the last occasion when this Bill was before us it was found that in consequence of certain legal difficulties arising from the prohibition of the Local Councils to amend or modify any Act of the Government of India passed since the passing of the Indian Councils Act, we could not interfere with the High Courts' Fees Act in such a manner as to provide for retaining the same fees for suits brought in Mámlatdárs' Courts as are now levied. A reference to the Government of India on the point was necessary, and the Bill was referred back to the Select Committee in order that the reference might be made. I hope my honourable friend the Advocate-General will explain the legal aspect of the difficulty that arises in consequence of this prohibition of the Local Councils to interfere, even verbally, with Acts passed by the Government of India; but in the meantime I may state that the difficulty with regard to the fees has been got over by the Government of India agreeing that, if we pass this Act in its present shape, they will be prepared, on the application of the Government of Bombay, to reduce the rate of fees so as to leave the amount as it has been under the old Acts. Of course, there will be no difficulty on the part of the Bombay Government in making this application, and there is no fear that the rate of fees now levied on suits brought in the Mámlat-

dárs' Courts will be in any way enhanced. The other alterations that the Select Committee have thought it necessary to make do not affect any question of principle, but are mostly verbal alterations and alterations such as were required to make the arrangement of the Act more accurate and more methodical, and I need not further allude to them. They have been explained in the report of the Select Committee. I beg now to propose the second reading of this Bill.

The Honourable the ACTING ADVOCATE-GENERAL :—As the Honourable Mr. Rogers has suggested that I should explain to the Council the legal difficulty that arose with reference to the Bill as previously drafted, I will endeavour to do so. The Council are probably aware that the Local Legislative Council have no power, in any Act they may pass, to modify or affect any Act of the Government of India. For instance, if the Government of India, in one of their Acts, refers to any Act of the Bombay Government,—say Act V. of 1864,—the Local Council, in any subsequent Act they may pass repealing Act V. of 1864, have no right to say that the reference in the Government of India's Act to Act V. of 1864 shall be read as referring to the subsequent repealing Act. A similar reference was originally proposed to be made by this Bill to the Courts' Fees Act, 1870, and the Government of India objected that such reference would be a modification of that Act. The amount of fees to be paid on plaints presented in the Mámlatdárs' Courts was fixed by Act V. of 1864 and Act XVI. of 1838 at 8 annas, and to the Courts' Fees Act passed by the Government of India a schedule is attached in which there is an express provision directing that the fees to be paid in these Courts should be regulated according to Acts XVI. of 1838 and V. of 1864. The repeal of these Acts by the present Bill wipes them off the Statute Book, and renders the reference to them in the Courts' Fees Act inoperative; and as we cannot say—as was intended in the first instance—that this Bill is to be read as the Act referred to by the Courts' Fees Act, no special fee is fixed for suits instituted in the Mámlatdárs' Courts, and instead of the original nominal fee of 8 annas, the fee ordinarily charged on plaints in Civil Courts would have been payable. Of course, it is impossible that heavy fees can be levied upon suits such as those instituted in these Courts; if that were done, the intentions of the Government in framing the Act would be entirely frustrated; but the difficulty has been got over by the Government of India expressing its intention, under the power given by the Courts' Fees Act, of reducing the Fees payable in plaints instituted in Mámlatdárs' Courts to the original nominal amount.

His Excellency the PRESIDENT :—The practical effect appears to be that the Local Government will be debarred from altering any of its own Acts which has been thus adopted by the legislation of the Government of India.

The Honourable Mr. GIBBS :—We can pass any new Act of our own or repeal any Act passed by this Council, but we cannot say that the number and year of any new Act of ours shall be read instead of the number and year of a previous Act mentioned in any Act of the Government of India that has been passed since the Indian Councils Act. We have full power to repeal our own Acts, or do what we like with them; but if the Government of India in one of their Acts passed since the Indian Councils Act, should have referred by number to, say, Act V. of 1864, and we repeal that Act V. of 1864 and pass another in its place in 1876, we cannot say that wherever Act V. of 1864 is mentioned in the Government of India's Act, our new Act shall be read for it. We can repeal our own Act, but we must leave it to the Government of India, if they please, to strike out from

their Act, say Act V. of 1864, wherever it may occur and substitute, say, Act II. of 1876 in its place. The only other part of this Bill requiring reference to the Government of India was the last section, as to which we had some doubt whether we had power to limit the term for the institution of suits against orders of the Mámlatdárs' Courts to three years, but the section as drafted was referred to the Government of India, Legislative Department, and they replied that the section might stand, and, therefore, there is no further difficulty in that respect.

