PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS,

1890.

VOLUME XXVIII.

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Volume XXVIII.

PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

FOR THE

PURPOSE OF MAKING LAWS AND REGULATIONS.

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

The Council met at Bombay on Wednesday the 8th January 1890, at 3 P.M.

PRESENT:

His Excelleney the Right Honourable Lord REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding.*
The Honourable J. B. RICHEY, C.S.I.
The Honourable Sir RAYMOND WEST, K.C.I.E.
The Honourable the ADVOCATE GENERAL.
The Honourable Sir FRANK FORBES ADAM, Kt., C.I.E.
The Honourable RAHIMTULA MAHAMED SAYANI, M.A., LL.B.
The Honourable NAVROJI NASARVANJI WADIA, C.I.E.
The Honourable T. D. LITTLE, M.I.C.E.

A BILL TO CONSOLIDATE AND AMEND THE LAW RELATING TO SALT AND THE SALT REVENUE THROUGHOUT THE PRESIDENCY OF BOMBAY.

Consideration in detail of the Salt Bill resumed.

The Honourable Mr. RICHEY :—I propose in Section 16, line 2, to substitute the word "has" for the word "establishes". This of course means that the claimant may be called to prove his claim before some authorized tribunal, and to avoid any suggestion of that kind we should simply say "if he has a right."

The amendment was agreed to.

The Honourable Mr. SAYANI :—The Honourable Sardár Ráo Bahádur Behechardas Veharidas has asked me to move his amendments, but I wish the Council to understand that I do not adopt all these; I simply move them as a matter of form. I, therefore, move that the words "special and" in Section 16, line 6, be omitted. I believe the object of this Act is to make matters as easy as possible for all those who manufacture salt, and if the words are allowed to stand, a little more difficulty will be put in their way.

The Honourable Mr. RICHEY :—I think, Your Excellency, that any claims to manufacture salt without a license would require a very special case indeed to admit of their being granted, and there are hardly any claims of this sort at all. What the original intention of introducing the word "special" was, I cannot discover; but probably it was introduced with a view to prevent any claims of this kind being made from any general grant of

land. It may have been thought that any landholder with a sanad conveying general proprietory rights might say "I have a right to make salt on my own ground", and possibly that is the intention of the introduction of the word, viz., that every claimant must have a special right to manufacture salt. If that was the intention, and if the omission of the words would open the way to claims arising which are not specific, I think the words should be retained. And probably by this time the words are inoperative, and no fresh claims are likely to arise. In any case I would not like to have an alteration of the existing law without some strong case being made out.

The Honourable Mr. SAYANI :—Under the circumstances I shall not press the amendment.

The Honourable Mr. RICHEY :—I will now move that in Section 22, lines 11 and 12, the words "may be reasonably sufficient for the execution thereof" be substituted for the words "he shall deem fit". This amendment is intended to guide an officer in the use of discretionary powers. The section of the Act with which it deals authorises the salt revenue officer to call upon the licensee of the salt work to execute any work emergently which is necessary for the timely collection of the revenue. As the Bill stands it reads "within such period as he may deem fit". It seems reasonable that his discretion should be guided in determining the time, and I propose that instead of its being in its present form, he should issue his notice for a time which it might reasonably be judged that the execution of the work will take up.

The amendment was agreed to.

The Honourable Mr. RICHEY :—My next amendment is that in Section 23, clause (*a*), after the word "construct" the words "within or adjacent to such salt-work" should be added. There is authority given to the Collector to require the licensee to construct a store-house or building for the storage of salt; but it is not specified where the licensee may be called upon to erect these buildings. I think it would be rather a wide section if we leave it as it stands, and I think we should limit it by substituting the words "within or adjacent".

The amendment was carried.

The Honourable Mr. RICHEY :—I will now move that in Section 24, line 3, the words "has been found by an authority competent in this respect to have committed" be substituted for the words "is guilty of". I would ask the Council to have this considered before the amendments standing in the Honourable Sardár Ráo Bahádur Behechardas' name, because they open up principles which can be best dealt with together. The amendment I propose is in such terms as will not in any way compromise the amendment standing in the name of the honourable Sardár. By this amendment I propose substituting, in lieu of the vague expression "is guilty of", the words I have mentioned.

The Honourable Mr. SAYANI :—I might suggest the word "Court" instead of the word "authority".

The Honourable Mr. RICHEY :—If the amendment standing in the name of the honourable Sardár is carried, then this will follow.

The Honourable Mr. SAYANI :—It is a question whether the amendment will be carried or not.

The Honourable Sir RAYMOND WEST:—If you introduce these matters into Court it would necessitate our going back over past clauses again, and for that reason the introducing of "Court" here would be inappropriate. And if the amendment is carried it would be of no practical advantage. So I think it would be better for the mover of the amendment to leave the amendment as it stands.

The Honourable Mr. RICHEY'S amendment was thereupon adopted.

The Honourable Mr. SAYANI moved that in Section 24, line 2, the words "or his agent" should be omitted. He said:—It would be rather hard if the agent of a person is guilty of an offence, that the person himself should be punished in the manner this section indicates: thus a man might be ruined for life. No doubt it may be argued that because this is a revenue matter, therefore the man should be very careful; but although the man himself is very careful he might make a mistake in selecting a bad or wicked or careless agent, and it would be very hard for him to be punished so severely for this.

The Honourable Mr. RICHEY:—This amendment and all those relating to the 24th section of the Bill are, I think, open to criticism on two grounds of general application. I should like to state my view with regard to these general grounds, so that all the amendments which immediately follow this one may be taken together. The Bill as it stands is a reproduction of the existing law; but as it was necessary to introduce some modifications into the law, the opportunity was taken of re-drafting our salt statute,—a much more convenient method, I think, than enacting a new law. But that mode of procedure for amending an Act of course exposes us to this, that any member of this honourable Council has then the right to challenge the existing law, and to propose amendments to repeal the provisions of existing statutes, and I think the Council will agree with me that in such cases the amendment proposing the repeal must be regarded in a somewhat different light from those which raise objection to a new provision not as yet made law. The burden of proving that a new provision is wanted, rests on the member in charge of the Bill, the burden of proving that an existing provision should be repealed distinctly rests upon the honourable member proposing an amendment. It is not my business in introducing the Bill to defend the existing law: I presume that the Legislature have satisfied themselves on the point and will not permit any alteration unless a very strong case is made out. Therefore when such an amendment is moved I say we should have something more from the honourable member than a mere statement of objection. This necessitates going beyond the existing state of matters to find out how the case stands, and the honourable member should make himself acquainted with the origin of the law he wishes to repeal. He now throws upon me the burden of going back to the time when this law was made sixteen years ago. But I say if it comes to the issue we should be very slow in accepting the repeal of an existing statute without strong facts. This objection of mine applies to all the amendments which have been proposed which affect the existing rules of the Salt Act and especially to this particular section, because (I now state my second objection) these provisions define the conditions of contract between Government and the licensees of the salt-works. These latter are either existing or future contracts. As regards those existing, these provisions have been in force for sixteen years and they are still binding on those who have taken up contracts under the existing law. Now if the conditions are to be modified largely in favour of the licensee, it might be argued that Government should have some consideration, for the terms on which

the licensees were allowed to take up the works did not cover such favourable conditions. And it might be said that as they have paid for stringent conditions we ought to have a free hand to make fresh terms with them. What do we find is the working of these conditions? We find that so far from their being regarded as a hardship, there is such an increasing demand for licenses to manufacture salt as never existed before this Act of 1873 was in operation. All of us who are concerned in the government of the country know that Government is pestered with applications for permissions to start salt-works. These conditions cannot be objected to by existing licensees as we have no complaints, and they cannot be objected to by prospective manufacturers because, as I have said, we have larger demands for licenses than we can comply with. And then it must be remembered that no one is obliged to embark in salt manufacture so that the general public are not interested in these amendments. Now I will go back to the merits of the question. This amendment actually threw upon the member in charge of the Bill the labour of justifying the legislation of which we have only the record now, and with the permission of this Council I should like to read one or two extracts from the report of the Collector of Salt Revenue which led to the passing of the existing Act. These do not point exactly to the issue raised by the mover of the amendment, but they show the position of matters which were held to justify the Legislature in enacting these provisions.

"22. The proposal to make owners of salt works responsible for illicit removals of salt from their works is new, but it is nevertheless just in principle, and its adoption will, I am convinced, have more effect in repressing smuggling on a large scale than any subjection of outsiders to penalties for infringements of the salt laws. As the law now stands no responsibility whatever attaches to owners unless they are personally concerned in the passing of contraband salt, and the penalty for such an offence is limited to fine, or at most to a short term of simple imprisonment. However notorious a work may be for smuggling, Government are powerless to stop manufacture there so long as it produces 5,000 maunds salt a year, so that it is actually to the interest of owners to encourage smuggling from their works. If they do not smuggle themselves, others will always be found ready to pay for facilities for smuggling. It is a significant fact that there is no case on record, so far as I have been able to ascertain, in which an owner has complained of the removal of salt from his works without payment, although owners *ought* to suffer as well as Government whenever excess salt is removed. Many of the works have now passed into the hands of traders who export the whole quantity manufactured on their own account, and some among them carry on a system of wholesale smuggling. It is from these men that the greatest danger to the revenue arises. They know every weak point in our system, and take advantage of it: they are intimate with our establishments, and soon learn from association what men are susceptible, and they bribe them right and left, and as they take out permits through their servants they run no risk whatever if a seizure is made. Surely such a state of things ought not to continue. If a distiller permits smuggling from his distillery, or if the owner of a bonded warehouse fails to take proper precautions against the smuggling of dutiable goods therefrom, detection is always followed by loss of license. In the case of manufacture and trade in all other excisable articles the possessor is answerable for every breach of the excise laws with respect to goods in his possession, and I see no reason why the owner of a salt work should not be subjected to similar responsibilities. It will not be sufficient, as proposed by Mr. Pedder [paras. 184 and 308], simply to make the works liable to confiscation

when owners are proved to have connived at smuggling; such proof will practically never be obtainable, as owners will keep in the back ground and act through others. What is needed is to force responsibility on owners, so as to make their interests identical with those of Government as regards the prevention of the illicit removal of salt . . . . .

"The scheme thus compels the owner either personally or by his lawfully appointed agent, to take part in every process necessary for the passing of salt from his works, so that opportunity is thrust upon him for detecting and preventing irregularities, and it then makes him responsible for irregularities committed. It also makes him responsible for breaches of the conditions of his license and for offences against the Act committed by his servants, and it protects him from the intrusion on his works of unauthorized persons. There is nothing harsh or unfair in this, and as the penalty of suppression of his work, or suspension or withdrawal of his license can be inflicted only by the deliberate action of Government, the owner is protected from hastiness or severity on the part of over-zealous executive officers. I think that Government should reserve to itself the power to decide whether an offence involving the penalty of suppression &c. has or has not been committed, as failures of justice sometimes occur in the Criminal Courts for which the criminal law affords no remedy, and cases will certainly happen in which, though it may be impossible to establish a criminal charge against the owner, his agents or servants, very good cause may be shown for the withdrawal of his license.

"23. I beg that it may be understood that the remarks made in the last paragraph regarding the complicity of salt owners in smuggling operations are not intended to apply to the whole body. Some of the proprietors are men of undoubted probity, and if they have not hitherto interfered actively to prevent smuggling, it is only because it was no part of their duty under the existing law to do so . . . . . ."

That points to the liability of agents. Now these extracts which I have read are from a long report which discloses a very widely ramified and very expert organization for illicit purposes, and the Government in 1873 were satisfied that such provisions as those at which the amendment has aimed were necessary for the protection of the Government. Therefore on these general grounds I have to oppose the amendment.

The Honourable Sir RAYMOND WEST:—I may remark to the honourable member that the punishment or penalty which falls on the owner or agent is not so opposed to principle as the honourable member suggested a short time ago. In England cases are not at all infrequent of a principal or a master being responsible for the acts of his agent, especially in such cases in which he enjoys a special privilege through being a licensee: for instance, as masters of a tavern or public house. In such cases if a servant gives drink to a policeman or allows gambling, the owner is responsible for the act of his servant even though he might not have been there at the time. It is carried even so far as this, that if a servant allows cattle to stray on the road the master is responsible for any damage that might be caused. Persons who enjoy any particular privilege by a license are allowed to do so on special conditions, and it is open to any one in taking a license to refuse to take it if he does not like these conditions: it is not likely that he would take it except when he sees that, looking at the whole thing, he is to be a gainer by the transaction. If there is any alteration in this section there is a danger of every one saying that he is not responsible for any fault that may have been committed as it was committed by an agent. Morally of course a master is not to blame for the fault of his agent, but technically and in legislation we should not allow this distinc-

tion. There is another point which arises. The honourable mover of the amendment has not mentioned whether this section, which has been in operation for sixteen years, has ever been applied despotically, or how many instances there are of Government suppressing any salt-works. Unless there are many instances, and startling instances too of this kind, it is better to trust to that discretion which has been wisely exercised hitherto and which all who are interested in the revenue think has been so exercised. Of course the power given to Government to suppress a salt-work need not in any case be exercised in its utmost rigour. The man might be fined, but if that is not sufficient to restrain wrong-doers, and if there are a great number of cases of the same sort in succession, a salt-work or two might be suppressed to act as a warning to others. Of course power of this kind should always be exercised in a judicious way. I think we may fairly call upon the honourable member to mention the occasions on which Government has not been found to exercise a reasonable discretion during the sixteen years this section has been in force.

The Honourable Mr. SAYANI :—I do not wish to say that the Government have been despotical, on the contrary I think Government have always tried their best to deal with subjects in as liberal a manner as possible; but when we are discussing a matter of this kind, I do not quite see how that fact can be brought in as an argument; if we pursued that to its logical conclusion we might say there was no necessity for legislation at all. If there is a law it should be made on fair and proper principles; simply because Government have not acted harshly is no argument for any sort of clause being admitted. In the first place the Honourable Mr. Richey says that when a member wishes to propose a section of the existing Act he should show some good reasons why it should be altered because it puts the mover to a deal of trouble in defending the existing law. I admit that this is reasonable and proper. Now on the face of it the punishment in this Bill is very severe for acts not done by parties themselves but by some agent. Of course we cannot expect an agent in a salt-work to be an educated or superior man, and then the owner of the salt-work is not necessarily expected to be present there all day; in fact these men generally leave their business to be conducted by agents. So you see the case is not quite on all fours with that of the tavern-keeper or cattle-owner who are always at hand and who can supervise the actions of their servants or agents. And as to the extract which the Honourable Mr. Richey quoted from the Collector's letter, all I can say is that that was only one side of the question. Did we hear the other side? There must have been some reasons also advanced on the other side too. When a law is being enacted, I think the honourable movers can and ought to bring these matters before the Council. On the face of it these provisions are so harsh that this section if possible should not be enacted.

The Honourable Sir RAYMOND WEST:—I said that it was incumbent on a member moving an amendment to produce instances on which Government had acted in a harsh manner.

The Honourable Mr. SAYANI :—I know Government will act in a liberal manner, especially in cases where a man cannot defend himself; but on the face of it the section was so harsh that no other ground was necessary for challenging it, and I do not see why we should not challenge it when it comes up for reconsideration. Then it was said that this is a matter of contract, and that so far the Act had been in force for sixteen years, both parties agreeing to this section as one of the conditions to the contract. No

doubt it is a contract, but it must be remembered that it is a contract between Government and a subject, and consequently if even heavier terms were introduced they would be accepted, as the industry is so profitable. That is the reason why people are anxious to take the licenses. I think, so far from taking this as an argument for making things burdensome to the merchants, that all possible endeavour should be made to improve and facilitate. I am sorry therefore that I must press the amendment.

The Honourable Mr. RICHEY:—I should like to notice one or two points in the honourable member's remarks. The last suggestion of the honourable member, that if an industry becomes profitable Government should relax the stringency of their conditions, seems to me to be rather a reversion of the natural order of things: in proportion as the temptations to smuggling be increased, in the same proportion should the laws guarding against smuggling be relaxed! But the fact that applications for licenses are being frequently made owing to the increasing profits of the trade, in spite of the presumedly harsh conditions, is, I think, in itself a justification for the existence of these laws. Of all things we do not wish a return to the state of things before this law came into existence, and any relaxation of these conditions would be directly in the way of losing control over these people. Government do sympathise with the desire of the honourable member that its relations with every one should be as easy as possible, but it would be insane to restore the former order of things.

The Honourable Sir FRANK FORBES ADAM:—I think it would be exceedingly unwise to omit from this section the clause making a master responsible for his agent's actions, as the man who had a license from Government would invariably shield himself behind the excuse that his servant and not he had committed the fault. It is to my mind a strong argument in favor of leaving the words as they now stand that the man would know distinctly the terms of his contract before he undertook it. If the trade is a profitable one it is certainly an argument in favour of leaving the Bill as it stands, because then a licensee would be able to afford to employ none but trustworthy, careful and reliable agents.

The amendment on being put to the vote was lost.

The Honourable Mr. SAYANI:—I shall not propose the two other amendments to this section.

The Honourable Mr. RICHEY:—I will move that in Section 30, at the end of sub-section (1) the words "and he shall give a receipt for the payment in such form as the Commissioner may prescribe" be added. In the Bill there is a provision which presumes the granting of a receipt, but it is not imposed as a duty on the collecting officer to do so. As it is necessary that an officer who collects the money should grant the receipt, I move the amendment.

The amendment was accepted.

The Honourable Mr. SAYANI:—I will not press the proposition to omit clause (*a*) in Section 35. I formally propose that in Section 38, clause (1), line 4, the words "any salt not intended for *bonâ fide* domestic or agricultural purposes" be inserted after the word "possess", and that the words "salt exceeding one maund in weight" after the word "possess" be omitted. I would also propose that clause (2) in this section be omitted. The object of these amendments is obvious, but if the honourable member in charge of the Bill is opposed to it I will not press the amendment.

The Honourable Mr. RICHEY :—Yes. It will throw the duty of determining whether salt is for domestic or agricultural purposes on the revenue officer, and it will open the door to smuggling.

The Honourable Mr. SAYANI :—In that case I do not press it.

The Honourable Mr. RICHEY :—I might mention for the information of the Council that our limit of one maund is liberal, as in Bengal it is only about five seers.

The Honourable Mr. SAYANI :—I will now move that in Section 39, line 2, the words "not lower in rank than a sir-kárkún or a dároga" be inserted after the word "officer". The object of this amendment is obvious.

The Honourable Mr. RICHEY :—The provision in Section 39 follows the existing law in Bombay and all the provisions in the Government of India Salt Act of 1882. The Governor in Council or Provincial Governor is authorized to invest salt officers with powers to execute certain duties without limitation. The only exception is in Madras where one or two limitations are made. I think we may safely trust the Executive Government to use their powers with discretion. Then there is always a risk that these restrictions might be quite unsuitable if changes are made in departments; thus it might be that an officer with all the powers and position of a sir-kárkún or dároga might go by some other name. Then there is another objection. The Governor in Council can invest officers of other departments with the powers of salt officers according to the Bill, and if we have these officers so invested, we cannot very well make a standard of official dignity by stating particular ranks belonging only to the Salt Department. On these grounds I think it would be better to leave the section as it is, in accordance with the other Acts in India.

The amendment was withdrawn.

The Honourable the ADVOCATE GENERAL proposed that the word "that" at the beginning of clause *(ii)* be omitted. The proposal was accepted.

The Honourable Mr. SAYANI :—I will now propose that at the end of clause (*b*) of the same section the following proviso be added :—"Provided that if any such place is an apartment in the actual occupancy of a woman who according to custom does not appear in public, such officer shall before entering such apartment give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it." I believe that is the usual exception to a rule of this kind.

The Honourable Mr. RICHEY :—I would have no objection to receive this; but the Code of Criminal Procedure provides sufficiently for the protection of zenana apartments.

The Honourable Sir RAYMOND WEST :—The remedy the most effectual would be to insert it in clause 40, where one or two particular provisions are laid down in these salt searches. The two could then go together. Perhaps the Honourable Advocate General would say what he thinks of combining the two in Section 40.

The Honourable the ADVOCATE GENERAL :—Supposing breaking open a door is not a search?

The Honourable Sir RAYMOND WEST :—Either the two sections do run together or they do not.

The Honourable the ADVOCATE GENERAL:—It would do no harm if these words were introduced.

The Honourable Sir RAYMOND WEST:—I think that Section 40 gives ample protection to the women, because their apartments cannot be entered, save under the conditions of the Criminal Procedure Code—that is, after sufficient notice has been given.

The Honourable the ADVOCATE GENERAL:—That is on the assumption that the search is under the Criminal Procedure Code.

The Honourable Sir RAYMOND WEST:—It is either so or not. The terms in the Procedure Code are quite sufficient for all purposes. The section which is important is this—"provided that an apartment is in the occupation ..... and then break open." So I think this breaking open will only be done under Section 48 of the Criminal Procedure Code.

The Honourable Mr. SAYANI:—I withdraw that, and will not propose the amendment to Section 39, clause (*c*). I will now formally propose that in Section 39, clause (*f*), the words "and the other contents, if any" in line 7 be omitted.

The Honourable Mr. RICHEY:—That amendment will have to be considered in connection with the amendment proposed by the Honourable Sardár Bahádur Behecherdas to Section 50. That section says:—"All contraband salt, and every vessel, animal or conveyance used, or intended to be used, in carrying contraband salt, and all goods, packages and coverings in which contraband salt is found, and the other contents, if any, of the vessel or conveyance in which contraband salt is found, and every apparatus, implement, utensil or material employed, or intended to be employed, for the manufacture, excavation, collection or removal of salt without a license or for the purpose of utilizing natural salt or salt-earth contrary to any of the provisions of this Act or of any rule made hereunder, shall be liable to confiscation." Under Section 39 the salt officer is empowered to exercise that preventive function. Now the honourable member's amendment proposes to omit from Section 39 (*f*) the words "and the other contents, if any." That amendment as it stands is hardly adequate and the section would require further amendment. Now, examining the other salt laws I do not find that this specific power is given under them if we consider the word "vessel" to mean ship, and the interpretation will turn upon that. It is a curious thing, and I dare say has attracted attention, that the word "vessel" is used in two senses in (*f*). In one place it means a pot or other substitute for it and in another it means a boat. In Section 50 we have "vessel" meaning a boat. Therefore I would readily accept the honourable member's amendment in so far as the word "vessel" means boat or ship, because I do not find that the other Salt Acts go so far as that. What we want then is to re-draft Section 39 (*f*) and Section 50 in such a way as to show that the other contents of the packages, coverings or utensils containing salt should be confiscated. If that will satisfy the honourable member it might be done.

The Honourable the ADVOCATE GENERAL:—It may be sufficiently remedied if the words "vessel or conveyance or" be omitted. Of course the honourable member in charge of the Bill sees the absurdity of a whole ship being confiscated. A curious incident occurred here some time ago. It did not arise under the Salt Act, but a threat was made to confiscate a whole train belonging to the G. I. P. Railway because some bottles of liquor

had been conveyed by it contrary to the A'bkári Act. So leaving the word "conveyance" it would be as hard as leaving the word "vessel."

The Honourable Mr. RICHEY:—I can accept the amendment in so far as not extending the confiscation to a boat, ship or cart, but not further.

The Honourable Sir RAYMOND WEST:—Section 50 relates to a somewhat different subject, while Section 39 relates to a protection of revenue by seizure. I think if the word "vessel," which is used in one sense in one place and in another sense in another, were struck out, "conveyance" would include all that was wanted.

The Honourable the ADVOCATE GENERAL:—I think the word "conveyance" is as objectionable as "vessel".

The Honourable Sir RAYMOND WEST:—No one has seized a railway train and if it is done some special provision might be made for it.

The Honourable Mr. RICHEY:—I think we should say "or other article in which the salt is contained", or "any package or covering in which such article is found," leaving out the word "vessel".

The Honourable Sir RAYMOND WEST:—That will at least remove all ambiguity.

It was then agreed that the word 'vessel' in line 55 and the words "the vessel, conveyance or" in line 58 should be omitted, and that the word 'such' should be inserted after the word 'of': and the words 'or covering' after the word 'package' in line 58 of Section 39.

The Honourable Mr. RICHEY:—I propose to substitute the words "carried out" for the word "made" in Section 40, line 3, to prevent any misunderstanding.

The amendment was accepted.

The Honourable Mr. RICHEY:—I propose to omit sub-paragraph (2) in Section 48. This sub-paragraph is taken from existing statutes, but all it does is to provide a more severe punishment than is provided by the ordinary law. It does not appear to me to be at all necessary nor can I find any special justification for its existence. I therefore propose to leave the criminals to the ordinary laws.

The amendment was accepted.

The Honourable Mr. RICHEY:—I propose in Section 49, line 5, to insert the following words between the word "salt" and the word "knowing":—"Or an incorrect certificate purporting to be such as is required by Section 32." I take this occasion for mentioning that the Honourable Mr. Pritchard submitted several amendments for the alteration of some of the existing rules of procedure. I did not however think it necessary to take up the whole of them as they stood. One item however was necessary, that is this particular little clause which I ask the Council to insert in line 5 of Section 49. A person desiring to remove salt has to get a permit and a certificate under Section 32. He is made responsible for the correctness of the permit and should also be for that of the certificate.

The amendment was accepted.

The Honourable Mr. SAYANI:—Section 50 has been already considered.

The Honourable Mr. RICHEY:—The amendment says "omit the words 'animal or conveyance'."

The Honourable the ADVOCATE GENERAL :—There are several amendments which stand on a very different footing to each other.

The Honourable Mr. RICHEY :—It says likewise to omit the word "goods" in line 6; but it is important that the word "goods" should be included.

The Honourable the ADVOCATE GENERAL :—I think the difficulty is to say where to draw the line; but I think the line might be drawn at the words "the other contents of such packages or coverings, if any."

The Honourable Sir RAYMOND WEST :—I rather think the wording here follows the English Act in reference to smuggling.

The Honourable Mr. RICHEY :—It does so far as the Abkári Act is concerned, but not in this.

The Honourable Sir RAYMOND WEST :—I suppose if there was any intention of smuggling opium. The question is as to the contents of the conveyances.

The Honourable Mr. RICHEY :—I think that is worded clearly enough.

The Honourable Sir RAYMOND WEST :—The clause as it stands is described as the existing law.

The Honourable Mr. RICHEY :—I see no objection to substituting the words we have already agreed to for vessel or conveyance in line 8 "the contents of such packages or coverings." And as other packages are used to conceal contraband salt beside that in which it is contained I think the words "or among" should be inserted between "in" and "which".

The Honourable Sir RAYMOND WEST :—I think we might strike out the word "vessel" and retain the word "conveyance". The argument in favour of this is that it is the existing law; and if the honourable member is willing to accept this it is for him to signify.

The Honourable the ADVOCATE GENERAL :—The old law was "all vessels, animals, or conveyances used or intended to be used in conveying salt." I mean Act VII of 1873, section 48. I do not think there was anything about all goods, packages or coverings.

The Honourable Sir RAYMOND WEST :—Then that being so the argument falls as to this being the existing law. But would it not be better to strike out the clause beginning at line 8 and leave the law as it is in regard to packages and coverings;—what is not a reproduction of the existing law to be left out?

The Honourable the ADVOCATE GENERAL :—I think so.

His Excellency the PRESIDENT :—Then it is agreed to leave out the clause beginning at line 8 "the other contents if any," down to "and" in line 10; and to add the words "or among" after "in" in line 6.

This modification was accepted.

The Honourable Mr. RICHEY moved that in Section 51 (l) the words between "Act" and "shall" be omitted and also clause 2 be omitted. Sub-para. 2 of Section 48 having been omitted, he said, these words of Section 51 must necessarily follow.

The amendments were accepted.

The Honourable Mr. RICHEY moved to substitute the following for lines 7 to 11 in Section 55—"or when the notice has not been so served, the date which shall appear to the officer holding the enquiry to be the date on which the person on whom the same

is to be served has become aware of the issue and purport thereof." The mode of procedure has been, when the person on whom the notice was to be served could not be found, to send the notice to his place of residence. But that being so it has been found necessary to decide for other purposes of procedure, what should be the date on which the notice should have been presumed to have been served. It may be left to the enquiring officer to settle this by fixing the date on which he may be supposed to have become aware of the service of the notice. The officers on inquiry would find out where the man was, and when he may have been presumed to have heard of the notice that date should be the date of service.

The amendment was accepted.

The Honourable Mr. RICHEY moved in Section 55, sub-para. 2, to substitute the words "a material misconception of the intended intimation" for the words "substantial injustice" in line 17.

The amendment was accepted.

The Honourable Mr. SAYANI, referring to amendment by the Honourable Sardar Ráo Bahádur Behecherdas, Section 61, line 4—*Viz:* to insert "or against any of the officers referred to in section 41" after the words "salt-revenue officer" said:—It is not necessary now to propose this amendment.

The Honourable the ADVOCATE-GENERAL:—There is one section on which I have not proposed any formal amendment—Section 61, clause 3, para. (*b*). I think it would be monstrous to dismiss an action on this account. It really passes my understanding what is to happen if the money has to be paid and then the action dismissed. It seems to me that is a very bad alteration of the existing law. I would suggest that this paragraph be omitted.

The Honourable Sir RAYMOND WEST:—There is this to be noted, that in cases of this kind the Criminal Code would not be sufficient. This would affect a case in Court in which a man would be claiming damages for some wrong, and this paragraph is to prevent needless litigation on the chance of getting more, or a man from getting anything if he has had reasonable amends made to him. The object of this is to prevent a case of that kind. It is intended to impose a certain risk upon people who are claiming damages. The object of this is to prevent people bringing unnecessary or revengeful suits or carrying them on after a reasonable sum being lodged in Court.

The Honourable the ADVOCATE GENERAL:—But in the High Court the Crown runs that risk.

The Honourable Sir RAYMOND WEST:—But it was thought necessary to make that provision.

The Honourable the ADVOCATE GENERAL:—Not in the Civil Procedure Code.

The Honourable Sir RAYMOND WEST:—It is all left to the discretion of the Judges here, if they do not take what has been reasonably tendered. No notice having been given I am hardly prepared to say just now whether this clause could be spared, or whether it might be put into another shape.

The Honourable the ADVOCATE GENERAL:—I think it should be brought up at the third reading. I have considered it with regard to similar provisions in another Act, and I think it is entirely superfluous.

The Honourable Sir RAYMOND WEST :—I should be inclined to say it is not desirable in its present shape; but at the same time I would not like to say it would be absolutely useless.

The Honourable the ADVOCATE GENERAL :—Well, it can be brought up on the third reading, and the Honourable Sir Raymond West will look into it.

THE GAMBLING BILL.

The Honourable Sir RAYMOND WEST, in proposing the first reading of Bill No. 2 of 1889, a Bill to amend the prevention of Gambling Act, said :—

Sir Raymond West moves the first reading of the Gambling Bill.

Your Excellency, the object of the Bill, the first reading of which I ask leave to move, is stamped on the surface. The Gambling Act of 1887 was passed in terms which were at the time thought sufficient; but the ingenuity of a certain class of gamblers found means of evading the law, and the matter went to the High Court for trial, and it was there ruled that what ordinary people would call gambling on the rainfall did not come within the purview of the Act. It is now necessary to fill up the blank in that Act, because it is shown that people of gambling tendencies would wager money as much even on the rainfall as on any other form of gambling. In matters of that kind we have not so much to look at the difficult and somewhat subtle principles that underlie the subject, and to determine where the moral offence begins and ends; but rather to the good order and welfare of society, and to the prevention of practices which in effect are found to be seriously injurious. It is on these grounds that an amendment to the existing Act seemed to be necessary, and the object is to prevent people from being tempted to public and reckless wagering, by which they lose as much money as in ordinary gambling. Wagering becomes a fascinating pursuit which takes people from their ordinary avocations, induces them to risk larger sums of money than they can afford to lose and demoralizes those who take part in it, and frequently leads to disastrous results in the case of those who lose their money. There is a question as to whether the wording of the Act would best effect what is intended, and as there is this amount of doubt about it, I think after the first reading of the Bill has been accepted it should be referred to a select committee of members of the Honourable Council to settle the precise wording of the Bill. As to the general idea and principles of the Bill, however, there can be no diversity of opinion. It might be thought that by interfering with this form of gambling, betting on horse-racing would by a logical consequence have to be put a stop to; there is something to be said for that, but if you carried out the idea to the logical end then even insurance offices would be doomed; although the ground principles are extremely hard to determine, the general applications are easy, and Government, who have to look to the good of society in general, have been obliged to take the matter up in a practical rather than a systematic way.

The Honourable the ADVOCATE-GENERAL :—I may say that I entirely agree with the mover of the Bill. Although there is a very formidable amendment standing in my name, yet it only deals with the question of the machinery to be used in carrying out the provisions of the Act. I was the officer entrusted with putting the matter before the High Court, and I am of opinion that the decision arrived at by the Judges was a correct one according to the law as it stood. While I was engaged in the case I received much information from the police as to the manner in which this rain-gambling was carried on, and from this I

am of opinion that the matter is one which does call for legislation. A very high authority in the English Church has said that gambling in moderation is no moral offence at all; but we in this Council can have no hesitation in saying that where a temptation is held out to people to indulge in conduct which is pernicious or extravagant, and which might lead to large losses of money, it should be put down; and I am in a position to say that this rain-betting establishment is a gaming house on a very large scale, which leads not only to people losing their own money, but to clerks and other employés risking the money they had been entrusted with by their masters. The matter is one which ought to be dealt with before the next monsoon; still the Council should consider well before they go on with it, for it opens up several very wide questions. For instance you will have to consider the question of betting on race-courses; and it will be impossible to let implement of such betting like the totalisator continue to be used. I know there are many people who are much in favour of these totalisators. They say it makes betting on a race-course fairer, as it takes the matter out of the hands of the book-makers. But the making of the gambling easier is making it a greater temptation, and I have seen private soldiers flock to these instruments and risk their money which would have been better spent on their families. Whenever there is a public invitation to gamble, it is sure to be accepted; and as this Bill purposes to put down one special form of public gambling, I am in entire accord with it.

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

The Bill was then read a first time and was referred to a Select Committee consisting of the Honourable the Advocate General, the Honourable Messrs. Sayani and Wadia, and the honourable mover, with instructions to submit the report by 8th February 1890.

THE DISTRICT POLICE BILL.

Sir Raymond West moves the first reading of the District Police Bill.

The Honourable Sir RAYMOND WEST in proposing the first reading of Bill No. 3 of 1889, a Bill to amend the Law for the Regulation of the District Police in the Presidency of Bombay, said:—The administration of the District Police of this Presidency has been hitherto vested, subject to the superintendence and control of Government, in the Commissioners of Divisions. Since the year 1885, an Inspector-General of Police has been appointed, whose position and powers were provisionally determined by orders of Government. The experience since gained has enabled Government to arrive at clear views of the proper place of the Inspector-General in the Police system. It has become necessary to give legislative definition to his authority and functions, and in settling these to review and re-define the relations to the Police system of the Commissioners and District Magistrates. The constitution and working of the Police Forces established in other provinces of India, chiefly under the provisions of Act V of 1861, have been carefully considered as a source of improvement for the Bombay system, and such provisions as could be beneficially adopted have been introduced into the present Bill in such modified forms as were necessary in order to reduce them to harmony with the general system. It has been thought desirable while giving the Inspector-General full control over the discipline and mechanism of the force, to maintain and emphasize the authority of the Magistrate of the District as one in whom, to a certain extent, centre both the magisterial and the executive local powers, and to confer a corresponding

authority on each Commissioner within the area under his administrative control. This Bill is introduced for this purpose, and the opportunity has been taken of re-arranging the provisions of the Police law, of revising them with a view to the conditions of the present time, and of introducing amongst them some new enactments suggested by the deficiencies of the present law. Whenever extended authority has been given to the magistracy or the police, for the purpose of preserving order and maintaining the general comfort of the public, careful precautions have been taken to prevent abuse of the powers thus conferred. Some novel sections have been introduced for the purpose of securing gentleness and humanity on the part of the Police, in the discharge of their necessarily harsh and invidious duties. The Act will not in the first instance extend to Sind or to Aden and its dependencies. But power is reserved to Government to extend to these places either the whole Act, or such portions of it as shall seem appropriate. Several of the provisions of the Bill have a possible utility independent of the others, and may be brought into operation, when the introduction of the Act as a whole might be premature or unadvisable.

The Bill may be regarded as the effect of the gradual advance in the organization of the Police, which has arrived at such a stage that further legislation is necessary on matters not included within the scheme of previous laws; at least certain regulations in matters connected with the Police have become manifestly desirable. It is known to most members of Council that the existing organization of the Police is due in a great measure to that eminent administrator, Sir George Clerk, who, taking up the subject first in 1856, and afterwards developing his scheme to some extent in 1861, when he came to this Presidency a second time, placed our police on a basis which was governed to some extent by the ideas embodied in the general Police Act of 1861, which is an Act applying generally to India, although not adopted in Bombay. Under the system introduced by Sir George Clerk, the Police Commissioner was the head of the force, and it may be through the want of organization in the administration generally at that time, but at any rate matters not having reached a high point of general development, the working of the system, it must be admitted, in the interval between 1857 and 1860 was not highly satisfactory. Consequently the Police Commissioner was dispensed with, and various proposals were laid before Government and considered as to the best means of organizing the force. In 1867 matters had reached a point at which the Honourable Mr. Ellis introduced into Bombay the District Police Act now on our statute-book. This was a distinct advance on anything enacted before, and put the Bombay Police on a footing which was satisfactory at that time. If the honourable members will look into the debates on these Acts, and especially the earlier one, they will find what Mr. Ellis dwelt upon was that it was left open to Government at that time to appoint a Police Commissioner separate from the Commissioner of the Divisions of the Presidency; but as a matter of fact such an appointment has never been made, the experience gained not having been favourable to the repetition of such an experiment. Since 1867 the police have been under the charge of the Commissioner of each Division, subject of course to the control of the Governor in Council. In more recent times the extension of railways, the improvement of education, and the wider organization of the Government departments, have given facilities for criminal organizations which did not formerly exist: and we cannot but be aware that the greater facility of passing from district to district, and even from one presidency to another, has considerably increased the necessity for a more

complete organization of the police force, such an organization as will enable the head of the Police to bring his whole powers to bear at particular points where it may be necessary to meet and cope with criminal organizations. Therefore, for the purpose of an efficient working of the police it became desirable and appeared obviously necessary to successive Governors of this Presidency that a reform should take place. It was evident, especially to Sir James Ferguson, that an improved organization of the police was indispensable if its former efficiency was to be maintained. In 1885, when an Inspector-General of Police was appointed, the idea of Government was to confer on him nearly all the powers intended to be given to the Commissioner of Police under the Regulation of 1867. That idea was not approved by the Government of India; if it had, it would have been somewhat incongruous with the legislative and administrative arrangements enforced in other parts of India. The views of the Government of India being expressed, and the function of the head of the Police being thus confined, this Government proceeded to consider what the proper powers of the Inspector-General of Police should be in matters relating to technique and the organization of the force. The way in which the duties of the police were to be performed in the suppression of crime was a matter which concerned in a special degree the Magistrate of the District, and for the Magistrate his superior, the Commissioner, was in this respect responsible. In order to combine the several principles two drafts of Police Bills were drawn up, neither of which was approved. The whole subject had thus reached the point at which the position of the Inspector-General was becoming very difficult. It was difficult I mean for him to determine his position and relations to other functionaries. It was considered desirable another effort should be made; and so in 1888 a new Bill was prepared, and then after taking advice from various sources, the outlines of the present measure were determined by Government. Since 1885 we have had an Inspector-General at the head of the Police force over all matters of discipline, and what one may call the organism and the technique and physical working of the force, and it is intended to establish that position in this Bill. At the same time the principle is recognised, and it is referred to in the Bill, that the whole control as far as possible of the forces of each district, should as to their direction and purpose be in the hands of the Magistrate of the District, and that as to both ends and means the Superintendent of Police should be his subordinate. The functions of the Magistrates are set forth clearly in Sections 13, 14, 15, and 16 and of the Commissioner in Sections 17, 18, 19, and 20 of the Bill. If these provisions are compared with those of the earlier Act of 1867, it will be found they define, and very much more clearly, what the precise functions of Magistrates and Commissioners are. Matters were left somewhat vague in the earlier Act which are now made clear, and one main idea of the present Bill is that the Commissioner shall for his whole division have substantially the same power as that centering in the Magistrate within his district, so that the Commissioner having at his disposal in any emergency a force dispersed in four or five Collectorates, may bring this entire force to the suppression of any disturbance in either of the districts. He has also authority to indicate to the Inspector-General defects either in the arrangements or the officers of the Police, and it is made a duty of the Inspector-General to do all in his power to remedy any defects in the organization of the force under his command. These sections relating to the Commissioner are not however so much new provisions, as new and clearer statements of the existing law. In substance at least they were contained in previous legislation. But as to the Inspector-General several sections have been introduced giving particular power

and authority over those places under him. In matters of organization and in general technique the Inspector-General will have control and authority over the Police, it will be a disciplined instrument which he and his subordinates will handle as experts. The manipulation will be his, the work to be done and the efficiency with which the requisite ends are attained will be determined by the Magistrate and the Commissioner. They are to preserve peace and suppress crime: the Superintendent's function was subordinate and ancillary; he is not to be allowed to have authority in the use of the Police which will interfere with the authority of the Magistrate of the District. But an authority is given to the Inspector-General which is obviously necessary for such purposes as the centralisation of the force when it may be required at any particular part of the Presidency which may lie outside the district, and even outside the division in which any particular Commissioner is carrying on his duty. Particular provision is made in order to enable Government and the Inspector-General to exercise authority of that kind in any case of emergency, and making it the duty of every police officer to exercise his functions in any part of the Presidency to which he may be sent. Another case in which the functions of an Inspector-General become very useful is that in which an Inspector or other officer of special qualification is needed at one particular part of the Presidency, or where he may be less needed in one than in another. Suppose we want an officer of special detective skill in Gujarát or some other place, the Inspector-General may know where to lay his hands on the officer most useful for that particular purpose although such a one could not be found within that particular division. The appointment of Inspector is by the Bill placed in the hands of the Inspector-General, and the appointment of officers of lower grades is placed in the hands of Superintendents, the function of the Magistrate being to prevent improper appointments, and power being given to him for that purpose. The Inspector-General in carrying out his functions is empowered by Section 26 to make general rules for the co-operation of the different members of his force, but all rules which he makes must be consistent with the force remaining under the control of the Magistrate of the District, and with the authority given to the Magistrate in specific cases. Section 31 enables an Inspector-General to employ any number of forces in any part of the Presidency when required, and Section 27 imposes a duty on subordinates and others under him to furnish him with such reports or information as he may require for carrying out these functions properly. Under Section 28 the honourable members will find he is given power to punish his subordinates within reasonable limits. These are functions which are to a certain extent new under the Act. The Superintendent has not only power to suspend any subordinate, but he has one or two other functions given him which I may refer to. For instance the punishment of subordinates is given to Superintendents under Section 30. The Police are to a certain extent an armed force; and it is intended by the Government of India that every police force should have a nucleus of men tolerably well disciplined to cope with any serious disorder that may arise; and when men have arms, especially fire-arms, in their possession, a somewhat severe system of discipline becomes necessary. So it will be found that reasonable power is given by Section 30 to deal with insubordination. Then a Superintendent is given power to issue orders in furtherance of those made by the Magistrate for the suppression of disorder. A provision to that effect will be found in Section 44; and in Section 55 will be found a provision enabling the Superintendent of Police to make orders with regard to dogs, when there is any danger of rabies or any alarm in the community.