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

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

The Honourable Mr. ROGERS, in respect of Section I., said :—The reason for the change that has been made in this section since the Bill was last before the Council is explained in the 5th paragraph of the report of the Select Committee. In addition to this, Mr. Naylor suggests a slight alteration in the wording of the section. The old Act is followed although not nominally in force in Sind, and the wording of this section, as it at present stands, regarding the Scheduled Districts, will, I apprehend, have the effect of excluding Sind from the working of the new Act. There is no reason why it should not be enforced in that district, and I propose the section should be altered so as to include it. Mr. Naylor suggests a difficulty as to the Panch Máháls and the Mewasi villages, which are not under the direct Revenue management of the officer in charge of the district. I can see no reason why the Act should not apply to these places. Disputes with regard to possession of fields, &c., are as liable to arise there as in other portions of the district that are directly under the management of the 1st Assistant Collector in charge, and there is no reason why the Mámlatdárs should not have power to settle such disputes with regard to temporary possession in these places as well as elsewhere. I beg to propose that instead of the words "except the City of Bombay and the Scheduled Districts as defined by Act XIV. of 1874," the section should read "except the City of Bombay and Aden." The result of this alteration will be that the Act will be enforced in Sind and in the whole of the Panch Maháls, including the Mewasi villages.

The Honourable Mr. GIBBS :—I may state that in the notification which has been under consideration since the passing of the Scheduled Districts Act and the Laws Extent Act, showing what laws are in force and have been in force in Sind and other parts of what we should call the Non-Regulation Districts, such as the Panch Máháls and the Mewasi villages, the old Acts V. of 1864 and XVI. of 1838, which we repeal by the present Act, are both included as having always been in force, not legally but by custom, in these places, and when that notification is issued they will be legally enforced there. It is necessary, therefore, that this Act should not exempt those portions of the Presidency from its operation; otherwise we shall have to keep the old Acts on the Statute Book for the purpose of Sind, the Panch Máháls, and the Mewasi villages; and as the present Act is an improvement on the previous ones, there is no reason why it should not repeal them there as elsewhere in the Presidency.

The words "the Scheduled Districts as defined by Act XIV. of 1874" were then struck out and the word "Aden" inserted after "and" in line 7, and the section was passed as amended.

Section III. was amended by the word "their" being struck out and the words "of either" inserted after the word "behalf" in the 19th line.

Section IV. was amended by the substitution of the word "brought" for the word "made" in the 35th line.

The Honourable Mr. RAVENSCROFT, regarding Section V., said he did not think the description of the plaintiff and defendant required according to the section as drafted would be sufficiently clear, because a Christian, a Parsi, or a Masalman had no caste.

It was resolved to amend the section by inserting the word "religion" after the word "name" in the 9th line and also in the 11th line.

In regard to Section VIII., the Honourable the Acting ADVOCATE GENERAL observed that three days' allowance for the amendment of a plaint seemed to be a very short time.

The Honourable Mr. GIBBS:—That is the law as it at present stands, and it prevents great and unnecessary delays. I think the point was fully discussed before.

The section was then passed as drafted.

The Honourable Mr. ROGERS:—Before proceeding to consider Section XV., I beg to point out that there appears to be no provision in the Bill for enforcing the attendance of witnesses in cases where they may not be inclined to attend.

The Honourable Mr. GIBBS pointed out that the Mámlatdars' Courts had been held by the High Court to exercise the powers of subordinate Civil Courts for the purposes of the Act.

The Honourable Mr. ROGERS:—Then the declaration of the High Court will, I presume, be sufficient, without its being specially enacted.

His Excellency the PRESIDENT pointed out that Section XXI. as drafted referred only to the possession of property, and did not include the enjoyment of uses, &c.