on account of dogs being at large. It is obvious at the same time that it will not be safe to give enlarged powers to executive officers without sufficient check being put upon them, and in Section 46 you will find all the powers given to a Superintendent and all orders issued by the Superintendent are subjected to a strong control in the hands of the Magistrate of the District. The Magistrate of the District is under this section granted powers to set aside or modify any orders issued by the Superintendent under his control. The functions of the police officers under the Superintendents are for the most part limited to carrying out his orders, but some initiative has in one or two instances been found necessary. It has been found necessary to make provisions for officers being called upon to act suddenly when the public safety is seriously endangered. Section 43 is one of this kind. It is, for instance, very common in the Mofussil to have theatrical representations in tents or even without tents in matted enclosures made of very combustible materials. Large numbers of people congregate at these entertainments, where there is considerable danger of fire, or from people crushing or crowding over one another, if the representation of a play becomes popular. It has been thought desirable to give authority to police officers to regulate assemblies of this kind so as to prevent danger, where danger is obvious, and if there is any disorder in an assembly, to preserve order. Then there is a distinct extension of the functions assigned to the Police under Section 48, in which they are required to assist helpless persons, as for instance those who fall in the road and break their limbs. Section 40 also requires them to give protection to any poor lunatic, or drunk or helpless person, and there is also provision made to ensure their humanity and gentleness in taking people into custody. These are somewhat new provisions; but it has been thought desirable to introduce them and also to provide against officers in the execution of their functions generally being either unkindly, careless or unnecessarily harsh or severe. The Police by the Bill, in the event of their transgressing the law in using their power too harshly, are subject to special penalties as will be found in Sections 55, 57, and 58; and in Section 57 it will be found that a special duty of forbearance and warning is provided for and the police are forced to beware of harshness. There are other provisions of this kind. It will hence be the duty of the Police in a great number of petty cases, not necessarily to arrest a man, but rather in the first instance to tell him the law requires him to do so and so, that he must obey the law, otherwise complaint must be made against him on which he will be punished. At the same time if the person cautioned should neglect the warning, the requisite provisions are held in reserve. There is a further development in these police regulations, for as new wants have arisen beyond the capacity of the officers of Government under the existing law, it has for the general comfort and welfare become necessary for Government to make increased regulations. Now if the honourable members will look at the chapters relating to the Police regulations they will find there has been an endeavour made to embody some of the experiences gained both in this country and in England by which the convenience of the public may be essentially promoted. These regulations are partly in the hands of the Magistrate, and if the honourable members look carefully into the Bill, they find that this class of regulations relate to the people's safety, that the people's safety has been put in the hands of the District Magistrate, the preservation of the people's safety is equally necessary in a large town and in a small village, and if in a village it should become necessary, provisions under the sections to which I now refer may be made for the ensuring of the people's safety, and when it is requisite the same regulations

may be enforced as in a large town. It may be said perhaps that there is no necessity for bringing the application of such a law to bear generally, the necessity for which may never occur, or very rarely. If however the occasions are rare so will the application of the regulations be, and when the occasion does arise the regulation we think becomes necessary. If honourable members will refer to Sections 37, 38, and 41, they will see that power is given to the Magistrate in these sections to make regulations which will tend to preserve the safety of Her Majesty's subjects as by preventing building material from being left in the middle of the road, or preventing people suffering from infectious diseases being carried through the streets subject to certain reservations, or, again, prohibiting people from allowing animals to be tethered on the footpaths, and matters of that kind, where regulations are really necessary for the safety of passengers. Another rule is one enabling Magistrates to make provisions in case of epidemic, but regulations which the Magistrate may make in this case will only be in force within the short period of a fortnight, unless extended by Government for a longer period. Power is thus given to the Magistrate only in cases of emergency, and only during such time as the establishment of such rules is necessary; and after that time the authority is vested solely in Government. Certain powers are likewise given to Magistrates for maintaining good order and decency; thus in Section 39 provision is made for dealing with a certain class of houses which are not a benefit to the community; Section 40 enables a Magistrate to make orders and rules which it is hoped will prevent the occurrence of such terrible riots and affrays as have sometimes arisen between different classes of the community; and the Magistrate is empowered to prevent the uttering of cries calculated to excite religious fanaticism, to prevent the exhibitions of symbols or placards which have too often resulted in exasperation and fatal conflicts. It is necessary while guarding the rights of every class that any abuse of them for the purpose of insulting and annoying others should be suppressed; and if the powers proposed are given, these outbreaks, it may be hoped, and their disastrous consequences will be prevented. In connection with that you will find provisions for enabling the Magistrates to suppress the utterance of those obscenities which are a great public nuisance. They require immediate suppression, even in this city. Any one who has a knowledge of Maráthi in going along some of the streets at particular seasons may find his ears assailed by such language as he would not like any one of the other sex to have her ears defiled with. Power is given to deal with cases of that kind when required. Section 42 is one with regard to the public safety in cases of gangs of men who the Magistrate may consider are, if not actual criminals, yet possibly and probably on the verge of criminality, men who create a certain amount of alarm. The section enables the Magistrate to deal with them in a fitting manner. It is within the experience of Government that in several instances gangs of Pathans and men of other classes have paraded some of the districts causing considerable alarm, and to a certain extent levying blackmail; as in former days it was not an unusual thing for gipsies in England to go about levying blackmail on farmers and other countrymen to save them from having their hen-roosts robbed. Power is given to Magistrates under Section 42 to prevent this. As contrasted with these measures essential to the general safety the different sub-sections of Section 55 will be found to relate to the convenience of people in matters which will arise generally only in towns; it will very seldom, or never, be necessary for Government to introduce such provisions into places other than towns. If, however, the necessity should arise, it will be within the power of Govern-

ment to do so. Section 56 is one which will meet with the approval of all. It provides a proper remedy against cruelty to animals. Section 59 and sub-sections relate to punishment, and the honourable members will find that fines may be levied according to the gravity of the offence, not exceeding a certain amount, although the provisions are meant far more to prevent the offences than to punish for them. The only other section which appears to require any particular reference is Section 71, which imposes on a Municipality the duty of providing quarters for such Police as may be deemed necessary by Government for the special protection of that Municipality. This is a new provision here; although it is the law in England that Government shall only pay half the amount of the cost of salaries and clothing towards the maintenance of the Police, the rest being paid from local resources. The Police forces in large towns in England are furnished with quarters by the towns. This brings me to an end of the important provisions of the Bill. Some of these provisions may admit of debate; there is no doubt some of them are open to discussion, and Government desires that discussion. In the meantime it will be desirable that the Bill be read the first time, and then I will move that it be referred to a Select Committee in order that the several provisions may be gone through with care. I move that this Bill be read the first time.

The Bill was accordingly read a first time, and on the motion of the Honourable Sir Raymond West was referred to a Select Committee consisting of the Honourable Mr. Richey, the Honourable the Advocate General, the Honourable Mr. Sayani, the Honourable Sir Frank Forbes Adam, the Honourable Sardár Ráo Bahádur Behecherdas Veharidas and the honourable mover, with instructions to submit the report by 8th February 1890.

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

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Right Honourable the Governor in Council,

J. J. HEATON,

Secretary to the Council of His Excellency the Governor of Bombay for making Laws and Regulations.

Bombay, 8th January 1890.

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 19th March 1890, at 3-30 P.M.

PRESENT.

His Excellency the Right Honourable Lord REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding.*

His Excellency Lieut.-General the Honourable Sir GEORGE R. GREAVES, K.C.B., K.C.M.G., Commander-in-Chief.

The Honourable Sir R. WEST, K.C.I.E.

The Honourable J. G. MOORE.

The Honourable the ADVOCATE GENERAL.

The Honourable RAHIMTULA MAHAMED SAYANI, M.A., LL.B.

The Honourable NAVROJI NASARVANJI WADIA, C.I.E.

The Honourable T. D. LITTLE, M.I.C.E.

The Honourable A. F. BEAUFORT.

The Honourable Ráo Bahádur MAHADEO GOVIND RANADE, M.A., LL.B., C.I.E.

The Honourable JAVERILAL UMIASHANKAR YAJNIK.

Papers presented to the Council.

The following papers were presented to the Council and were taken as read :—

(1) Report of the Select Committee appointed to consider and report on the Bill to amend the Prevention of Gambling Act (Bombay IV of 1887).

(2) Report of the Select Committee appointed to consider and report on the Bill to amend the Law for the regulation of the District Police in the Presidency of Bombay.

THE GAMBLING BILL.

Sir Raymond West moves the second reading of the Gambling Bill.

The Honourable Sir RAYMOND WEST :—I will now, your Excellency, with the consent of the honourable members, move the second reading of the Bill to amend the Prevention of Gambling Act (Bombay IV of 1887), as it has been amended by the Select Committee. On looking carefully through the provisions of the Gambling Act as it was originally drafted, the Committee considered that if they varied the definition of gambling so that it should include wagering, everything that was necessary would be accomplished, for the Act makes effectual provisions to suppress gaming in all those cases in which it can be regarded as a common nuisance, such as where a man sets up a house for the purpose and makes gain out of it. It will be in the recollection of Council how the Gambling Act was evaded on the ground that wagering did not fall within the range or meaning of gambling in the legal sense, and immediately wagering on a large scale, and of the most injurious shape, was introduced, and spread its evil effects throughout Bombay. The Bill to amend the Gambling Act was introduced to suppress that nuisance, and the means to carry that out is to make gambling include wagering. There has been a good deal of discussion

on the fragmentary character of the provisions of the Bill, but it is the same in all Bills of this kind which have to deal with what may be called slight violations of morality, tending to serious general mischief in practice. The evil that the present Bill aims at is a considerable violation of public convenience, and a remedy for the particular case has been felt by society to be necessary, and recognised as necessary by all interested in our general welfare. The Act does not attempt to go beyond that, and we trust it may be effective. If anything further is necessary later on, some other fragment of a large subject may be taken up. It is better not to interfere with the people's liberty and convenience further than the actual necessities of the case warrant us in doing, although law generally means an interference with liberty, and is not objectionable therefore because it imposes a new restraint. I will now move the second reading of the Bill.

Bill read a second time.

The Bill was read a second time.

Standing orders suspended and Bill read a third time and passed.

On the motion of the Honourable Sir Raymond West, His Excellency the President suspended the standing orders, and the Bill was read a third time and passed.

THE SALT BILL.

Consideration in detail of the Salt Bill resumed.

The Honourable Sir RAYMOND WEST proposed the following amendment in the Salt Bill (No. 2 of 1888) :—

"Substitute the following Section for Section 61 :—

61. (1). No person shall be liable to any penalty or to payment of damages on account of any act done or order made in good faith, in pursuance or intended pursuance of any duty imposed or any authority conferred on him by this Act, or by any rule, order or direction made or appearing to have been made under the provisions hereof by a person having or appearing to have authority in that behalf.

No person to be liable to penalty or damages for act done in good faith in pursuance of duty.

(2). In the case of an alleged offence or wrong on the part of any person by any act done under colour or in excess of any such duty or authority as aforesaid, or wherein it shall appear to the Court that the offence if committed or the wrong if done was of the character aforesaid, the prosecution or suit shall not be entertained, or shall be dismissed if instituted more than six months after the act complained of.

No suit or prosecution in respect of an act done under colour of duty as aforesaid shall be entertained, or shall be dismissed, if not instituted within six months.

(3). In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall be bound to give to the alleged wrong-doer one month's notice at least of the intended suit with a sufficient description of the wrong complained of, failing which such suit shall be dismissed.

In suits as aforesaid one month's notice of suits to be given and sufficient description of wrong complained of.

(4). The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service, and shall state whether any and if any what tender of amends has been made by the defendant. A copy

Plaint to set forth service of notice and tender of amends.

of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof."

In proposing this amendment the Honourable Sir RAYMOND WEST said:—It will be within the recollection of the honourable members of Council that when we last discussed the Bill, I undertook, on the suggestion of the Honourable the Advocate-General, to recast the section, which applied to the possibility of officers falling into mistakes, in carrying out the provision of the Act; that is section 61. The honourable members will see, on comparing it with the existing section, that it is somewhat more reasonable in the provisions it makes for imposing terms on the persons prosecuting officers and in freeing the officers themselves from the responsibility they would incur than was the section as originally drafted. It does not speak of the action being dismissed in so many cases. It leaves the matter more to the Court. The section thus establishes a fair balance between public and private needs, and I hope it will be adopted, so that wherever Government officers are likely to fall into mistakes which make them responsible before the law, those who have been injured by these errors may not be without a remedy for wrong, and yet the officers will not be unfairly held liable. The first provision is that no person shall be liable to penalty or damages for acts done in good faith in pursuance of duty; and the second is that no suit or prosecution instituted in respect of an act done under colour of duty as aforesaid shall be entertained, or shall be dismissed, if not instituted within six months. This gives protection in a case of process before the Court, when a person has acted from a mistaken view, and yet there is reasonable ground for his supposing that he was acting within his authority, and also requires that he may have notice in order that he may have an opportunity to produce evidence that he has acted within his power, or else may make amends. It is desirable at the same time that a suit of that kind should be instituted within a short time. Six months is the time allowed. In the section as first framed four months were given. In sub-section 3, one month's notice of suits is to be given, and sufficient description of the wrong done is to be given. The necessity of that is quite obvious. If a man is going to sue an inspecting officer or any officer of the Government for excess of his duty, he ought to let him know what he complains of, for what appears to be excess of duty to the one may be considered quite within his powers by the other. The dividing line between legal authority and excess may be a fine one, and the officer whose conduct is impugned ought to have time to consider the matter from all sides, and, if need be, to take advice. Clause 4 carries out the same principle in requiring the plaintiff to set forth that notice has been served, and if any tender has been made, to set forth what tender has been made, and that a copy of the notice is to be attached to the plaint, with a statement of the manner in which it had been served. By this means the Court will know exactly what has been done, and what the plaintiff has had to complain of, and what demands are made. We may then, having made such provisions, leave it fairly in the hands of the Court. These alterations have received the concurrence of the Honourable the Advocate-General. I trust, therefore, the Council will accept this amendment, and accept the Bill as it is now amended.

The amendment was accepted.

Sir Raymond West moves the third reading of the Bill.

The Honourable Sir RAYMOND WEST:—Your Excellency, this amendment having been adopted, and the several clauses having been gone over *seriatim*, I move that the Bill be read the third time.

Bill read a third time and passed.

The Bill was accordingly read a third time and passed.

THE DISTRICT POLICE BILL.

Sir Raymond West moves the second reading of the Bill.

The Honourable Sir RAYMOND WEST in moving the second reading of Bill No. 3 of 1889, a Bill to amend the law for the regulation of the District Police in the Presidency of Bombay, said:—In introducing the Bill I gave a general sketch of the historical circumstances and of the necessities which arose for appointing an executive head of the police force, and of the changes in legislation which were necessary in order to give him a definite and distinct position in our administrative system. The Bill was received, and passed the first reading unanimously. It was referred to a Select Committee which was of a widely representative character. We had the benefit and the assistance of the Honourable Mr. Richey, who is specially acquainted with the subjects embraced in the Bill, from his experience as a district officer, and having dealt with the subject for years as Secretary to Government and as a Member of Government. Besides the Honourable Mr. Richey there was the Honourable Sir Frank Forbes Adam, who devoted, as he always did on such occasions, a great deal of personal care to the discussion of the provisions of the Bill. By the Honourable Mr. Sayani and the Honourable Mr. Behecherdas the Bill was thoroughly discussed in the Select Committee, and various papers, which were put before the Committee, were considered by it very deliberately. The Bill was gone through very carefully, section by section and line by line. The honourable members will find in the Bill, as it comes before the Council now, that some considerable variations have been made on the original draft, which variations originated to some extent on suggestions which came before the Select Committee from various quarters; and the Bill comes to the Council recommended by the unanimous assent of all the members of the Select Committee. It thus has claims to adoption quite different and much stronger than what it had when it was first introduced simply on the authority and recommendation of the Executive Government, having now been considered by an independent body, and when, having been so considered, it now comes forward with a unanimous recommendation in its present shape. The suggestions which have been received from various quarters have been carefully weighed and you will observe, from the list of amendments which I have to lay before the Council that every word of the proposed Act has been carefully gone over, sifted again and again, and wherever a change seemed desirable, or wherever any expression or suggestion seemed practicable, it has been acted upon. I may say I had some conversation on my proposed amendments with the Honourable Mr. Richey before he left, and in two or three cases they did not meet with his approval, I struck them out. Why I took the advice of Mr. Richey and submitted them for his approval was, because, as I said before, he has given so much special attention to the subject for so many years. At the suggestion of the Honourable Mr. Moore also I have made one or two other slight alterations which to my mind, while being from his point of view improvements, do not alter the effect of the Bill. It was obviously right to provide for these small changes which the Honourable Mr. Moore thought were desirable. These alterations I will ask His Excellency the Governor to sanction as we go through the clauses *seriatim* should we arrive at that stage to-day; and I believe if they are accepted by His Excellency the Governor there will be no difficulty offered by the honourable members of

Council to the reading of the Bill, as it will stand as amended. We have had a good many criticisms and suggestions passed upon this Bill by gentlemen who have been good enough to devote some time and attention to its provisions. Those gentlemen will, some of them, find indeed that it has been impossible to acknowledge all the communications that have come to us, but I do not wish them to think we have not carefully considered them; they will find that where those criticisms were applicable they have been accepted and acted upon. Everything that could be gathered while the Select Committee was discussing the Bill was carefully considered by the Select Committee, and weighed in its different aspects, and one or two criticisms which have reached us since have also been made use of, so that I trust the gentlemen who have been good enough to favour us with those criticisms and suggestions will take it, without any special mention of their names, that where practicable their counsels have been given effect to, and that even if their suggestions have not been admitted, as in some cases they have not, it is not through want of attention, but because Government did not find it expedient or possible in connection with the general provisions of the Bill to adopt those particular suggestions. The criticisms I may divide into two classes. The first are those which approving directly or indirectly the general principles of the Bill have objected to particular provisions or phrases. These have been by far the more numerous, and they have supplied corrections and suggestions in several instances which we have considered practicable, and have availed ourselves of. The other class are those which objected to the general principles of the Bill. These have been very few, but as censure is often more instructive than approval, they have been closely studied. They did not produce any hesitation in the minds of the Select Committee as to the soundness of the principles on which the Bill is founded. Some of the criticisms assert that the Bill has not been considered long enough, that there has not been sufficient deliberation over its provisions. The answer to that is that the materials of this Bill have been before the official world—and it is only from the official world these particular objections have come to Government—certainly for a period of five years. Although I went into the history of the subject at pretty considerable length on the last occasion, it may be desirable, in view of the objections which have been raised, that I should inform the Council somewhat more fully of the more recent history of the police reform, or at any rate the changes which have taken place of late years.

We may go back to the year 1881. In that year Sir James Fergusson, who was then Governor of Bombay and who was rather new in his office at that period, had been very much struck with the laxness in the police administration of this Presidency as compared with what he had seen in other parts of the world in his manifold experience; and he, looking over the discussions which had taken place since the year 1849 or 1850, came to the conclusion that some definite official head of the police, as an organized body, was necessary for its efficient government. With the consent of the Council I will read one or two short extracts from the remarks he made on that occasion, referring to his proposal that there should be an Inspector General. His Excellency urged:—"I have not proposed this appointment without considerable acquaintance with the management of police in counties and towns as well as in the metropolis in Great Britain, in British colonies, and lately having had occasion to see the irregular and uncertain administration in this Presidency. The opinion of Sir George Clerk during both his terms of government here are in accordance with mine, and the opinion of Colonel Bruce, Inspector

General of Police in India, amply confirms them. Sir Seymour FitzGerald in his closing minute considered that, as a general rule, no Government of Bombay would be able to maintain the police of the Presidency in a state of efficiency without an officer analogous to the Inspector General of Police provided in Act V, and this view he abundantly supports and establishes. There are in the papers many arguments against having Deputy Inspectors General for divisions, and Government decided against this in 1869. They would not procure uniformity of system, while they would, in my opinion, be better than leaving all Superintendents to themselves. I do not see the risk of friction, because an officer would be responsible for organization, inspection, and reports. The police would be equally at the disposal of the Magistracy. With all respect for the high authority of Sir Barrow Ellis, I think that if we find all the other Governments of India, Great Britain, and notably Ireland, all British colonies with which I am acquainted, in which the police is generally of a very high class, adopting the system of Inspector General, it is extraordinary that a totally different system in Bombay should be in theory and practice better." Now that was the conclusion at which Sir James Fergusson arrived after very careful consideration of the matter. The care and mastery of the subject manifested in every word of that minute are remarkable. Then he says later on :—"The multifarious duties of Revenue officers who are also Magistrates and often Political Agents, render it impossible that they can adequately superintend or watch the details of police work. The Commissioners also have duties which must engage them, and I fancy that these are, from various causes, heavier than formerly,—the facilities of communication bringing much more frequent references from Government and their own subordinates." Those views of Sir James Fergusson in 1881 were not adopted by Government. The Honourable Mr. Ashburner, who had long been a district officer and had been a Commissioner for some years, and who could not be denied authority on the subject, was opposed to the change suggested by Sir James Fergusson. Mr. Ravenscroft at the same time adopted the Honourable Mr. Ashburner's views, and opposed any change. The matter was then laid by,—Sir James Fergusson acting on the principle, I suppose, that time would tell. In the course of three years, after some further experience, he, in the year 1884, brought forward his views again, fresh experience having satisfied him that some distinct departmental chief or head was necessary, and the police could not be effectively managed in any other manner than he had proposed. Accordingly in 1884 he brought up the subject again. I will, with the consent of the Council, read from a minute by Sir James Fergusson dated 11th February 1884. He said :—"I have paid a good deal of attention to the police administration. I will observe (1) that it is a force from its constitution and peculiarities requiring the supervision of a special officer." Then again he says :—"I feel a constant want of information about the individual and comparative merits of the officers * * * * * * Without one advising officer it is impossible to judge whether the distribution of the force is satisfactory;" and he goes on to say that for many years there had been no distribution of the force in different sections of the Presidency, some places being overmanned and others overworked, except when force of circumstances demanded a reinforcement in some particular part of the Presidency. Then His Excellency says further :—"Why should not the police require special supervision as well as jails, schools, hospitals? We rightly require the district officers to visit these, and to report upon them through the Commissioners; but we do not dispense with special and skilled visitors. Yet there is as much need for skilled supervision of the police in point of discipline, conduct and practice as of jail officials and prisoners. There have not been wanting cases in which Govern-

ment have felt it necessary to overrule the treatment of police officers by Superintendents and Commissioners with great difficulty in judging of the merits of the cases. Such difficulties would have been greatly lessened had an Inspector General been available to investigate them with full knowledge of the individuals concerned and of police work generally. The plan I would propose is this: not to revive the Police Commissioner, but to create an Inspector General. I would choose him ordinarily from the more experienced Superintendents, but not bind Government to do so. I would in no way alter present powers and relations to the police of the District Magistrate. The relative functions of the Magistrate and the Inspector General are as distinct here as they are in England or in Bengal. But I would relieve the Commissioners altogether of their duties in respect of the police. I would take their present police establishment as far as they are required for, or as far as they would be useful to the Inspector General." This was the view of Sir James Fergusson, after three years' further consideration of the subject, which three years, you will perceive, had not been wasted. It was a subject in which Sir James Fergusson had been interested, which he had paid particular attention to, and which naturally engaged his attention very closely here. And those three years had had a certain effect on the other members of Government. The Honourable Mr. Ashburner had left the Government; but the three years had produced this effect on Mr. Ravenscroft. In 1881 he had agreed with Mr. Ashburner. In 1884 he says, "When the question was under consideration in 1881, I had not much knowledge of the working of the police in this Presidency, as when I was in the Secretariat I had charge of the Revenue and Financial Departments; and when I became a member of the Government, Mr. Ashburner had, until his departure in 1882, charge of the Police Department. I have now, for upwards of a year, had charge of the Police Department, and have done my best to master its system of work. The result of this experience is to convince me that a change is necessary. At present the Commissioners are quite unable to exercise anything more than a nominal supervision over the Police Superintendents and their actions. The consequence is that the police officers are left too much to their own devices, and repeated instances have occurred showing that some special and direct supervision is necessary. I do not wish it to be inferred from this that I am finding fault generally with the Commissioners, because they cannot exercise that amount of supervision over police matters which the state of the case demands. Even under such an able officer as Sir B. Ellis very much was left to Police Superintendents as I can speak from my personal knowledge as a Magistrate; and in his day as Commissioner, the duties were not so onerous as they are now. There are some objections to the removal of powers from the Commissioners to the officer whom it is proposed to appoint; but these, I think, have been over-estimated and I need not enlarge on them. I shall therefore be glad to support His Excellency's proposal." The Honourable Mr. Peile on February 13th, 1884, minuted that his own personal experience was extremely limited, but he could easily understand that the police required the supervision of one officer as Inspector General with regard to discipline, efficiency, distribution, &c., and that the supervision by three Commissioners in the Presidency and one in Sind was wanting in the necessary unity. These were the views of the Government in 1884, and they were forwarded to the Government of India for consideration; but the Government of India was not disposed to go so far as the Government of Bombay of that day were disposed to go. Of course the Government of Bombay at that time were disposed to keep the Commissioner out of the range of the police executive altogether, leaving police

arrangements to be made solely by the Superintendents under the Inspector General, subject, of course, to the control of Government, and leaving all matters of employment of the police to be disposed of by the District Magistrate. There was a reason for that which I need not dwell upon at this moment; but for reasons contained in the Criminal Procedure Code, which did not recognize Commissioners as being answerable for the administration of the criminal law, it seemed to the Government of Bombay that the same officers ought not to have control of the police. That of course would have involved an entirely new system. The Government of India were not disposed for any sweeping change such as had commended itself to the Government of Bombay, and probably their reason was that such a change would be premature, and in the then existing state of things it would have been extremely undesirable to adopt anything of a revolutionary character. In replying on 21st July 1884, after the matter had been referred to them, the Home Department, Government of India, stated: "In reply I am to say that, in the judgment of the Governor General in Council, the Government of Bombay have made a good case for relieving Commissioners, to some extent, of their police duties, and for appointing a special officer who, as Inspector General, may have the direct supervision of the discipline of the force. His Excellency in Council is however of opinion that the entire elimination of the Divisional Commissioners from a place in the police system is neither necessary nor desirable. The Government of India," they further added, "are of opinion that the relative position, powers and duties of the Inspector General of Police and of the Divisional Commissioners and District Magistrates might be regulated more on the lines of the system in operation in the Bengal Presidency. This will be a matter for the further consideration of the Government of Bombay when amending the Police Act (Bombay Act VII of 1867)." Well, this was the decision laid down by the Government of India, and the Government of Bombay was bound in loyalty to their wishes and desires, in making further changes to confine itself to this. It had to preserve the Commissioner within the police system, to keep him as an efficient element of the system, but had to adopt the plan of a special officer as head of the police force. That has been the basis upon which the Government of Bombay has worked in deference to the Government of India, or if in one or two instances they have deviated from the course, it was after further consideration of proposals laid before the Government of India, and which were considered appropriate. The matter having gone as far as this in 1884, a Committee was appointed consisting of the Joint Commissioners of the Northern, Central and Southern Divisions, and also of Colonel Wise, and of Majors Portman and Babington, all of them police officers of some distinction, for the purpose of drawing up rules for the Inspector General. These rules were drawn up and were carefully considered, but before they reached Government, there was a notice sent, on the part of the Commissioner of the Northern Division, Mr. Sheppard, who says :—"I am quite willing to admit that some distinct advantage, besides that of uniformity, may be secured by placing the details of the internal economy of the entire police force of the Presidency under a single officer. In such matters the Magistrate of the district now takes no share, and they may very safely be entrusted to a senior police officer, without in any way weakening the position, or interfering with the authority of the Magistrate." Mr. Erskine, the Commissioner of Sind, also took this view, and their opinions came before Government and were very carefully considered. The Chief Secretary, who was then the Honourable Mr. Richey, wrote at considerable length on the proposals, which note was also carefully considered by the Government, and the result was that, although one Commissioner out of the three in the

Presidency, and also the Commissioner of Sind opposed the rules, they were adopted by the Government after some slight verbal modifications. Sir James Fergusson, to whom this was always a subject of great interest, minuted upon it on 7th January 1888 at considerable length, and one or two extracts may be interesting to the Council. He says:—"I don't know why we should have sent the draft rules to the Commissioner in Sind if the Inspector General was not to have jurisdiction there. Mr. Erskine, following Mr. Sheppard, dislikes the change, but there is no district in which the need of it has seemed to me to be more illustrated than in the Northern Division. * * * * Neither should the Inspector General have the direction or control of the investigation of crime or subsequent procedure. The copies of diaries to be sent to the Inspector General are to enable him to judge of the energy and conduct of the officers. But I think the cognisance by the Inspector General of promotions, suspensions, reductions, fines, &c., is of first importance. I want that it should no longer be possible for hasty young officers to drop heavily upon old native officers without their proceedings being at once reviewed by the Inspector General or for a Superintendent to get a dismissal or a reduction passed by the Magistrate and continued by the Commissioner without the review of the Inspector General. It is just in such cases that I have seen the want of a professional control." The draft rules, as drawn up by the three Commissioners, with the dissent of Mr. Sheppard, and by the three officers of police were adopted by Government, and they were circulated, before being finally approved, to the Commissioners, and to the Inspector General of Police again for any remarks they might have to make. This was in March 1885, but meanwhile Colonel Wise had become Inspector General of Police. The next point to come under the consideration of Government was what changes in the Police Law were rendered absolutely necessary by the appointment of an Inspector General, and then the present Bombay District Police Act was referred to the consideration of the Commissioners of the Northern, Central and Southern Divisions and of the newly appointed Inspector General of Police in order that they might consider what changes were necessary. They sent in their report, but in the meanwhile there came in many suggestions from different districts, as to the necessity, arising from the experience in the trial arising from the murder of Mr. Prescott of Broach, for the revision of the system of roll-calls. A very considerable time was spent in considering this system of roll-calls, and so time passed. Eventually a Bill was presented to Government by the Legal Remembrancer, the Honourable Mr. Naylor, in which he endeavoured to combine the police regulations for the City of Bombay with the police regulations for the Mofussil. Meanwhile this roll-call system which had come so strongly to the front, had been considered by the Bombay Government and in great measure approved by it. The Bill presented by Mr. Naylor was sent for the opinion of the principal officers under Government and also to the Courts. It was sent to the Judges of the High Court, and being then a Judge of the High Court myself, I spent a considerable part of my scanty leisure in going through that Bill most carefully and sending in an elaborate minute on it. Replies having come in, it was found that the combination of the regulations for Bombay and the Mofussil was not a scheme which would work well. There were so many clauses in it which would suit Bombay alone that it was considered the police regulations for each must be separate. The Bill itself after all this consideration was laid aside; but in the meanwhile the main question was still present, because the Inspector General having been appointed, it became necessary to work the police system under his control as to matters of discipline and so on. It was at

this stage of the proceedings in 1887 that I became a member of His Excellency's Government. The whole Bill had been abandoned, but the needs it was intended to meet remained and demanded satisfaction.

An application, after considerable discussion, was made to the Government of India to allow us the benefit of consultation with some officer who had particular and special police experience in some other portion of India. The request was complied with ; Colonel Lane was sent from Berár, and a consultation was held at Mahábaleshvar in 1888. Our whole scheme was gone over in consultation with him, his suggestions were carefully considered and the Honourable Mr. Richey and myself having agreed with His Excellency as to the principles of a reform, or rather of the extent to which this new element should be made to agree with the old, the Legal Remembrancer was asked to draft a new Bill. At that stage I left India for some time and on my return I found that the Bill had been drafted and had been generally approved by Government. One of the first steps after my return was to send out the police regulations embodied in the Bill to every District Magistrate in the Presidency for his opinion. These opinions came in, they were put against the different sections and were considered, and the results were in a great measure brought before the public. The Bill as then drafted was submitted to the Government of India. The Government of India did not like the provisions as to roll-call, although these had been strongly pressed upon us by many officers and we abandoned the sections relating to roll-call. With that exception the Bill was approved by the Government of India, and it was then brought before the public in 1889. The Bill had then been for a year before all the Magistrates of the Presidency, besides other gentlemen whom it was thought desirable to consult. The Bill was then published, as honourable members will recollect, early in December last, the translations at the beginning of the present year. The Commissioners were all invited to give their opinions on the Bill, and those opinions we have received, and we have had the advantage of considering them, and in some instances of adopting the suggestions which were made. The opinions sent in are generally in approval of the Bill, nine out of ten belonging to that first class which accepted the Bill generally, but disapproved of certain details. Of the second class the Commissioner of the Northern Division may be considered a representative. His letter, as the Honourable Mr. Sayani will recollect, was laid before the Select Committee and was considered by them along with some observations in which I commented upon it. Mr. James's arguments were also considered, and it was felt that the Bill as it stood was better than it would be if these suggestions were carried out. In fact it was considered impossible to have an Inspector General of Police who would be only a dummy or a mere subordinate. The views expressed by the Commissioners of the other divisions were less extreme. Several suggestions were made by the Honourable Mr. Moore as Commissioner of the Central Division, which were taken advantage of by the Select Committee and were embodied in the changes they made. This is the present position of the Bill. Besides the official views to which I have referred we have also had opinions sent in by several other persons who have taken the trouble to go through the provisions of the Act, which they will find have not been overlooked. Two or three of the provisions of the Select Committee are based on these suggestions. If after this it can be said that there has not been a due amount of deliberation, I should like to know where you do come to a stage at which you have deliberated enough. If we compare our mode of procedure with that of the British Government on important matters, you will find that

the amount of deliberation on our part exceeds by fifty times that of Parliament. If you compare our Bill with the Factories Bill, which affects a great portion of the population, you will find that the rate of progress has been enormously slower with the Government of Bombay. But it has not been slow through pigeon-holing, the measure has been under the mental view of the Government all along. That is the first and most important ground of objection taken. In dealing with this objection I have also dealt to some slight extent with the other main objection which has been taken to the Bill—the supposed exclusion of the Commissioners. Now the view of the Government of Bombay and the unanimous opinion of the Committee in 1884 was that Commissioners might be excluded from any responsibility for the technique and discipline of the police. It was also considered that District Magistrates should be so excluded. Our Criminal Procedure Code is an Act of the Government of India which forms a base of general administration with which we cannot meddle. We must take that as the central point from which we may radiate but from which we must never quite depart. The centre of the whole system of jurisdiction is the Magistrate of the district. By being able to call up cases and revise them and give orders for further enquiry, &c., the Magistrate has the whole magisterial administration of the district in his hands, and it is his duty to exercise that power in an active and efficient way. He also is, in a special degree, responsible for the peace of the district, and being so he is of course responsible for calling out the police and using them as occasion may dictate in guarding the lives and property of Her Majesty's subjects. This is his central and important position, and that being so he is naturally the point also in which police administration of his district in the determination as to what the police have to do—must more or less centre. The Magistrate occupies that position and the Commissioner is immediately over him. Supposing that the Magistrate himself interferes with the details of police distribution and the government of the police in the minutest details—he issues rules about such matters and finds fault with this or that point of police management and then a case comes before a Magistrate and he finds fault with the preliminary conduct of the case, then the police would fall back upon the orders of the Magistrate of the district. In this case the proceedings would be called for, and what would be the position of a District Magistrate when the proceedings come before him where the police had in fact been carrying out his orders? It can hardly be said that a Magistrate in that case stands in a proper position. It is not in fact consistent with the duties that he has to perform as magisterial head of the district to be engaged in looking after the minute details of police work. He cannot well be the executive source of regulation as to small details which he is as Chief Magistrate bound to criticize, perhaps to censure, in a completely impartial spirit. On the other hand, in cases of urgency he should direct where the police should be sent, and have in fact full power to say where and how and in what force they are to be used. Well, if you pass from the Magistrate of the district to the Commissioner who administratively has control of the Magistrate, but by law has none, then we may have this arise, if the Commissioner has the giving of orders in minute police arrangements, that the Magistrate of the district might find fault with the police for carrying out orders which the Commissioner gave them. So that you will have a superior brought to book by a subordinate and the Commissioner will have to remain dumb unless he sends a querulous note to Government complaining of the offence to his dignity arising from the criticism. Therefore if it is undesirable that the details should be in the hands of the Magistrate of the district, which would engage him in a responsibility

which might clash with his higher duties, much more is it the case with regard to the Commissioner. Yet, as I said, although this minute interference is undesirable, at the same time when you rise to that higher sphere in which broad views have to be taken and plans devised for the protection of Her Majesty's subjects, and as to whether the police as a body are efficient, then you come to a sphere where the Commissioner can move with advantage. It is far from the policy of Government then to deprive the Commissioners of the authority to which they are properly entitled. It will be indispensable under the provisions of the Bill, to say nothing of the rules that will be framed under it, for the Inspector General as the head of a detective and preventive force to govern the force so as to give due effect to the wishes and commands of the Commissioner within his proper sphere; but in all that comes within that inner sphere assigned to the Inspector General himself in the consideration of questions of drill, arms, &c., that is a sphere which belongs to the regulating disciplinary head, *viz.*, the Inspector General. Some have thought that the two systems could not work without clashing; but Sir James Fergusson has pointed out that in our colonies and in Ireland and Great Britain the system works well. Then why should it not work well in Bombay? We are not so imbecile and so prone to disagree, nor is the Government so weak as to allow this. It is quite strong enough to deal with any possible disputes. But this clashing is not to be apprehended where every point is so clearly defined. It would be a vain endeavour to fix every little point by legislation. As Lord Bacon says, the subtility of things exceeds the subtility of words and the guiding formula of to-day may become the embarrassment of to-morrow. Writers on legislation recognize that when a law relates to the administration of large bodies of men in relation to other public servants, it is well to leave a great deal to the discretion of the Government. That is what the Bill as it is now before the Council demands to-day. In three or four places where there was some doubt as to the functions of the Commissioner being preserved, I have made verbal changes which will prevent any ambiguity from arising. If you make hard-and-fast rules you embed yourselves as in marble or chunam. There is an intention in this Bill to give the police force a life of its own, and for a body to have life it must have a head. It is necessary to infuse into the police an *esprit de corps* which will make it more efficient for its purpose. This is most important. Before the Police Acts were passed in England the police were in some places the curse of the country. Police misconduct has not been quite unknown in India and in this Presidency. It was most desirable therefore that there should be a high *esprit de corps* in the police—that they should feel themselves elevated by their position and their functions and pride themselves on their courage, intelligence, probity and on their readiness to submit to superior command, which could only arise from high discipline and respect to their superior. We should have them mindful of their duty, and ready to maintain the honour of the body to which they belong. Those are the principles on which the Bill now stands, and I trust it will commend itself to the approval of the Council.