It was resolved to amend the section by striking out the words "respecting the possession of property" from the 3rd and 4th lines, and also the words "to recover the property comprised in such order" from the 6th and 7th lines, and to substitute the word "any" for the word "an" in the 2nd line.

Schedule A. was amended by the insertion of the word "religion" after the word "name" in the descriptions of plaintiff and defendant.

Schedule C. was amended by striking out the words in parenthesis "(or use, as the case may be)" in the 4th line, and the insertion of the words "(or enjoyment of use of water, or right of road, or otherwise as the case may be)" after the word "property" in the 5th line; and also by striking out the words "(or use)" and the insertion after the word "property" of the words "(or enjoyment of the said use)" in the 7th line.

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

The Honourable Mr. ROGERS moved the first reading of Bill No. 4. of 1876,—A Bill to amend Bombay Act IV. of 1868. He said:—The objects of this Bill are explained in the Statement of Objects and Reasons, but I may briefly explain the circumstances under which it was found necessary to bring it forward. The Council are aware that Bombay Act IV. of 1868 provided chiefly for the survey of towns and cities. Under this Act, disputes have occasionally arisen as to whether the taking out of sanads or title deeds for properties was obligatory or not. A good deal of litigation has taken place on the subject, and, as the Statement

of Objects and Reasons will have informed the Council, according to the advice of our law officers, we have given way on the point and conceded that it is not obligatory upon persons owning property to take out title deeds under Bombay Act IV. of 1868. The doubt arose from the wording of Clause 2, Section I., and of Section X. of that Act, and was as to whether the sanad mentioned in the one was the same sanad as was mentioned in the other, that is to say, whether the Collector, in deciding on titles, could enforce the production of a title deed after an inquiry made by the City Survey. There can be no doubt that the intention of the Legislature when they passed Act IV. of 1868 was to make the taking of the title deeds compulsory, in order partly to pay for the expense of these City Surveys. Everybody must be aware that the survey of a large city in the detail which is necessary to mark out each little property is a very complicated and expensive matter. Residents in Bombay have seen the survey of their city proceeding before their eyes for several years, and they must be aware of the very complicated nature of the process; and also, I have no doubt, every one here will agree with me that when the work is really well done, as it has been done in Bombay, it is most valuable for the owners of property to have such a map to refer to, in which every little property is marked out and defined with the greatest accuracy. In Bombay itself no inquiry has been made into titles, but under Act IV. of 1868, in the Mofussil, when cities have been surveyed, in addition to the survey, measurement, and mapping of all property, there has been an inquiry into titles, for which certain rules are laid down in the Act, and title deeds have been issued for each separate property. In Surat particularly, the proceeding has been disputed and certain parties have affirmed that it is not obligatory on them to take out these title deeds at all. As I said before, however, it was the original intention of the Legislature that the taking out of the title deeds should be compulsory, and this Act now brought forward is simply for the purpose of making it compulsory, and to enable Government, when this very expensive process of a City Survey is carried out, to partly recoup themselves. In Bombay, the Municipality paid a certain sum (Rs. 5,000) towards the expenses of the survey, and in cases of surveys in the mofussil towns the Municipalities have also by agreement paid certain proportions; but what they have paid has been insufficient to cover the cost of the surveys, and as the benefits to the owners of house-property and other property within the limits of towns are undeniable, I think it is quite fair the cost should be partly met from the proceeds of the sanad fees. The original Act IV. of 1868 limited the cost of the sanad or title deeds to Rs. 5, and it is not proposed to increase it, but merely to impose a very moderate fee, as I said before, partly for covering the expenses of the surveys. I beg to propose the first reading of this Bill.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK said he understood this matter was to have been dealt with in the new Revenue Code. As for the Bombay town survey having been successful, as the Honourable Mr. Rogers had told them it was, he did not think it had been particularly successful. The Honourable Mr. Scoble, late Advocate-General, when speaking on that subject on one occasion, expressed an opinion of the survey far from favourable. Mr. Scoble said he was quite ready to admit the survey was a very valuable addition to the means of knowledge they possessed of the boundaries in the town and island of Bombay, but in a most important case in the High Court (the Towers of Silence Case) it had been found absolutely unreliable. His (the Honourable Rao Saheb's) opinion was that if owners of property wished to have their title deeds investigated, it should be done, but to compel them to pay for a survey unless they chose to do so through their Municipalities was not a fair proceeding. If people wanted a survey, let them pay for

it; but that was quite a different matter from compelling owners of property who might have rested secure in their titles for hundreds of years to have a survey and to pay for it. He did not see why persons should be required to pay for sanads to support titles of ancient standing.

The Honourable Mr. ROGERS :—I understand the Honourable Rao Saheb not to object to the first reading of the Bill:

The Honourable Rao Saheb VISHVANATH NARAYAN MADLIK :—No, I do not object to the first reading; I point out a matter for the consideration of the Select Committee.

The Honourable Mr. ROGERS :—With regard to the remarks of the Honourable Rao Saheb in reference to provision being made in the Revenue Code which is now under the consideration of the Council, the Revenue Code is a very extensive affair indeed, and will occupy some time before it is passed, and in the meantime, in the interests of Government as well as of the public, it has been considered advisable to bring forward this Bill at once.

The Bill read a first time,

The Bill was then read a first time.

On the motion of the Honourable Mr. Rogers, the Bill was referred to a Select Committee consisting of the Honourable Mr. Ravenscroft, C.S.I., the Honourable Rao Saheb Vishvanath Narayan Mandlik, the Honourable Rao Bahadur Becherdas Ambaidas, C.S.I., the Honourable the Advocate General, and the Mover, with instructions to report on the 29th January 1877.

The Honourable Mr. GIBBS proposed the first reading of Bill No. V. of 1876,—A Bill to prohibit the practice of inoculation, and to make the vaccination of children in Bombay compulsory. He said :—The history of this Bill is as follows. In the year 1869, the Bombay Association asked the then Health Officer of Bombay, Mr. Lumsdaine, to favour them with a report on the effects of the system of compulsory vaccination in European countries, in order that they might consider whether the adoption of such a course would be likely to answer in this country; and Mr. Lumsdaine, in October 1869, forwarded to the Secretary of the Bombay Association a very elaborate report in the shape of a letter, which gave, with a great many details, a short history of vaccination from the earliest times, and also showed the results of compulsory vaccination in certain parts of Europe where it had been introduced. This letter was illustrated by a number of very valuable tables, and the result of the whole was that the Bombay Association came to the determination that such a course as Government have now determined to adopt, viz., to introduce a Bill providing for compulsory vaccination in the City of Bombay, would be a matter to be desired. On the receipt of this information, Mr. Lumsdaine prepared a draft Bill, which was, I find, introduced into the Legislative Council at a meeting held on the 17th October 1872 by the Honourable Mr. Tucker, who, however, merely formally moved the first reading, and stated that he should defer any further remarks till the second reading. The motion was carried and the Bill read a first time, and referred to a Select Committee consisting of the Honourables the Advocate General, Sir Jamsetji Jijibhai, Mr. Bythell, Mr. Narayan Wasudeo, and the Mover, who were to report on the Bill. However, a reference was made at the same time by this Government to the Government of India, and the result was a lengthy reply from that authority stating that, while admitting how very desirable it was that compulsory vaccination should be introduced if necessary, there was considerable doubt in the opinion of the Governor-General in Council as to whether the time had arrived