The Honourable Mr. LITTLE:—It appears to me that if you reduce the Commissioner's power and give him only the position of a critic you impair his authority, influence and usefulness generally. I will read extracts from various authorities dealing with the subject:

> Sir Barrow Ellis, 1865:—I would by no means counsel the acceptance of an Inspector General. The appointment would be an administrative error.

Sir Bartle Frere, 1867 :—In every province the general management of the police should, I think, be superintended by one officer subordinate to and taking his orders from the Commissioner. He should in fact be the Commissioner's right hand man as far as his police duties are concerned.

The Honourable Mr. Ashburner, 1881 :—I agree with Sir Barrow Ellis in thinking that the appointment of an Inspector General would be an administrative error.

Mr. Erskine, 1884, was opposed to the creation of a separate appointment of Inspector General of Police.

It was evidently the opinion of the authorities quoted that the Commissioner should remain responsible for police administration generally and should be something more than a critic. One of the main objections that I see to this Bill is that the District and Village Police which have hitherto been linked together will no longer be under one control. A police district will often consist of several villages scattered over twenty-five square miles of country and at the station there may be only four to six men. But the Village Police who aid them are much more numerous, and I believe that in any important change in the Police this village agency will form the most important factor. The Village Police are at present under the Commissioners and I presume that they will remain so, for they have to look after certain important revenue duties, and if this should be so, the bulk of the force, *viz.*, the village policemen, will remain under the Commissioners, whereas the stipendiary police will be under the Inspector General. Another objection that I see to this Bill is that there are so many changes in the *personnel* of the district officers that it is necessary to have some central controlling authority in order to prevent undue influence by the permanent subordinate establishments and to secure a continuity of policy. However much Government may try to prevent it there must be a great many changes in the district administration and I can speak from my own experience in this matter. In two districts in the Northern Division there have been no less than five changes of District Magistrate in two and a half years, giving an average of six months to each, and in the six Collectorates of the division referred to there have been more than twenty changes in the same period. It takes a District Magistrate some time to know his district and during the time he is new to it he is greatly dependent on his subordinates; and just as he begins to know something about his charge he may be moved. A Commissioner would, as a rule, remain in one division for a considerable time and would know something about all the districts in his charge and his supervision should be most useful. The Commissioners will still remain, but the question is whether with their authority and responsibility weakened they will still be able usefully and efficiently to continue their duties of inspection. One Inspector General for the whole Presidency will be absolutely unable to do anything really useful as regards detailed táluka inspection. We have had officers of ability and energy in the appointment of Inspector General now for some years and from a return of their tours it will, I think, be found that very little táluka inspection has been found practicable. I hold that this Bill is against the weight of the opinion of experienced district officers and I have seen and spoken to many on the subject. I think District Magistrates should be asked to report on the matter in detail and ample time should be given them. I prefer the Act of 1867 to the proposed Act, and this being my view, I must give my vote against the second reading.

The Honourable Mr. MOORE:—I wish to correct a misapprehension under which the Honourable Sir Raymond West is apparently labouring, as he states that the opinions of the Commissioners are generally in approval of the Bill. The three Commissioners, in a joint report submitted to Government, objected to the appointment of an Inspector General of Police altogether, and in submitting my comments on the provisions of the Bill, I expressly stated that they in no way affected the opinion which was expressed in that joint letter. I concur in what the Honourable Mr. Little has said regarding the relations of the Village and District Police. What I desire is that the Inspector General of Police shall be subordinate to the Commissioners of Divisions. The foundation of our administration is to have one officer responsible for everything in a district, and that as the Collector and District Magistrate is the head of his district, so the Commissioner shall be head of his division; but as the Honourable Sir Raymond West promised me this morning that in framing the rules care would be taken to give the Commissioner his proper position, I withdraw my objection to the Bill.

The Honourable Ráo Bahádur RANADE:—With regard to this question of police reform, there can be no doubt that a great deal of deliberation has been exercised, but at the same time I think the way in which the successive drafts have been prepared on different principles has not allowed district officers and Commissioners a proper opportunity of giving their opinions on the final draft now before the Council. Two of these officers, Mr. Propert and Mr. James, have expressly complained that the Government has to some extent committed itself to this final draft without allowing them sufficient time to express their opinions. The difficulty of giving an opinion on it at short notice will be readily appreciated when it is seen that even after the Select Committee had settled their report, the honourable mover has found it necessary to give notice of amendments to many of the sections. Of course these new amendments have been made on suggestions sent in by the public and by official experts; but there is a legitimate cause for complaint that the public have not had time to give sufficient consideration to this matter, and the Council will do well not to furnish by its proceedings any ground of complaint in that particular, and it should not allow it to be said that the Bill was passed independently of what the officials most concerned had to say in the matter. There are, moreover, certain important sections in the Bill which propose to invest the District Magistrate with certain powers and responsibilities in certain cases, and it is possible that these might clash with certain special functions entrusted to Municipalities in large towns. In a matter like that, and considering that this is the final draft, I think it would be desirable that there should be no hurry. Steps should also be taken to ascertain how far the Municipalities which have been exercising these particular functions will be affected by the provisions of the Bill. In short, although the Bill has taken nearly ten years to prepare, yet the final draft had really not been properly shaped down to the first week of this year, and from that point of view I think the contention that there has been no time to consider the matter properly is correct. Strong differences of opinion may reasonably be expected in a matter of this sort and in fact the history of the Bill which the honourable mover has just given us shows that there has been a great difference of opinion on the subject. It has been shown that the original Bill was not approved by the Government of India, and the Government of Bombay had to make certain alterations and additions to meet the views of the Supreme Government. If the second reading of the Bill settles the principle and leaves only the details to be discussed hereafter I would not be in favour of the second

reading being gone on with now, though I cannot support the proposal to throw out the Bill altogether. In a matter of this sort the law and practice of other Presidencies cannot carry very much weight. Bombay for one reason or another has been administered in quite a different manner to other parts of India, the District Magistrate in Bengal is not what the District Magistrate is here. The village system is unknown there, and the revenue system which obtains here is absent in Northern and Eastern India, and therefore what they do in those parts can scarcely be of much help in guiding the course of this discussion. The honourable mover has given very good reasons in support of the Bill and has shown the necessity for having a special officer to look after the police. The consideration of the desirability of the appointment of such an officer is not therefore the question before us; the question is what are to be the relations of this officer with the Commissioners and their subordinates, and what distribution of power and work will cause the least friction between him and the authority of these officers. If we take up the second reading now, and come to any definite decision at once upon the principle of the Bill it would give people reason to complain that sufficient time had not been allowed for the full consideration of the final draft of the Bill. What I would suggest therefore is that the discussion of the principle of the Bill should be postponed till such time as the Commissioners, District Magistrates and Municipal Boards have had time to consider the final draft. On that point I believe there ought to be no difference of opinion. I would therefore suggest that consideration of the Bill should be taken up after two months, or such other time as may be deemed convenient.

The Honourable Mr. YAJNIK:—I would suggest that the various papers which have been received by the honourable mover might be circulated amongst the members. The Council had before it the recorded opinions of Messrs. Propert and James, and these stated most distinctly that the time allowed for consideration of this measure was so short that it was quite impossible to do justice to so important a subject and that the writers have been able to offer only hasty suggestions. The Municipalities might be asked if any of their interests are involved. For instance, there were certain provisions under Section 37 of the Bill which related mainly to municipal matters. My other reason is that the translations of the amended Bill were published only ten days ago and I hardly think that the Municipalities and the public have had sufficient time to consider the matter; and if there is nothing lost by more time being given, I am in favour of such time being given.

The Honourable the ADVOCATE GENERAL:—I had the honour of being a member of the Select Committee; and if, as I am afraid, my attention was devoted not so much to the general as to the legal points, I yet abide by that report. Still I think there is a great deal to be said in favour of the opinions we have heard that we should not at once proceed with the measure, although I am in favour of it as it stands. If there is a doubt, as the Honourable Mr. Moore seems to imply and as is said by Mr. Little who is well acquainted with the working of police administration in the districts, existing in the minds of district officers as to the efficiency of the Bill, even although we are of opinion that ample consideration has been given to it, we can yet delay the discussion of the details until we get further opinions. I think therefore we might agree to the wishes of several honourable members of Council and not proceed with it immediately.

The Honourable Sir RAYMOND WEST:—I am quite alive to the advantage there is in the long consideration of matters of this kind, but there is also a certain disadvantage in it,

and I have found as a matter of experience that if there is a very long period allowed for deliberation the matter is simply put by, and at the very last moment a number of crude opinions are sent in. The opinions of officials have been gathered on all particulars and on the principles of the Bill over and over again. In fact, this has been done so often that when we are asked for further delay I am reminded of what Léroy Beaulien says in his book on the administration of Russia. The writer says that it might be imagined from the smallness of the legislative body that legislative work is done very rapidly, but that there is no greater mistake than that. Mr. Wallace too says the same thing in a sarcastic way. He says that when any one through jealousy or obstructiveness wants to retard any particular measure he has it referred to a Committee, when it either dies a natural death or it comes up for consideration long after those interested in it are dead or have ceased to belong to the Council. This is the way in which though the Council is small, legislation takes longer in Russia than in any other country. My opinion is that once you have got what the opinion of the people is on the principle of a Bill, it is simply a frittering away of time to go on asking them again and again for their opinions. Every improvement, every concession creates some further demand or some new opposition. Once the thrashing has been done no good arises from beating vacant chaff. The opinions of officials have been taken over and over again. Some think that the functions of the Commissioners should not be interfered with in any way; others think that an Inspector General would be useful and that the law proposed would be a distinct improvement on that which exists. I have only referred in my former speech to those who hold adverse opinions, hardly to those who are in accordance with us. Those adverse opinions were placed before the Select Committee, and were rejected. Then there is another class of rules in the Bill to which those remarks may not apply, namely those called police regulations, but those have been referred to officials and others for a year and a half, and if in a year and a half they cannot make up their minds, they would hardly do it in ten years. The remarks of the Honourable Mr. Yajnik as to Municipalities being overridden must have been made without his seeing the clause in Section 67 which expressly guards the powers of Municipalities. He will find there that the District Magistrate cannot make any of these rules apply, except subject to such orders as may have been made by the Municipality. The final draft of the Bill certainly has not been before the public for a long time, but the principle of it has been before it for years, and the police regulations which bear more immediately on the point were specially sent out for opinions fifteen or sixteen months ago, so that we are not at a loss for materials in framing this draft, and we shall get nothing by sending the matter to the same people again. When postponement begins in matters of this sort, you do not know where it will end. Perpetual dallying with a question is a sign of weakness rather than prudence; and here we have a practical need to provide for. There is nothing about the Village Police in the Bill. The subject is under investigation and when materials are before Government that matter can be taken up. The opinion that has been quoted of Sir Bartle Frere is only alternative; he says elsewhere in the same paper from which this opinion has been taken that he did not know how in any part of India there could be an efficient police force unless there was an efficient head such as an Inspector General. I do not wish to go into these details. I prefer that the second reading of the Bill be taken now and the discussion of the details gone on with afterwards. If there is an opinion in the Council that the Bill should be postponed, I have no objection. But you must remember that if it is, we shall not

have our present Governor, who has become familiar with the subject; we shall have a new Governor here who will have to work up the whole subject, and if we do not have the second reading now, we shall not have it for some months to come; for you have seen that the going through this Bill is ground that is not gone over quickly. It will be then said that the matter should be sent to a Committee, and then it will have to be again published, fresh opinions taken and the whole process of circumlocution gone through again. I should recommend the Council to adopt the principle of the Bill, which was accepted by my late colleague, Mr. Richey, and which I understand was accepted by the Honourable Mr. Moore. I should therefore ask the Council to accept the second reading, after which they can go on as fully as they please into the consideration of details.

His Excellency the PRESIDENT:—The Council may rest assured that no Bill has ever been so carefully considered by the Executive Council who are responsible for its introduction. We had the benefit, in the first instance, of the opinion of the Honourable Mr. Pritchard; afterwards of the Honourable Mr. Richey, whose great experience of district administration gave additional weight to his co-operation; of the opinions of the Commissioners and many district officers, who suggested several important modifications which were accepted. If the Honourable Mr. Richey were present, he would certainly not object to the second reading. The measure has further been carefully considered by a remarkably strong and representative Select Committee. The views which the Honourable Mr. Little has expressed may very fairly be held. An organization of the police in which each Commissioner is supreme in his own division, with a military expert as his assistant, is conceivable. But Sir James Fergusson, whose knowledge of the matter is entitled to the greatest respect, as it was acquired at the Home Office, thought it necessary to appoint an Inspector General of Police. As the Inspector General of Police has been introduced, the question is no longer whether such an officer should be appointed or not, but what authority he should exercise. His authority could not survive for one day if he were placed under the orders of four Commissioners. What we have to regulate is a *modus vivendi* by which we can secure the most efficient services of the Inspector General in the supervision of the force, and on the other hand preserve the general control of the Commissioners with regard to the police in their own divisions. My testimony may be taken as friendly to the authority of the Revenue officers. During the past five years my object has always been to strengthen their hands in relation to special departments, such as forests, jails, excise, survey and settlement, sanitation. Specific questions or technical details belong to the officers having special knowledge, but administrative harmony is kept intact by the officers who are responsible for the general conduct of the administration. The Honourable Mr. Ranade has very properly laid stress on this feature of the Bombay administration. Such general control of special departments is much needed. But the police have no less need of a specialist at their head than other departments, to secure unity of control and the interests of the *personnel* of the force as a corps. If I had found any traces in this Bill of a wish to curtail the legitimate general authority of the Commissioners, I could not have given to the Bill the support which I give ungrudgingly, convinced as I am that the Bill will place the police on a proper footing. With regard to the District Magistrate, it is absolutely impossible to find words more distinct than those stating that the District Magistrate is supreme in his district. From the very inception of the Bill it has been the central principle. Having become so familiar with the Bill it is natural that we should look on it in quite a different light from honour-

able members who have not had the same opportunity of mastering its contents. It is by no means a revolutionary measure; it is simply a measure which gives a legal, natural and much-needed expansion to the existing situation. As honourable members seem to think that outside opinion has not had sufficient time to make itself heard, and as nothing can be further removed from the wishes of Government than that this Bill should not have the further benefit of the criticism of experts, I propose that we should only proceed with the second reading. The details of the Bill can be considered at a subsequent meeting of Council after honourable members have become thoroughly conversant with them and ascertained that they are in accordance with the principles I have set forth as underlying the measure.

Bill read a second time.

The Honourable Sir RAYMOND WEST's motion for the second reading of the Bill was then put to the vote and carried. The Bill was accordingly read a second time.

THE BOMBAY MUNICIPAL SERVANTS BILL.

Sir Raymond West moves the first reading of the Bill.

The Honourable Sir RAYMOND WEST, in moving the first reading of Bill No. 1 of 1890, the Bombay Municipal Servants Bill, said:—The circumstances under which the present Bill was brought forward are that an earnest appeal was made to Government owing to the strike which was threatened and took place in Bombay among a very useful and indispensable class of servants. In the ranks of these, and amongst others who exist and have to be dealt with in considerable numbers, through the exigencies of civilization, there is much power to inflict mischief and to endanger the welfare and health of the community, and so it is thought expedient that some more severe measures should be taken than was thought necessary at an earlier date. In early Europe and in this country, too, it was long considered that a man was not free absolutely in the exercise of his calling, but that he exercised his calling not merely for his own private good, but for the good of the community at large. I believe one of the latest instances in the Courts was that of a farrier being bound to shoe a man's horse if he was required to do so. There are other familiar cases, as that of public carriers, &c. So that the principle of enforcing municipal servants' duties by a sanction is not in itself a new one. There are two opinions as to the extent to which we can go: we have the argument in favour of liberty, and we have the argument in favour of order and regularity. However, when we are obliged to take up particular matters as they arise, we must make the needs of the situation and expediency as the governing motives and the occasions of our legislation. That is what has been done in the present Bill, as in the Gambling Bill. The principle applies that in order to protect the property and lives of men, and even to protect freedom itself, you must to a certain extent interfere with freedom, and the extent to which you must go must be governed by practical considerations. If we go beyond that, we get into a field of theory where debate is endless. If a Bill of this sort is not passed, it is apprehended with apparent reason that we may sometimes live in substantial terror of diseases and death being brought among us. These are the general considerations in support of the Bill, and it has been strongly recommended to Government by the Municipal Commissioner. I therefore recommend the Bill for the first reading.

The Honourable Mr. YAJNIK:—I find from the statement of objects and reasons that the defunct bye-law No. 9, under the old Bombay Act III of 1872, upon which the

present legislation is founded, provided that a person who shall resign the service of the Municipality or withdraw himself from it without leave or notice shall be liable to forfeit all arrears of pay due to him. Halalkhors, biggaries or other labourers, in addition to forfeiture of pay, shall be liable on conviction before a Magistrate to a fine not exceeding Rs. 20. Thus forfeiture of pay and a fine of Rs. 20 formed the highest penalty under the old Act. The Bill now before the Council provides for a penalty which besides forfeiture of arrears of pay amounts to imprisonment which may extend to three months or to fine or to both imprisonment and fine. I consider the penalty to be too severe. I admit that in a large city like Bombay it would not do for labourers to leave off their work whenever they liked, and I remember the times when the city has suffered very much from these people having struck under one excuse or the other; but the question that presents itself to me is how far it would be desirable to deal criminally in a matter of this kind. The Municipal Commissioner has expressed an opinion in favour of the Bill; but I think that before the first reading it would be desirable to obtain the views of the Corporation and of the Standing Committee on it. I remember having read in to-day's telegrams about a strike of twenty thousand labourers in some docks in England. Such cases have of late become very frequent in England, but I have seen no attempt being made to deal criminally with such people: therefore before the Council proceeds with the first reading it would be desirable to obtain the views of the Corporation.

The Honourable Mr. SAYANI:—I cannot agree with the observations that have fallen from the Honourable Mr. Yajnik. It was not necessary to put this Bill before the Corporation, and I fully agree with the honourable mover that the Bill should be read.

The Honourable Ráo Bahádur RANADE:—The best course to pursue in such cases is to follow closely the precedents set by the Legislature in dealing with similar matters. There is an Act of 1859 which is intended to deal criminally with differences between master and servant. That Act makes the breach of service on the part of certain servants, who have taken advances from their employers and refuse to perform stipulated services, criminal. They have either to perform the service or return the money. In the present case it is only a question of master and servant. The Municipality have great resources. Even on occasions much more trying than the one referred to by the honourable mover the Municipality has been able to get over the difficulty caused by combination without any great trouble. The Legislature having laid down their lines, every care should be taken that this principle is not transgressed simply because a combination of poor people comes down upon the Municipality as a surprise. The Municipal Commissioner has apparently appealed for help to the Government without having brought the matter to the notice of the Corporation or Standing Committee. I think no action should be taken on such a requisition till the opinion of these bodies is ascertained.

The Honourable Mr. YAJNIK:—I might explain that the only objection I have to this is that the punishment is too severe.

The Honourable Sir RAYMOND WEST:—I think the best time to send this to the Corporation would be after a first reading, because it is only a proposal—a thing of thin air—until that is done. As to the Honourable Mr. Ranade's contention that the matter should have been referred to the Corporation, the reason of the Commissioner's action is obvious. The Municipal Commissioner being in such a strait, and with all these people in a fevered

state of feeling, he did not want to make an unnecessary display of his intentions, which would bring about the very result that he wished to avoid. On another point I quite accept the contention that what the Legislature has done already need not be repeated. He says that the only Act dealing with this is Act XIII of 1859, but that is not the only instance, for if he looks at the Calcutta Municipal Act he will find that the servants are punished by fine and imprisonment for refusal to do their work; so that we have a pattern before us. The same may be found in all Police Acts. What I would propose is that the honourable gentlemen should attempt to improve the Bill by becoming members of the Select Committee. At any rate I think there is a case made out for a first reading.

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

The Bill was then read a first time; and on the motion of the Honourable Sir Raymond West was referred to a Select Committee consisting of the Honourable the Advocate General, the Honourable Messrs. Beaufort, Yájnik, Wadia, and Sayani, and the honourable the mover.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Right Honourable the Governor in Council,

J. J. HEATON,
Secretary to the Council of His Excellency the Governor of Bombay for making Laws and Regulations.

Bombay, 19th March 1890.

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 3rd April 1890, at 3-30 P.M.

PRESENT.