for such a measure. The result of that letter appears to have been to cause the Bill to lie over, and nothing further has been done from that time to this, and as far as this Council is concerned, the Bill which was read a first time and referred to a Select Committee, who were to report on the 20th December 1872, has not proceeded further; and it will be my duty, if the Council accede to my present proposition in regard to the new Bill, to move that that old Bill be withdrawn. The letter from the Government of India which stated the doubts and difficulties that had occurred to the Governor-General in Council, said his Lordship had no doubt the question raised therein had received the attention of the Government of Bombay, but the Government of India were not in a position to judge whether the City was yet ripe for the measure, and desired the Governor of Bombay in Council to satisfy himself that there was a real and pressing necessity for rendering vaccination compulsory by law, when, should His Excellency the Governor in Council, on the principles of general policy indicated, still desire to proceed with the Bill, the Government of India directed attention to a memo. which had been prepared by their Secretary in communication with their Sanitary Commissioner. These papers led to the Bill being put aside for a time, but Dr. Pinkerton, who had very ably presided over the Vaccination Department for some years, after the very serious outbreak of small-pox which took place in the early part of this year again moved in the matter, and Government then came to the conclusion that, however well voluntary vaccination had worked, still the time had come when, to preserve the health of the city generally from the scourge of small-pox, it was desirable to introduce a Compulsory Vaccination Bill. This Government communicated their views on this subject both to the Secretary of State and also to the Government of India, and from both these authorities they received permission to introduce the present measure. Since the matter has been under consideration, the position of the Vaccination Department and of the Sanitary Department of this Government has also been under the review by this Government as well as the Government of India, and the result has been that a combination between the two departments has taken place, and the old Office of Superintendent General of Vaccination has been done away with, and the whole of the vaccination as well as the sanitary matters of the Presidency are now combined under one officer, the Sanitary Commissioner, under whom the present vaccination establishments have been placed. Therefore, throughout this Bill, in lieu of the term "Superintendent General of Vaccination" you will find the term "Sanitary Commissioner" used, that being necessary in consequence of the Government of India's decision to combine both these establishments in one under the superintendence of the Sanitary Commissioner. Dr. Pinkerton, who was Superintendent General of Vaccination, has, I believe, obtained another appointment, and the whole matter will now remain in the hands of the Sanitary Commissioner. The subject has been thoroughly discussed, both in the Municipality, as well as by the Bombay Association in former days, and there has been no objection raised to it,—in fact it is a measure which meets with the general consent of all parties. I should mention that shortly after the receipt of the Government of India's letter, His Excellency the Governor communicated with 27 native gentlemen of position and intelligence in Bombay, representing the Hindu, Muhammadan, Jewish, Parsi, and Portuguese communities, who were asked to give an unreserved opinion on the subject of the desirability of introducing compulsory vaccination in view of the religious prejudices and superstitions of the natives on the subject of small-pox, and out of the 27 references that were made, I may state the replies were entirely favourable in all the cases except three, two Parsi gentlemen and one Muhammadan alone objecting. In April 1876, after

the great outbreak of small-pox in this city, when the Superintendent General of Vaccination again urged on Government the necessity of proceeding with the measure, the matter was brought to the notice of the Municipal Commissioner, and at a meeting of the Town Council held on the 13th June 1876, it was resolved that in the event of the Bill being passed the Town Council would recommend the Corporation the extra expense within the City of meeting the requirements of the Bill. The measure that I have now the honour to propose the first reading of has, therefore, met with the consent and approval of the Secretary of State, of the Government of India, and I may say of the citizens of Bombay, including the Municipal Corporation, and, therefore, it comes before the Council under very favourable auspices. In the Statement of Objects and Reasons attached to the Bill will be found a short history with some few statistics. I will not now take up the time of the Council by reading the statement, but will merely refer the members of the Council to it, and will without further delay move the first reading of "Bill No. V. of 1876, to prohibit the practice of inoculation, and to make the vaccination of children in the city of Bombay compulsory."

The Honourable Rao Bahadur BECHERDAS AMBAIDAS:—The objects and reasons of the Honourable Mover of this Bill are very good, being directed to the prevention of the great loss of life by small-pox. The statistics show the number of deaths in Bombay from small-pox to have been in 1870, 556, in 1872, 1,854, and in the first four months of 1876, 2,717, which is an enormous increase. The season when this disease is generally most disastrous is now close at hand, and I think it would be prudent to take immediate measures with a view to checking it. At the same time, it would be advisable, as was recommended by the Bombay Association, that people should not be submitted to any annoyance or extortion.

The Honourable Nacoda MAHOMED ALI ROGAY:—The Bill is good in principle, but I think it should be very carefully considered in detail. One proposition made in it is rather unpopular with the native community. So far as the Mahammadan community are concerned, I may say they do not object at all about vaccine matter taken from animals, but the taking of lymph from children to vaccinate other children is thought very objectionable, especially by the poorer classes, among the natives. I only mention it as a matter of detail for the consideration of the Select Committee.

The Honourable Mr. SORABJI SHAPURJI BENGALI:—I think the people of Bombay are quite prepared for the measure now proposed to be introduced, and I also think that the intelligent portions of the several sections of the native community of the city will give their hearty co-operation to the measure, as it deserves. The Bill appears to me to be framed in such a way that it will not work harshly or in an oppressive manner on the people with one exception, viz., the point referred to by my honourable friend Mr. Mahomed Ali Rogay, the giving authority to the public vaccinator to take lymph from a child by force. Section 8 says:—"and, if he see fit, take from such child lymph for the performance of other vaccinations."

The Honourable the ADVOCATE GENERAL:—That is framed according to the English law.

The Honourable Mr. SORABJI SHAPURJI BENGALI:—No doubt, but the circumstances are different. The people here have a feeling that the lymph taken from some children would breed disease. The ignorant portion of the people object to the lymph being taken from their

children, and the intelligent portion object to the lymph taken from others being put into their children, because bad lymph is held to generate disease; according to the constitution of the child from whom it is taken. I think, also, the Act should provide in some way for the punishment of public vaccinators who use lymph not fit for use. If the Act is to make it compulsory for children to be vaccinated, children should be protected by law from injury to their health or constitution by the acts of vaccinators who do not use proper lymph and who do not exercise their profession properly.

The Honourable the ADVOCATE GENERAL :—That might give rise to considerable difficulty. A vaccinator might innocently use lymph which was not pure.

The Honourable Mr. SORABJI SHAPURJI BENGALI :—I mean that punishment should be provided for acts of wilful carelessness or neglect.

The Honourable the ADVOCATE GENERAL said he thought such acts as those would be punishable under the Penal Code.

His Excellency the Honourable SIR CHARLES STAVELEY :—A certain amount of discretion must be accorded to a vaccinating officer. He must be supposed to understand his duty.

The Honourable Mr. SORABJI SHAPURJI BENGALI :—We have heard of complaints even in England.

His Excellency the PRESIDENT :—Yes, there may be complaints enough, but have they been investigated ?

The Honourable Mr. SORABJI SHAPURJI BENGALI said cases of eruptions after vaccination had often occurred and were attributable to the use of bad lymph.

The Honourable Mr. GIBBS :—I should doubt whether it has been proved.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK :—I was one of those who were asked to give their opinions on this subject to the Bombay Association. I think most of the complaints that will arise among the native communities, if the Bill were passed as it stands, could be avoided if vaccination were made compulsory only with vaccine matter taken from animals. There is no doubt a diseased animal would be just as apt to communicate disease as a diseased human being; but there are some human diseases, like syphilis, when transmitted from the parents, which are not observable except in certain cases, and in animals there are no such diseases, but only eruptions and sores which can be easily detected. If clean animals are selected there is not the slightest danger in vaccination. However, I think this is a point the Select Committee will be perfectly competent to deal with; and as the measure is simply for the City of Bombay, I should certainly feel inclined to give the Bill my support.

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

On the motion of the Honourable Mr. Gibbs, the Bill was referred to a Select Committee, consisting of the Honourable the Advocate General, and referred to a Select Committee, the Honourable Rao Saheb Vishvanath Narayan Mandlik,

the Honourable Nacoda Mahomed Ali Rogay, the Honourable Sorabji Shapurji Bengali, the Honourable Donald Graham, and the Mover, with instructions to report by the 29th January 1877.

The Honourable Mr. GIBBS :—I have now, with your Excellency's permission, to move that Bill No. IV. of 1872— " A Bill to extend and make compulsory the practice of vaccination in the City of Bombay"—be withdrawn.

Bill No. IV. of 1872 withdrawn

The Bill was accordingly withdrawn.

His Excellency the PRESIDENT then adjourned the Council till the 30th January 1877.

By order of His Excellency the Governor in Council,

G. C. WHITWORTH,

Acting Under-Secretary to Government.

Bombay Castle, 4th December 1876.