His Excellency the Right Honourable Lord REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding.*
His Excellency Lieut.-General the Honourable Sir GEORGE R. GREAVES, K.C.B., K.C.M.G., Commander-in-Chief.
The Honourable Sir R. WEST, K.C.I.E.
The Honourable J. G. MOORE.
The Honourable the ADVOCATE GENERAL.
The Honourable RAHIMTULA MAHAMED SAYANI, M.A., LL.B.
The Honourable NAVROJI NASARVANJI WADIA, C.I.E.
The Honourable T. D. LITTLE, M.I.C.E.
The Honourable A. F. BEAUFORT.
The Honourable Ráo Bahádur MAHADEO GOVIND RANADE, M.A., LL.B., C.I.E.

THE DISTRICT POLICE BILL.

Consideration of the Bill in detail.

The Honourable Sir RAYMOND WEST moved the insertion in Section 3 (*a*), line 5, of "Deputy Inspector-General" after "Inspector-General". He said:—This introduction is necessary so as to make provision, should it be necessary in course of time to appoint a Deputy Inspector-General of Police. The necessity does not appear at present, but in future it may be found necessary; and then the rules in connection with the Act will necessarily apply to the Deputy Inspector-General. It is merely a formal amendment.

The Honourable the ADVOCATE GENERAL:—This matter was not brought before the Select Committee in any way, and I do not think it has their recommendation.

The Honourable Sir RAYMOND WEST:—The honourable members of the Select Committee will remember I mentioned we had written to the Government of India with respect to the Deputy Inspector-General, but there was some little delay in the arrival of the answer. It was not until the Select Committee had finished their sitting that it came; but the fact that there ought to be a Deputy Inspector-General was mentioned; the idea was approved, and the Select Committee were aware I had prepared a section to meet that contingency.

The Honourable the ADVOCATE GENERAL:—I was not aware of the fact until I saw the amendment. I think that the appointment of a Deputy Inspector-General might be left for future legislation, till such time as it becomes necessary.

The Honourable Mr. MOORE:—I think the matter may be left to the Government of India. The appointment of a Deputy Inspector-General of Police would involve enormous expense, and until we see it is required, I do not think it is necessary to provide for his appointment; and I hope it will not be required for a long time to come.

The Honourable Mr. SAYANI:—I understand that such an officer will only be appointed if it is necessary to appoint one. If we once accept the principle, we may leave

it to Government, should necessity arise, to appoint the Deputy Inspector-General; therefore it will be better to make provision for his appointment. I was present on two occasions when the honourable mover said a Deputy Inspector-General would have to be appointed, and that application had been made to Government.

The Honourable Sir RAYMOND WEST :—If we are to have the Act at all, we must make it complete, but Government would not appoint a Deputy Inspector-General unless they found it necessary to appoint one, and even if they were anxious to make the appointment, their wishes would not be enough, they would have to make an application to the Government of India. No function can, according to the provisions of the Bill, be given to a Deputy Inspector-General that does not devolve on the Inspector-General, for he would necessarily be subordinate to the latter. He will merely take up a portion of the work of the Inspector-General. As to how the Magistrate could be overridden by such a functionary, I cannot understand; and so far as expense is concerned, it will be a matter of consideration whether a Deputy should be appointed. It will be a matter for consideration by the Government whether on the whole it is expedient to appoint a Deputy Inspector-General or not. If it be necessary, why should not Government bear the expense? The sole effect of this addition to the section will be this, that if it is necessary it will be open to Government, not simply at its own pleasure, but with the sanction of the Government of India, to appoint a Deputy Inspector-General. It will interfere in no way with the Magistrates of the District. I think the amendment is so necessary, that I leave it to the common sense of the Council to judge.

The Honourable Ráo Báhádur RANADE :—My own view of the matter is that if the Inspector-General is to be a permanent officer in charge of the entire direction of the Police, a time may come when he will require assistance; but that time has admittedly not yet come. The published correspondence shows clearly that Government only desired one Inspector-General to control the police and advise it in police matters in place of the three Police Commissioners. Even in those provinces where the Inspector-General has charge of the police there have been differences of opinion about the necessity and usefulness of these Deputy Inspectors-General, and Sir Barrow Ellis said that they were the fifth wheel in a coach. His exact words are to the following effect :—"The Deputy Inspectors-General have proved a failure elsewhere, and in some provinces, Oudh for instance, they have been abolished." If this is so, I do not see the utility of taking power to appoint them. At any rate no case has been made out for their appointment, the only reason given by the honourable mover being that the insertion of the name of the official at this stage would save legislation hereafter. My own fear is that such additional power to appoint Deputy Inspectors-General will only strengthen the feeling that there is an intention in the Bill to sever the Executive District Officers entirely from any connection with the Police, and that is what I do not approve of. Deputy Inspectors-General may not be required for some years to come, and I think it is best to wait till they are required, when a small Bill might be introduced for their appointment. Centralization of power and responsibility is what is to be aimed at, and the appointment of an officer of this sort will tend to create an hierarchy which, while diffusing and diluting responsibility, might come into frequent conflict with the existing state of things. For these reasons I think the amendment should not be accepted at this stage.

His Excellency the COMMANDER-IN-CHIEF :—I think it would be useful to have provision in the Bill as it is. It says distinctly that it cannot be brought into use until the

Government of India has approved of it. I think this provision is a very desirable one, and the Government of India can settle hereafter whether it is wanted or not.

The Honourable Mr. LITTLE :—My opinion is that it would lead to extra expense and therefore I am against the Deputy Inspectors-General.

The Honourable Sir RAYMOND WEST :—I thought I had already been asked to reply. It is a somewhat inconvenient thing to have to reply in a fragmentary way to the speeches that are made when a discussion has apparently closed. With regard to the somewhat elaborate remarks made by the Honourable Mr. Ranade, the honourable member will find a little lower down the page in which he read from Sir Barrow Ellis—

"I quite concur in His Excellency's remarks that the Commissioner would derive great advantage from assistants to look after the details of Police organization". Now an Inspector-General may at times equally want assistance in details. Sir Bartle Frere said, "No Government of Bombay would be able to maintain the Police in a state of efficiency without an officer analogous to the Inspector-General provided by Act V of 1861. . . . . This opinion is not altered by the fact that Inspectors-General and Deputy Inspectors-General are said not to have improved the Police in other parts of India".

How it is possible out of the appointment of a Deputy exercising some of the powers of an Inspector-General to set up a hierarchy with an entirely different set of powers I am at a loss to conceive. A little further study of the documents will show the honourable member that the view of the subject taken by Mr. Ellis was not agreed in by the other Commissioner Mr. Hart, and in those provinces where a Deputy Inspector-General was thought by Mr. Ellis to have been found useless he has in fact been found indispensable, and is at this moment an integral part of the Police system. Supposing a period of riot or tumult occurred, it would not be the time then to pass an Act for the appointment of a Deputy Inspector-General. An incident of this kind occurred only recently in one of our large towns where an unfortunate animosity exists between Mahomedans and Hindus. Suppose this feeling to extend, and then the duties cast on the Police would become heavier and more urgent. Men might have to be moved from division to division, and a more complete organization would be needed than in quiet times. In such a state of things, legislation would be ineffectual, because it would be too slow ; but the approval of the Government of India could be very promptly obtained if necessary.

The amendment was then put to the vote and carried by the casting vote of His Excellency the President.

The Honourable Sir RAYMOND WEST next moved :—In Section 3 (*a*), line 10, insert "Deputy Inspector-General of Police" after "Inspector-General of Police". This, he said, naturally follows in the wake of the other, and needs no discussion.

The amendment was carried.

The Honourable Mr. LITTLE :—Your Excellency—The amendment I propose is the substitution of the word "may" for "shall" in line 6 of Section 5 (1) of the Bill under discussion. I admit that the modification will not be complete in itself and it will be necessary to supplement it by alterations in other sections, in order to carry out the object I have in view, which is to leave latitude in regard to the supervision of the Police to the Government of the day. The method of carrying out the subsidiary

modifications would require detailed consideration, but it seems to me that the difficulty might be met by repealing certain sections of Act VII of 1867, conditionally only and not finally. A somewhat similar course was followed in Section 3 of the Village Sanitation Act, which repeals certain enactments, not absolutely, but only so long as Parts II or III of the Act in question continue to be in force. I was under the impression at the last meeting, and I believe a number of honourable members of this Council shared my views, that the discussion of this Bill would be postponed for a longer period, probably until the monsoon, and I had hoped that the suggestion of supplying the Council with opinions of the various officers consulted would have been adopted, as well as another suggestion, that more information should be called for from responsible officers connected with district administration. The postponement has been for a fortnight only, and that at a time of great official and social pressure, when we have all been endeavouring to do honour to the high personages who have lately departed or are about to depart. The Police force is a very important factor in Indian administration, and necessarily and properly so. It wields great power and the liberties of the people are in its keeping to a considerable extent, and the question as to whether it is to remain, as heretofore, a body directly subordinate to the divisional officers responsible for the ordinary civil administration, or whether it is to become a separate department with its own complete organization, is one of considerable importance. The latter course has many able advocates, but in India there is some risk of a Police under its own rules and rulers eventually developing into a separate class or caste, and this risk is particularly great in the mofussil where there is no strong public opinion to show up abuses. The Bombay system, which it is now proposed to supersede, has, I submit, done very good work in the past and is capable of equally good results in the future. In English counties and boroughs the Police are managed locally and are controlled by the town and county authorities, and the duties of the Inspector-General under the Home Office are, I believe, confined to inspection and do not extend to detailed direction and supervision. Sir James Fergusson, in January 1881, apparently desired an Inspector-General with only a limited sphere of this kind, for he wrote that "the Revenue Commissioners, though the proper heads of the Police, can hardly be expected to be efficient inspectors of drill and organization". Later on, Sir James was in favour of relieving the Commissioners altogether of their Police duties, leaving the position of the District Magistrate untouched, while the Honourable Sir Raymond West in 1888 was of opinion that the District Magistrate as well as the Commissioner should be "critics only" of the force.

The Honourable Sir RAYMOND WEST:—That is a fragmentary quotation from a fragmentary extract. A few lines higher up in the same page I say the Police should be a force 'to be used when he will, and as he will, by the District Magistrate'.

The Honourable Mr. LITTLE:—It seems to me that a Bill that revolutionizes the present Police system and relegates the present chief controlling authorities to the position of critics requires and demands patient and deliberate attention, and I, in common, I believe, with some other members of this honourable Council, regret that it has been thought desirable to devote two days out of the gazetted Easter holidays in order to pass such a Bill in a Council in which nearly half the members are new and have been appointed during the past few weeks and long after the introduction of the Bill and its Select Committee stage. The sacrifice of the holidays is not, I am sure, grudged by any honourable member, but some of us grudge the sacrifice for the purpose of a Bill which we would prefer to postpone. It

is an open secret that the provisional member of Council does not agree in the weakening of the responsibility and supervision of Commissioners, and the honourable member who is acting for him has shown his opinions by the amendments of which he had given notice, and it is well known that many experienced District Magistrates who will be concerned in the working of the new Act are not in favour of this portion of it. One of my main reasons for proposing to make Section 6 permissive instead of imperative is my fear that history may in this case repeat itself, and as Lord Elphinstone and his Council had in 1860, after five years' experience, to abolish the separate head of the Police, so some future Government may find it desirable to disestablish the authority it is now proposed to create, or at least to modify his position and functions. The results of the experimental Inspector-General have not so far, I believe, been such as to show that the system can be worked without friction, and its success is challenged by many officers of experience, and this being the case I think we should not tie the hand of future Governments.

But even if the new Act is found to work satisfactorily it may still be a question as to whether its advantages are commensurate with its cost. As originally drafted and as submitted to the Select Committee of this Honourable Council, the Bill only provided for an Inspector-General as contemplated by Sir James Fergusson, but it is now proposed to introduce amendments providing for Deputy Inspectors-General. The Inspector-General and his office, I believe, cost between Rs. 40,000 and Rs. 50,000 per annum instead of about half that sum as anticipated by Sir James Fergusson, and it seems to me that as the Deputy Inspectors must, on an average, receive about Rs. 1,500 per mensem *plus* office and travelling charges, the total for a single Deputy Inspector-General and his establishment will, including pension charges, amount to from Rs. 25,000 to Rs. 30,000 per annum. Including Sind it will probably be necessary to employ at least three Deputies, and the proposals which when before the Select Committee involved a cost of less than half a lákh of rupees have now been so extended that they may, and probably will, involve an expenditure of double that sum. Whether the Select Committee would have approved of a Bill which involved so large a cost is a question which cannot be answered, but it will, I hope, be remembered that the Bill as submitted to the Select Committee varies on this very important point from the Bill which it is now proposed to pass into law. The approval of a scheme for controlling the Police of the Presidency by one officer at a cost of half a lákh does not necessarily carry with it the same approval when it is found that the one officer will require several Deputies and that the half a lákh is likely to develope into a lákh and probably more. For some time past Government and the Finance Committee have in various departments been endeavouring to amalgamate offices and to reduce expenditure, but in the Police Department the very opposite course is now being followed, for the department is to be developed and new appointments are to be created. I am in favour of more liberal treatment of the Police, and I think that both in the lower and higher ranks some additional expenditure is necessary, but I doubt if the best method of improving the force is the formation of these new posts to relieve Commissioners who would rather not be relieved and to construct an organization which many experienced authorities look on as doomed to failure. For these and other reasons I submit my amendment to the consideration of this Honourable Council.

The Honourable Sir RAYMOND WEST:—The speech of the honourable member is one which should more properly have been read to the Council on the occasion of the second

reading. It is a speech against the whole principle of the Bill, as indeed the honourable member admits. In reading the Bill a second time the Council agreed with the unanimous decision of the Select Committee. The Select Committee had the contingent appointment of a Deputy Inspector-General before it, and yet unanimously approved the provision to which the honourable member objects. The striking out of a provision for the appointment of an Inspector General, and leaving it purely optional, would be extremely like proposing to have the play of *Hamlet* with the part of *Hamlet* left out; or, to take an illustration within the ordinary sphere of the honourable member, much as if, after a committee on a public building had determined to have a particular arch, an opponent of that plan should propose to leave it optional to put in a key-stone or keep it out. I take it that having acceded to the principle of this Bill, it follows, as a matter of course, we must have an Inspector-General. And if by the substitution of the word "may" for "shall" you leave the position of the Inspector-General precarious, you will not have so good men; for good men will not take up a precarious position. If one of the honourable member's arguments is well founded, there is a doubly strong reason for making the Inspector-General's position stable and removed from the influence of individual whims and prejudices. Therefore, I say, it being a matter of such importance that the appointment of an Inspector-General should not be left optional, the word "may" is not the proper word here; and, having accepted the principle on the second reading, the Council are bound to accept the word "shall" as it is in the section, rather than the word "may", which will leave everything floating and uncertain.

His Excellency the PRESIDENT:—The honourable member has said that the present system is a failure. With the practical experience of the past to guide me, I must distinctly deny that it is a failure. That the appointment of an Inspector-General must necessarily lead to friction with the Commissioners, is a proposition for which I can find no evidence in the administrative record of past years. On the contrary, I think the Commissioners will derive as much benefit as Government has derived from an expert at the head of the Police. The late Colonel Wise, an officer of great experience and tact, rendered services which I have much pleasure in publicly acknowledging. His successor I have no doubt will find it quite easy to limit himself to his proper sphere, and in that sphere there is scope enough for the display of activity not to encroach upon forbidden ground. If you want a well-disciplined and efficient Police force you must have a responsible officer in command, and Government must oppose the amendment of the honourable member which strikes at the principle of the Bill.

On a vote being taken the Honourable Mr. Little's amendment was lost.

The Honourable Sir RAYMOND WEST proposed the following amendment:—In Section 5 insert the following as sub-section (2):—

> "(2) Subject to the previous approval of the Governor-General in Council, the Government may appoint one or more Deputy Inspectors-General of Police, to whom Government may assign such duties, being amongst the lawful duties of the Inspector-General of Police or in aid and furtherance thereof, as shall to Government seem expedient."

He said:—This is an amendment which has been discussed and disposed of in connexion with Section 3, therefore I will propose it without making any remark.

The amendment was carried.

The Honourable Sir RAYMOND WEST next proposed:—In Section 8, lines 1 and 2, after "subject to the" insert "rules and". This alteration will make the power of the Governor in Council somewhat more extensive. It is a suggestion I received from the Honourable Mr. Moore, and as it is obviously right, I propose it be adopted.

The amendment was carried.

The Honourable Sir RAYMOND WEST moved:—In Section 13, line 14, insert "shall" between "and" and "be".

The Honourable Ráo Bahádur RANADE:—I find that notice of motion was given with regard to Sections 8 and 9 by the Honourable Mr. Moore. I understand that it has been withdrawn. I wish to know what is the effect of such a withdrawal.

The Honourable Mr. MOORE:—I may explain that a copy of my proposed amendment was circulated to the honourable members, and in conversation with Sir Raymond West he has embodied my amendment in his. Therefore my amendment was withdrawn.

The Honourable Ráo Bahádur RANADE:—Which is the amendment in which it is embodied?

His Excellency the PRESIDENT:—This amendment having been withdrawn is no longer before the Council.

The Honourable Sir Raymond West's amendment was then put to the vote and carried.

The Honourable Sir RAYMOND WEST:—In Section 14, line 10, I propose to insert the words "and subject to the orders of Government" between "possible" and "comply". It makes it more clear that the Inspector-General is subject to the order of Government. It has no other effect than that.

The amendment was carried.

The Honourable Sir RAYMOND WEST:—I propose in Section 15, line 8, to substitute "disorder" for "disorders". This merely corrects a typographical error.

The amendment was carried.

The Honourable Sir RAYMOND WEST then proposed the omission of the words "the employment of" in Section 17 (1), lines 3 and 4. He said:—The section will now read thus: "A Commissioner may make any order with respect to the Police force in any district," and so on. It has been suggested that the words "the employment of" placed an undue restriction on the authority of the Commissioner, and in order to meet that view it has been determined to strike out the words. It is obvious this does in terms widen to a certain extent the authority of the Commissioner, although it does not make it any wider than it was intended to be. This amendment must be considered with the amendment which follows; and with Your Excellency's permission I will speak on that amendment which was arranged after most careful consideration by my honourable colleague Mr. Moore and myself. It is, in Section 17, line 8, to insert after the word "make" the words "and any order which he may be authorised to make by any rule lawfully made by Government under the provisions of this Act or other law in force." The section, as it stands, appears to some persons to unduly restrain the authority of the Commissioner in issuing orders which should be obeyed in the district under his command.

That was never intended by the Act as it was drafted; and Section 5 and other sections of the Act, if they are carefully looked into, will show that everything would have to be done subject to such rules and orders as might be made by Government. This shows the intention was that Government should have power to invest the Commissioners with such authority as was consistent with the Criminal Procedure Code. But as some views have been expressed pointing to this, that if the section were left as it was, the Magistrates or the Police authorities might consider that the Commissioner's power was much restricted as to the Police force, so in Section 17 it has been thought expedient, and especially by the Honourable Mr. Moore, that this alteration should be made. It has been made after conversation with him; and I believe now it would be impossible to take exception to Section 17 as not enabling the Commissioners to discharge such duties as may be lawfully imposed upon them in the management of the Police in their several divisions.

The amendment was carried.

The Honourable Sir RAYMOND WEST then moved, with the assent of His Excellency the President, to amend Section 18 as follows:—By inserting the words "in every such case" after the word "general" in line 11; by omitting the words "to give" down to "may be" in lines 11 to 13; by omitting the word "and" in line 14; and by adding after the word "complaint" in the same line the words "and to conform to the requests of the Commissioner where the same shall be lawful and consistent with the orders of Government and other lawful commands, requests and instructions."

He said:—The object of inserting these words was for the benefit of an Inspector-General who might receive orders from two Commissioners at the same time, or a requisition from a Magistrate contrary to orders sent him by the Commissioner. In order to meet that difficulty it was originally proposed that an Inspector-General should conform "as far as may be" to the Commissioner's direction. But another means to the same end having been found, it has been proposed to omit these words. The insertion of the words to be introduced after the word "complaint" in line 14 will make it perfectly clear to the Commissioner what authority he has, and will make it impossible for the Commissioner to say he has not ample authority for the working of the Police in his own division.

The amendment was carried.

The Honourable Sir RAYMOND WEST then proposed the following amendments in Section 22:—

In sub-section (1) omit the first eleven words.

„ (2), line 17, omit "Magistrate of the District or".

„ (3), line 24 and line 30, omit "Magistrate of the District or the".

These amendments were carried.

The Honourable Sir RAYMOND WEST moved:—In Section 22 add the following sub-section:—

"(4) In acting under this section the District Superintendent shall be subject to the provisions of Section 13 (1)."

He said:—Under Section 22 as it was drafted, some words which belonged to the earlier Act of 1867 were retained which did not fit in so well with the general scheme of the Bill as it stands now, for you will observe the Superintendent is made subject to the "general direction of the Magistrate of the District," whereas under Section 13 (1) the District Superintendent and the Police force of a district shall be under the "command and control of the Magistrate of the District." If we left Section 22 as it now stands, it might lead to some confusion or friction to say that there was but a general control when elsewhere it is declared that the Superintendent is without qualification subject to the command and control of the Magistrate of the District; so it was proposed to strike out the words which have that tendency, and in lieu thereof to put in Clause 4. The effect of it is to render the Magistrate's control more decisive than it is.

The amendment was carried.

The Honourable Sir RAYMOND WEST moved:—Section 23 (3) should be numbered Section 23 A.

The amendment was carried.

The Honourable Sir RAYMOND WEST next moved:—In Section 24 (1), lines 2 and 5, omit "in the *Bombay Government Gazette*". It is proposed to omit these words merely because the Bombay General Clauses Act makes "notification" equivalent to notification in the *Bombay Government Gazette:* so these words here are superfluous. They are not without sense, but they are needless.

The amendment was carried.

The Honourable Sir RAYMOND WEST:—I propose to omit all the italicized words beginning with "*and shall be levied*" in Section 24 (3), because with the provision of Section 25 as it is to be amended the words are superfluous.

The amendment was carried.

The Honourable Sir RAYMOND WEST moved the following amendments:—To Section 25 (1) add the words "due by him".

In Section 25 (2), line 9, insert the words "as aforesaid" after the word "Collector"

In Section 25, line 10, omit the words "under the said section".

He said:— This is connected with what I said just now. If you add the words "due by him" to clause 1, it follows the words "as aforesaid" must be added in line 9. Then by omitting the words "under the said section" in line 10 the clause will read thus:—

"Every rate assessed by the Collector as aforesaid shall be recoverable by the Collector as if it were an arrear of land revenue due by the person answerable therefor."

This is really a re-adjustment of expression without the slightest change in the sense.

The amendments were carried.

The Honourable Sir RAYMOND WEST:—I move to insert in Section 26 (*a*) the word "recruitment" before "organization". I propose to insert this word, so that the matter may be more clearly under the control of the Inspector-General. It was thought the word *organization* included *recruitment*, but I saw in reading some papers that a question had

been raised about that, and therefore, to stop the gap, I thought it expedient to put in the word " recruitment ".

The amendment was carried.

The Honourable Sir RAYMOND WEST proposed that to Section 31 a second sub-section should be added as follows :—" (2) Timely intimation shall, except in cases of extreme urgency, be given to the Commissioner and Magistrate of the District by the Inspector-General of any proposed transfer under this section, and, except where secrecy is necessary, the reasons for the transfer shall be explained ; whereupon the officers aforesaid and their subordinates shall give all reasonable furtherance to such transfer. "

He said :—Your Excellency will remember it was previously intended that this as a matter of detail should be settled by rules to be made by Government, but in order to satisfy official sensibilities it has now been thought necessary to make the courteousness and deference due to the Commissioner a part of the Act rather than leave it to a mere rule. I may mention to the honourable members of Council that this clause has been carefully considered in conversation between myself and my honourable colleague who has so recently come from a Commissioner's administration of the existing Police Act, and he considers the arguments advanced by some critics of the Act will be met by the clause as it now stands. The Honourable Mr. Moore suggested the modification in the clause I have now read; and I trust, therefore, it will be adopted. It makes no difference in the principle of the Act. It merely lays down, if there is to be any removal or transferring of Police, the Commissioner and the Magistrate of the District are to be made aware of it in time.

The amendment was carried.

The Honourable Sir RAYMOND WEST :—I propose in Section 33 (1), between Clauses (*a*) and (*b*) to insert the word " and ". This requires no remark ; it is only a matter of symmetry.

The amendment was carried.

The Honourable Sir RAYMOND WEST :—I propose that in Section 35, before sub-section (1), should be inserted the following :—" Any person who makes a false statement or uses a false document for the purpose of obtaining employment or release from employment as a Police officer, or ". The section goes on as it stands. It is not a matter which would readily occur to the mind that the section, as it was originally drafted, was not sufficient ; but it has happened, while the Bill has been in course of consideration, that a case has arisen in another part of India in which a man did make a false statement to get employment, and on the matter being referred to the Advocate General, it was found the rules were couched in such terms that not being a Police officer he could not be prosecuted. In order to stop that gap we have thought it expedient to introduce this clause.

His Excellency the COMMANDER-IN-CHIEF :—We have had a case of the same kind in the army too.

The Honourable the ADVOCATE GENERAL :—Taking a recent conviction in the High Court as a case in point, I do not think the amendment is required.

The Honourable Sir RAYMOND WEST :—If the Honourable the Advocate General desires it, I will have the correspondence on which this was based got out and read it at the third

reading, but I can tell the honourable member what the substance of the decision was. A man in the Bombay case had forged a certificate to obtain employment, and it was held by the Bombay High Court that he was subject to punishment under the Penal Code. But in a recent case in the North-West, where a man had obtained employment in the Police by making false representations, the opinion, as I said before, of the Advocate General was obtained, and he said that the man could not be punished for that false statement, as he was not a Police officer. The papers were circulated to the various local bodies by the Government of India; and it so occurred to me to stop up this little gap by proposing this amendment. Even if the Penal Code had provided for it, it would do no harm to insert the proposed clause here.

The Honourable the ADVOCATE GENERAL:—I think this ought to be made clear before the third reading.

The Honourable Sir RAYMOND WEST:—If the Honourable the Advocate General will allow this to stand over, I will confer with him between now and the third reading.

The discussion on the amendment here dropped, the consideration of it being reserved.

The Honourable Sir RAYMOND WEST:—I propose in Section 35, lines 16 and 17, to omit all words except "or". I have no remark to make except that, as Your Excellency will observe, the words are not necessary.

The amendment was carried.

The Honourable Sir RAYMOND WEST moved:—In Section 35, lines 24 and 25, substitute the words "one hundred rupees" for the words "three months' pay of such officer". It seems desirable to substitute the words "one hundred rupees" for "three months' pay", especially with reference to the new clause which I have just proposed, because if the man seeking employment has made a false statement, there would be no three months' pay. Besides, Rs. 100 is a usual maximum fine for offences of this kind.

The amendment was carried.

The Honourable Sir RAYMOND WEST moved:—After Section 36 insert the following:—

"36 A. Government whenever it shall seem necessary may by notification make an order to such effect as any order which, if made by a Magistrate under Section 144 of the Code of Criminal Procedure, could be continued in force by Government under the enactment aforesaid."

He said:—This is also a case in which, owing to the progress of events, the law calls for some slight modification. A case has lately arisen which showed this; and other cases might arise in which there would be a difference of opinion in regard to Section 144 of the Code of Criminal Procedure between the Magistrate of the District and the Commissioner. It is obviously desirable that Government should also have an opportunity of making an order on its own account. The order is one to be made only in order to guard the public health or safety and in an urgent case. If the Magistrate makes an order, the Government can continue it, yet it cannot make any original order, or decide between a District Magistrate and a Commissioner, as the law stands at present. This is the substance of the clause we propose to introduce.

The Honourable the ADVOCATE GENERAL:—This is really an amendment of the Code of Criminal Procedure. I do not think it is a clause that can be inserted for the benefit of the Government of Bombay alone. I think the power ought to be given to every

Government throughout India; and I think it is somewhat objectionable in principle to introduce a clause like this into this Bill.

The Honourable Sir RAYMOND WEST:—I do not think the Government of India would take exception to our adopting any measure for our own purposes which does not detract from the operations of the Criminal Procedure Code. It gives to Government no power new in its nature; only one which now on the initiative of the District Magistrate it can exercise under the Code; but it gives to Government authority to exercise it in case of necessity on its own responsibility. I think this is a very useful clause. I submit it for the consideration of Council in order to prevent clashing of authorities, and I think the honourable members will see that such a power in the hands of the Government is necessary. On the next occasion when the Criminal Procedure Code is revised, the section that I am proposing at present will be repealed and be embodied in the new Criminal Procedure Code; but in the meanwhile I do not see why we should not provide for our necessities by a useful little clause like this.

The Honourable Ráo Bahádur RANADE:—I think cases might well be imagined in which Government, having no direct knowledge of the locality, may not be in a position to take action on its own account, and overlook the District Magistrate's view of the matter.

The Honourable Sir RAYMOND WEST:—We have heard a great deal about the necessity of upholding the authority of the Commissioner, and now we have it urged that we must disregard him and uphold the Magistrate.

The Honourable Ráo Bahádur RANADE:—There are many local nuisances in which I think the district authorities are more competent to know how matters stand than the Government at a distance.

His Excellency the PRESIDENT:—My experience hardly bears out the assertion of the honourable member. Government often receives appeals from orders passed by local officers, and the intervention of Government is, I think, considered by the public an additional safeguard against the possibility of arbitrary action. I do not think that the exercise of such powers by Government need inspire any apprehension.

The amendment was carried.

The Honourable Sir RAYMOND WEST:—In Section 37, line 125, I wish to insert, between the words "clause" and "(*l*)" the words "(*g*); or made under clause." Clause (*l*) relates to two or three different subjects and it was thought desirable to make the application clearer to have it expressed thus. It is merely a verbal amendment in order to make the sense clear. With Your Excellency's permission I will go through the whole of the amendments in this section. In line 128 I wish to substitute the words "ordinary and established" for "caste". There are usages amongst certain people who are of no caste, and some objection might be taken and has been taken if the clause remained as it was. If these words are inserted, it will run thus:—"Every regulation made under clause (*g*) or made under clause (*l*) with respect to the use of a place for the disposal of the dead shall be framed with due regard to ordinary and established usages and to the necessities of prompt disposal of the dead in certain cases." . . . So that in making these provisions by which quarrels and disputes at burning and burial grounds might be prevented, the Magistrate will be bound to have due regard to the usages of castes and classes. Then in line 134 there is a verbal change. I wish the word "or" to be omitted and "or (*h*)" to be inserted after "(*g*)"; and to omit the words beginning "it shall be

the duty" down to "thereto" in lines 144 and 145. It will be observed that the rule imposing on the subjects of Her Majesty conformity with the preceding rules is omitted. The Magistrate is empowered to make special rules, and it should be clearly incumbent on all to obey these rules without exception; therefore it is thought better to add a sub-section (4) to section 37, *viz.*:—"It shall be the duty of all persons concerned to conform to any order duly made as aforesaid so long as the same shall be in operation."

All these amendments were carried.

The Honourable Sir RAYMOND WEST:—The amendment to omit the words "in the *Bombay Government Gazette*" in Section 39, lines 7 and 8, follows as a matter of course. In lines 18 and 19 I wish to make a mere verbal change by substituting the words "set forth" for "prescribed".

The amendments were carried.

The Honourable Sir RAYMOND WEST:—In Section 40 B, line 19, I wish to substitute "every" for "any".

The amendment was carried.

The Honourable Sir RAYMOND WEST:—In the same section, lines 26 to 28, I propose to substitute for the words "subject to a decree, injunction or order made by a Civil" the words "recalled or altered on its being made to appear to the Magistrate of the District that such order is inconsistent with a judgment, decree, injunction or order of a". This amendment is rather more substantial in its effect than some others, and if honourable members will read the clause as we think it ought to stand, it will be obvious that this is an improvement. The section as it stood only provided for an order of the Civil Court, but it is conceivable that a matter might have gone to the High Court and that an order might have been made by that Court in the exercise of its criminal jurisdiction. The whole effect of the proposed change is to make it incumbent on the District Magistrate to consider the legality of his order whenever a Court's decision is brought to his notice whether the Court is a Civil or Criminal one, and if the order is inconsistent with the order of a higher authority, to withdraw it.

The Honourable ADVOCATE GENERAL:—I think it would be preferable to strike out the word "Civil," which would meet the difficulty.

The Honourable Sir RAYMOND WEST:—If the Honourable the Advocate General prefers to have it that way, I am quite willing to have it so. I would propose, with the assent of His Excellency the President, to strike out only the word "Civil" and to insert after "jurisdiction" the words "and shall be recalled or altered on its being made to appear to the Magistrate of the District that such order is inconsistent with a judgment, decree, injunction or order of such Court."

The amendment as thus settled was agreed to.

The Honourable Sir RAYMOND WEST:—In line 29 I propose to insert "complaint" before "suit". This follows as a matter of course after the preceding amendment.

The amendment was agreed to.

The Honourable Sir RAYMOND WEST:—In Section 41 (1), lines 15 to 17, I propose to omit the words "or proposing to repair" and the words "or proposing to return". It appears on consideration that this would confer too much power on the officer. It was suggested by an ex-Government official residing in Poona that it would be very difficult to

ascertain what a person might be "proposing" to do. That is very reasonable, and therefore it would be desirable to strike out these words.

The amendment was carried.

The Honourable Sir RAYMOND WEST:—In Section 41 I propose that clause (2) (b) be numbered clause (3), because it is separate in sense from the other provisions.

The amendment was carried.

The Honourable Sir RAYMOND WEST:—In Section 44 (2), line 32, it is proposed to insert the words "or shall be notified to the person affected thereby" between the words "operate" and "and". It may be desirable to give a more specific notification to the persons affected by the order, and it was thought desirable to have that addition made to the clause.

The amendment was carried.

The Honourable Sir RAYMOND WEST:—In Section 45 (1), line 1, it is proposed to substitute "Magistrate of the District" for "District Superintendent". This is a matter affecting the general control of the district, which in consequence ought to be in the hands of the Magistrate of the District instead of in those of the District Superintendent of Police. Connected with that is the proposed amendment in line 2, where after "notice" it is proposed to insert "extending to such place or places within the district as shall therein be named." The clause as it stands does not provide for the introduction of the order within the limits of any particular town. It is obvious that there should be a power of discrimination between one place and another.

The Honourable Mr. MOORE:—In my opinion there is too much detail in this.

The Honourable Sir RAYMOND WEST:—This is a matter which was considered very carefully by the Select Committee, one or two representations having been made on the subject, and the conclusion arrived at was that this clause went as far as it was desirable to go at present. This is a new matter altogether in the Mofussil, and it was thought that we could not be too particular in describing the powers of the Police in order to prevent any unpleasant *fracas* between the people of the village and the policeman carrying out the orders. Members will see that if the owner of a dog comes forward to claim it, it will be restored to him if he pays the expenses of its keep. Thus, while the owners of good dogs will claim their property, pariah dogs will be unclaimed. There is something to be said both for and against this; but we have endeavoured to be as mild as possible.

The Honourable the ADVOCATE GENERAL:—I am inclined to think the Police will have power to destroy dogs whether they are muzzled or not. There is no doubt that when once that notice has been issued, the insertion of these words into the clause means a very large power.

The Honourable Sir RAYMOND WEST:—Well, this section was considered over and over again in the Select Committee and that was the view taken by the members. It was considered on both sides, and this is a new provision. It was thought inexpedient to go too far at present; but if this section works well, it should then appear desirable that we should go further; that can be done if necessary.

The Honourable Mr. MOORE:—And it can only be done when the order is in operation.

The Honourable Sir RAYMOND WEST:—It means the order can be issued and put in operation until withdrawn by the Magistrate.

The Honourable Mr. LITTLE :—There will be a difficulty in some places. I know of some towns in Gujarát where dogs swarm in thousands, and unless something is done, hydrophobia will be rampant.

The Honourable Sir RAYMOND WEST :—Under the section as it stands the Police will lay hold of such dogs, muzzled or unmuzzled, and they will keep them for three days, when if the owner does not come forward, the dog will be destroyed.

The Honourable Mr. LITTLE :—You will see ten thousand dogs in some towns in Gujarát. People are glad to see them destroyed.

The Honourable Sir RAYMOND WEST :—And some would be much irritated. That is all the more reason why the nuisance should be gently dealt with. I think in a matter of some delicacy I should like to proceed in a rather tender fashion; and I should not advise the Council to go too far.

His Excellency the COMMANDER-IN-CHIEF :—I know in the towns of Northern India when the number of dogs straying about the streets becomes a nuisance, we call upon the Magistrate to inform the people that if they are not secured they will be killed, and a great number are thus killed.

The Honourable the ADVOCATE GENERAL :—Even in England the muzzling of dogs is a difficulty. There are questions as to the muzzling of dogs, and they have come to the conclusion that a strap muzzle is not within the provision of the Act. But here they may destroy a dog whether it is muzzled or not. At any rate I am inclined to think the provision will act more widely than it is intended. There will at least be a question of law on it.

The amendments were carried.

The Honourable Sir RAYMOND WEST :—In Section 47 (1) (*dd*), line 26, there is a printer's error, and for the word "needed" I propose to substitute the word "aided".

The amendment was carried.

The Honourable Sir RAYMOND WEST :—In Section 47, line 6, I propose to add "and shall by all lawful means endeavour to give effect to the commands of his superior." One would have thought that such words were not necessary, but a case has arisen recently which shows that there is a necessity for them.

The amendment was carried.

The Honourable Sir RAYMOND WEST :—In Section 48 (*c*) I propose to insert "and shelter" after "sustenance". The reason I insert these words is because you might be as cruel to a prisoner, especially if it happens to be an old woman or a person in feeble health, by keeping the prisoner out in the cold or rain as by not feeding him.

The Honourable Mr. LITTLE :—Are the prisoners to be provided with clothing?

The Honourable Sir RAYMOND WEST :—That question was discussed by the Select Committee, and it was thought that if clothes were provided, many people would commit offences to get a suit of clothes from the Police.

The amendment was carried.

The Honourable Sir RAYMOND WEST :—In Section 51A, line 4, I propose to substitute the word "Trespass" for the word "Pound". The latter word was merely a slip of title. In line 7 I propose to insert the words "and other persons concerned" after "owner", in

order to bring people within the reach of the law who might otherwise set up a quibbling defence.

These amendments were carried.

The Honourable Sir RAYMOND WEST :—In Section 52, line 10, I propose to insert "in any such case" after "if". This makes the sense somewhat clearer.

The amendment was carried.

The Honourable Sir RAYMOND WEST:—I propose to add to Section 54A the words "whenever the same shall appear necessary or expedient for giving more complete or convenient effect to the law or for avoiding an infringement thereof." The object of the section is to enable the Chief Constable or Inspector or Superintendent, when he sees that the work to be done is of a delicate nature, to take the matter into his own hands, or to call to his assistance some person other than the stupid policeman in charge; but he should not of course take warrants out of the hands of the man to whom they have been entrusted; nor should he supersede a subordinate in any case without some good cause.

The amendment was carried.

The Honourable Sir RAYMOND WEST :—My first amendment in Section 55, *viz.*, to omit the words "in the *Bombay Government Gazette*", will of course be accepted. The other in line 92 is merely a verbal change, "or" for "and". In line 101 I propose to insert "causes a child to do so" after "nature". It seems necessary to provide for a common kind of nuisance in the streets by allowing Government to prohibit the committing of nuisances by holding out children and allowing them to stool, which is just as bad as grown-up persons being allowed to commit the same nuisances.

The amendments were carried.

The Honourable Sir RAYMOND WEST :—In Section 55, lines 105 and 128, I propose to substitute "Magistrate of the District" for "District Magistrate", in order to preserve uniformity of expression.

The amendment was carried.

With the assent of His Excellency the President, the Honourable the ADVOCATE GENERAL moved to amend section 55 *(l)* in the following manner :—By omitting in lines 123 to 126 the words "pond, pool, aqueduct, or part of a river, stream, nala, or other source or means of water-supply," and by adding to the clause the words "or in or by the side of any pond, pool, aqueduct, part of a river, stream, nala or other source or means of water-supply in which such bathing or washing is forbidden by order of the Magistrate of the District or other person having lawful authority in that behalf."

The Honourable Sir RAYMOND WEST :—The proposal of the Honourable the Advocate General is less important than it would appear, as will be seen on reference to clause 1 of the section. This particular section could not be brought into operation in any particular district unless there was a special necessity for it, and of course Government would not extend the operations of the clause to the neighbouring open country surrounding the particular town or village where it was introduced. However, if the Honourable the Advocate General presses for it, I do not object to meeting his views; it amounts to the same thing either way. The specification in the one case would be of prohibition; in the other, of permission.

The Honourable the ADVOCATE GENERAL :—I think it would be better.

The Honourable Sir RAYMOND WEST :—The Honourable the Advocate General and myself can readily model this clause into the shape he desires, and if the Council will permit, we will bring it forward at the third reading.

This was agreed to.

The Honourable Sir RAYMOND WEST :—To Section 56 I propose to add "2. Jurisdiction in cases arising under this section shall not be exercised by a Magistrate of lower rank than the First Class, unless such Magistrate be specially invested with jurisdiction for that purpose by Government." It has occurred to me that rather serious cases in the shape of cruelty to animals might arise, which ought not to be left entirely to the lower Magistrate, who might perhaps be imbued with the prejudices affecting certain classes in India in this regard. He might be subjected to special influences, and not administer the law in the proper way.

The amendment was carried.

The Honourable Sir RAYMOND WEST:—In Section 62 between clauses (*a*) and (*b*) I propose to insert "or". This is a purely formal amendment.

The amendment was carried.

The Honourable Sir RAYMOND WEST :—In Section 67, line 1, I propose to insert between "not" and "be" the following words, *viz.*, "except in obedience to a rule or order made by Government or by the Magistrate of the District." The general object of this section was in cases of very petty offences, where there was no real crime, but where only some inconvenience had been caused (in such cases, for instance, as cleaning furniture or exposing goods for sale on the road, &c.), that it should not be imposed on the Police to carry on prosecutions. But, on the other hand, it was suggested to me that the Police might make this a source of bribery, and therefore they should not without reserve have it in their own hands to prosecute or not, but it should be left to the Magistrate. So if the Magistrate thought that the Police in any particular division could not be trusted, he should be empowered to give orders to prosecute. It is merely introduced with a view of keeping the Police in check.

The amendment was carried.

The Honourable Sir RAYMOND WEST :—In Section 68, line 4, I propose to insert "and punished" after "prosecuted". Then there is a modification at the end of the section which makes it clearer than it is. In line 7 I propose to insert "prosecuted and" after "being", and to substitute "this Act for an offence punishable under any other enactment. Provided that all such cases shall be subject to the provisions of Section 403 of the Code of Criminal Procedure" for the words beginning with "any other" in line 7 to the end of the section. This brings the provisions within the general sphere of the law, *viz.*, that there shall not in any ordinary case be a second prosecution, but that subject to that the person may be dealt with under either of two laws applicable.

The amendments were carried.

The Honourable Sir RAYMOND WEST :—I propose to add the words "and may withdraw such authority" to Section 70. It is not perhaps necessary to add the words, but as an honourable member is very anxious about it, I do not object to introducing them.

The amendment was carried.

The Honourable Sir RAYMOND WEST :—In Section 72 (1), line 1, I propose to insert "Commissioner" after "no", because it is desirable that he, too, should be protected if he happens to make a mistake, as well as the lower officials, against any malicious prosecution.

The amendment was carried.

The Honourable Sir RAYMOND WEST :—In Section 72 A (2), line 26, I propose to substitute "District" for "High", and after "Court" to insert "of the district wherein he resides and wherein the rule or order operates". The reason for this is that a question might arise as to whether in passing such a section the Government might not, by some technical process of reasoning, be thought to infringe the jurisdiction of the High Court. It will be still possible for the High Court to withdraw the case from the District Courts, so that if it desires it, it can do so; but it is no longer imposed upon it as a necessity.

The Honourable the ADVOCATE GENERAL :—Why is this restriction placed upon them.

The Honourable Sir RAYMOND WEST :—It was thought desirable that we should not encourage mere speculative litigation, and therefore that the suits should not be brought unless first the particular order was in operation in the district, and, secondly, the person had some reason for bringing it; he must show that he is a person affected by the order he complains of. Therefore it was thought desirable to insert these two conditions.

The Honourable the ADVOCATE GENERAL :—I can imagine a case of a person being affected by the order who was not a resident in the district. I would suggest that the words "wherein he resides" should be struck out.

The Honourable Sir RAYMOND WEST :—I have no strong objection to striking them out. It is hardly possible that a person not a resident should be affected or interested.

The amendment after omission of the words "wherein he resides and" was carried.

The Honourable Sir RAYMOND WEST :—In Section 72 A (3), line 34, it is thought desirable to insert the words "for a malicious injury or a criminal offence" after "individual".

The Honourable the ADVOCATE GENERAL :—I do not see that it is necessary to put them in at all.

The Honourable Sir RAYMOND WEST :—This clause was only inserted to satisfy the Honourable Mr. Sayani, and I do not think it would do any harm if amended as I propose.

The Honourable the ADVOCATE GENERAL :—I do not think it advisable to introduce the words.

The Honourable Sir RAYMOND WEST :—Well, if Mr. Sayani has no objection, I think the best way would be to strike out the clause.

The Honourable Mr. SAYANI :—I have no objection.

The clause was struck out; and the Honourable Sir Raymond West's amendment was consequently withdrawn.

The Honourable Sir RAYMOND WEST :—I propose to add "or of the Municipal Taxation Act, 1881" to Section 73, in case this Act at any time came in the way of that Act.

The amendment was carried.

The Honourable Sir RAYMOND WEST:—In Schedule B, I wish to substitute "Form of certificate for Police officer below the grade of Inspector" for "Form of Police officer's certificate."

The amendment was carried.

The Honourable Sir RAYMOND WEST:—In Sections 6, 13, 24, 28 and 39 I wish to substitute "Government" for "the Governor in Council" and also elsewhere in certain places where it occurs. It is a condensed expression, and for three words we need only use one.

The Honourable the ADVOCATE GENERAL:—The honourable member will see that this would answer in some places, but would not in others.

The Honourable Sir RAYMOND WEST:—The matter is of no consequence. The words "the Governor in Council" are exactly equivalent to "Government".

The amendment was carried.

THE MATADARS' BILL.

Mr. Moore moves for leave to introduce the Bill.

The Honourable Mr. MOORE moved for leave to introduce Bill No. 2 of 1890, a Bill to amend the Matadars' Act (Bombay VI of 1887). Leave was granted for the introduction of the Bill.

His Excellency the PRESIDENT then adjourned the Council to Wednesday the 9th April 1890.

By order of His Excellency the Right Honourable the Governor in Council,

A. C. LOGAN,

Secretary to the Council of His Excellency the Governor of Bombay for making Laws and Regulations.

Bombay, 3rd April 1890.

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 9th April 1890, at 3 P.M.

PRESENT.

His Excellency the Right Honourable LORD REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding.*

The Honourable Sir R. WEST, K.C.I.E.
The Honourable J. G. MOORE.
The Honourable the ADVOCATE GENERAL.
The Honourable RAHIMTULA MAHAMED SAYANI, M.A., LL.B.
The Honourable NAVROJI NASARVANJI WADIA, C.I.E.
The Honourable T. D. LITTLE, M.I.C.E.
The Honourable A. F. BEAUFORT.
The Honourable Ráo Báhádur MAHADEO GOVIND RANADE, M.A., LL.B., C.I.E.

THE DISTRICT POLICE BILL.

Consideration of the Bill in detail resumed.

The Honourable Sir RAYMOND WEST:—It will be in the recollection of honourable members that it was resolved to substitute the word "Government" for the words "the Governor in Council" wherever they occurred, and in some instances it would be necessary to substitute "it" or "its" for "he", "him" or "his". There is therefore a slight modification which I will ask your Excellency's permission to introduce in Section 28, and that is to substitute "the Governor in Council" for "Government", because there power is also given to "any officer authorized", &c., and the word "he" would have to be used. Therefore I propose to make an exception to the amendment by allowing the words "the Governor in Council" to stand there.

The amendment was carried.

The Honourable Sir RAYMOND WEST:—In Section 3, line 11, I propose to insert the article "a" before the words "Deputy Inspector-General, &c.," as it improves the grammar.

The amendment was carried.

The Honourable Sir RAYMOND WEST:—In Section 5 (2), line 14, I propose to omit the word "the" before "Government", in accordance with the usual practice throughout this Bill.

The amendment was carried.

The Honourable Sir RAYMOND WEST:—In Section 5 (3), line 22, I propose to insert the words "and Deputy Inspector-General" between the words "General" and "may". No objection will be taken to the Government having power to dismiss this officer even by those who are opposed to his appointment.

The amendment was carried.

The Honourable Sir RAYMOND WEST:—In Section 7, line 12, I propose to omit the words "the Local" before "Government". The word must have slipped in by mistake.

The amendment was carried.

The Honourable Sir RAYMOND WEST :—In Section 26 (*e*), line 22, I propose to insert the words "and Section 17" between the words "Section 13, clause (1)" and "the". The utility of this will be evident. Section 26 relates to the powers and duties of the Inspector-General, and it is obvious, considering the position we have assigned to the Commissioner in the body of this Act, that what the Inspector-General does ought to be subject to the authority of the Commissioner which is set forth in Section 17, as it ought to be subject to the authority of the Magistrate of the District. Therefore to preserve harmony I propose this amendment. Otherwise it might be that the Inspector-General will give an order with which the Magistrate will interfere, and the Commissioner in his turn will interfere with the order of the District Magistrate. It would be very much better to give the Commissioner the direct power.

The amendment was carried.

The Honourable Sir RAYMOND WEST :—In Section 31 (1), line 12, I propose to omit "the" before "Government", for reasons I have already stated.

The amendment was carried.

The Honourable Sir RAYMOND WEST :— In Section 33 (1) (*a*), line 14, I propose to add the word "until" after "and", as it makes the expression a little clearer.

The amendment was carried.

The Honourable Sir RAYMOND WEST :—In Section 33 (3), line 38, I propose to insert the words "of this Act" between the words "Section 35" and "or", so that it will run "Section 35 of this Act, or".

The amendment was carried.

The Honourable Sir RAYMOND WEST :—In Section 35 I propose to insert the following before Sub-section (1) :—"(1) Any person who makes a false statement or uses a false document for the purpose of obtaining employment, or release from employment, as a police officer, or". The reason for this I stated at the last meeting, and it was that a case of misrepresentation by a man seeking employment in the police in the North-West Provinces having come up for consideration by the Law officers of the Government of India, they both agreed that he was not responsible, under Section 192 of the Indian Penal Code, for making that false statement. Now I am not bound to sustain that view of the law; in fact, I may say that I believe it is opposed to a ruling of my own when I was Judge in the High Court here. But as a matter of prudence it seems better, when this view has been taken by the Law advisers of the Government of India, to put the clause in; and as the matter was sent to us it is more respectful to put in that clause. The Government of India, like all persons in authority, looks to have its suggestions followed. In any case its insertion will do no harm.

The Honourable the ADVOCATE GENERAL :—The honourable mover's decision has been followed by a similar one lately, and so there is no doubt as to the law on this point; but if it will please the Government of India to have the words inserted I have no objection to them.

The amendment was agreed to.

The Honourable Sir RAYMOND WEST :—In Section 35, lines 25 and 26, I propose to omit the words "the amount of" after "to", so that we may follow the phraseology of the Penal Code.

The amendment was agreed to.

The Honourable Sir RAYMOND WEST:—In Section 40 I have to ask your Excellency's permission to introduce a slight modification, and I believe the view of your Excellency's Council is universally in favour of what I have to propose, or at any rate the honourable members consent to it. I have had a long conversation with the Honourable Mr. Ranade and several other honourable members of Council, and I am satisfied some objections which it was proposed to make may be met by it. It has been thought desirable that so extensive a power as that given under Section 40 ought rather to be committed to a Magistrate of the first class only rather than that it should be allowed to fall into the hands of one of lower rank, and at the same time that what the Magistrate of the district should have control over ought to be more definitely stated. Therefore with your Excellency's permission I propose to introduce after the word "absence" in line 2 of Section 40 the words "and subject to his order", and after the word "Magistrate" in line 3 to substitute for the words, "chief in rank of those" the words "of the First Class" and in clause 2, line 34, to substitute for "equal rank" the words "the First Class."

I propose this change to meet the views of a considerable number of gentlemen whose views have already been expressed. That being the case, I will ask your Excellency to make that complete by adding a third clause in these words:—"An order made under this section by a Subordinate Magistrate shall be forthwith communicated to the Magistrate of the district who shall thereupon confirm, cancel, or modify the same as shall seem expedient."

The amendment was carried.

The Honourable Sir RAYMOND WEST moved:—In Section 45 (2), line 22, to substitute "a known" for "the." The idea in framing the clause as it stands was to preserve dogs where the owners were known and likely to come forward and claim them; but it has been strongly placed before us lately that there are a number of people in some parts of the country who would put false collars upon them in order to give the dogs an additional chance of life, or at any rate keep them from being destroyed so soon, and in order to worry the police who are engaged in the particular duty of destroying ownerless dogs at large. It seems desirable that while dogs should be preserved, if there is any reasonable chance of the owner coming forward, the police should not be sent hunting over the country for some imaginary owner of dogs which are perhaps absolutely ownerless. Then at the end of the same clause I propose to add "for which he shall be answerable as for an arrear of land revenue" so that if there is a real owner he may be sued in Court for the expense of keeping the dog for some days. If that is accepted it follows as a corollary to insert in Section 45 (3), line 34 "apparently genuine" between "the" and "address."

The Honourable the ADVOCATE GENERAL:—No; I do not see how it can follow as a corollary. It would be rather awkward to sue a man for the expense after his dog has been destroyed.

The Honourable Sir RAYMOND WEST:—It would not be unfair seeing that the dog had been kept for the owner's sake. I do not suppose the question would arise very often, and it is very desirable to put a check on this practice of putting collars with false names and addresses on dogs. Now if we make the owner liable we can get at the person who puts on a collar bearing a false name through the criminal law.

The Honourable the ADVOCATE GENERAL :—But he will probably put an imaginary name and address, if he should adopt that device at all. If you want to introduce a clause, you will have to put it as a substantive clause.

The Honourable Sir RAYMOND WEST :—The evil suggested has already been provided for. But you see a large number of dogs might be collected, and considerable expense incurred by the public through owners not coming forward to claim them. It is surely desirable to prevent that.

The Honourable the ADVOCATE GENERAL :—It would rather make the Act unpopular to destroy a dog, and then ask people to pay the expenses of its keep. It is not done in England, I know.

The Honourable Sir RAYMOND WEST :—It is made at the suggestion of the district officers who have experience in these matters.

The Honourable the ADVOCATE GENERAL :—Well, I think it would make the Act very harsh.

The Honourable Mr. LITTLE :—At present I know of 18,000 dogs having been destroyed in one district in one year.

The Honourable Sir RAYMOND WEST :—The effect would be to make the owners come forward and claim their dogs. Having in any case to pay they would take better care of them.

The Honourable the ADVOCATE GENERAL :—I think you want a substantive clause for it, or the Court will not accept it in that way.

The Honourable Sir RAYMOND WEST :—I will alter the wording to meet the suggestion of the Advocate General and make it another clause. Put it in this way :—

"(3.) For the expenses incurred under the preceding sub-sections the owner of the dog shall be answerable as for an arrear of land revenue."

The amendments to Section 45 as thus modified were carried.

The Honourable Sir RAYMOND WEST :—In Section 50, line 14, insert the words "or order" between "notification" and "as".

The amendment was agreed to.

The Honourable Sir RAYMOND WEST :—"In Section 55, (*j*), line 103, insert the word "or" between "nature" and "causes."

The amendment was agreed to.

The Honourable the ADVOCATE GENERAL proposed the following amendment :—
For Section 55 (*l*), substitute the following :

"(*l*) bathes or washes in or by the side of a public well, tank or reservoir, not set apart for such purpose by order of the Magistrate of the district or of some other person having lawful authority in that behalf; or in or by the side of any pond, pool, aqueduct, part of a river, stream, nála or other source or means of water-supply in which such bathing or washing is forbidden by order of the Magistrate of the district, or other person having lawful authority in that behalf." This is the matter I mentioned the other day. I gave my reasons then for the clause. I think the onus lies on those who desire to forbid bathing in the places mentioned in the latter clause; therefore I move the amendment.

The Honourable Sir RAYMOND WEST :—I have no objection to make. It is much the same, and it may be better to put it in this shape than the other.

The amendment was carried.

The Honourable Sir RAYMOND WEST proposed the following amendments:—

In Section 55 (*pp*), line 168, to insert "the" between "disturbs" and "public."

In Section 71 A, line 8, to insert the word "*Bombay*" before the words "*Government Gazette*".

Both amendments were carried.

Sir Raymond West moves the third reading of the Bill.

The Honourable Sir RAYMOND WEST:—These, your Excellency, are the only amendments I have to propose, and I will now recommend the Bill to the honourable members for third reading.

No Bill has ever passed through the Council which has been more carefully handled by the Members of Council or in the Select Committee. I have gone over the principles of the Bill, and compared it with former Acts, and stated the reasons which made it inevitable for Government, so to say, to bring this measure forward, so that I need not dwell on that part of the subject on the present occasion. The Bill, as it stands now, will be very effective in the maintenance of public peace and good order by the police authorities and by all connected with the police force in this Presidency. It is impossible to say that in this Act, any more than any other, which is the result of joint deliberation, there are not some matters which might have been resolved, or better stated. Even of so great and successful a work as the Constitution of the United States, Hamilton, who was almost its philosophic father, had to say: "Wherever in any measure the results of deliberations and expressions of different views are given, these results must represent the prejudices and errors of some of those persons, or perhaps of all of them, as well as represent their wisdom and sagacity." All that we can hope to do is to strike a fair balance between the conflicting opinions or claims, and here we may hope that the errors and prejudices of the Government have been corrected by the wisdom and good sense of its frank counsellors, and that now finally it is in a shape in which, again referring to the American Constitution, we may say the main and leading principles of it are fairly and firmly established, while as to details its sections possess the requisite amount of flexibility, so we may look forward to the Bill working beneficially and effectively. The very few gentlemen whose opinions have been unfavourable to the Bill, will, I hope, when it becomes an Act, take it as a part of the legislatively embodied interests of the Presidency, and use their very best endeavours to make it successful instead of the failure they have predicted. The manner in which an Act of this kind is worked is of immense importance, and the Government will certainly do its best, and devote its best attention to make it work effectively, and have it carried out with perfect harmony amongst the different officers concerned in the working of it.

It will, at any rate, have the effect of enabling the servants of Government to falsify the reports of evil purposes which have had a disturbing effect though they may have been made in perfect sincerity. I myself believe that the Act with the modifications it has received will have the effect in the management of the police, of making the magistrate of the district more completely responsible for the police in his district, and that it will also increase his power very largely. By a very greatly increased power of making local rules the magistrate of a district will have more scope in the preservation of public order and decency in the district under his charge. There may be some objections taken to certain points in the police regulations, that they place the magistrate of the district in a position of imposing too many restrictions, and that the freedom of action of the people

will not be sufficiently regarded and respected. With respect to that objection I have to say the magistrate of the district will be subject to the control of the High Court, for in the rules the important word "reasonable" has been introduced, and if the magistrate does anything palpably violent, the Court will pronounce an order that it is absolutely unreasonable. Again, he is subject to the Commissioners under Section 13 of the Bill; and, thirdly, there is the control of the Government of Bombay to be taken into consideration; indeed it is only in rare instances we may expect differences to be referred to Government, but when such cases do arise we may expect them to be justly and considerately disposed of by the members of Government, for they are always men of long experience who occupy elevated positions which enable them to have a somewhat broad and philosophical idea of the questions, which may arise as to the liberty of the people and the order to be maintained. Having that view Government never could allow the magistrate of the district to run riot in issuing orders which unfairly interfere with the freedom of the people. As civilization advances the sensibilities of the people grow finer, and there will be a spontaneous activity amongst them in doing all they can to further each other's happiness as dependent on such other's acts and forbearances. But, at the same time, we know that especially in a country where the conditions of life and of civilization are so unequal, when there are many who as others have risen have refused to follow, we must look to it that they do not drag all down to their own low level, and therefore it is necessary there should be a coercive force in order that they may be brought up to the general level of civilization and refinement. This is the object of the measure in the provisions of which I am speaking. All the matters connected with it will come under the careful cognisance of Government, who having that duty to perform and a sense of that duty, it is not likely they will fail to check any operation that does not follow a wise and judicious course. I am sure that, considering the principles upon which this Bill is based, the magistrate's authority will be used with very great benefit to society at large, and in the course of years a distinct step forward in civilization will be the result. Amongst the indications of a careful regard to the people's comfort to which I have made reference, there is one other point I may mention, and that is the great care which has been taken in dealing with the abuse of power on the part of police officers. Honourable gentlemen will have observed, in the course of the reading of the Bill before Council, that any aberration from duty, specially any purposed aberration from duty on the part of an officer or constable, is pretty severely punishable under the Act. There is one error which the police fall into at times; that is the undue detention of prisoners, and that has been provided for by a penalty. The constable is prevented from indulging in harshness and encouraged in mildness and forbearance. It is provided he must always be gentle to the persons under his custody, and provide them with proper shelter when necessary. It has been suggested we should provide them with suits of clothes when found necessary. Supposing the honourable member who made that proposal to have been serious, I may seriously answer that we have not yet reached the point of progress at which such an encouragement to petty crime would be innocuous. But what could properly be done to alleviate the great discomfort of police custody has been done. I think I can congratulate his Excellency on this, the last occasion upon which he will preside at this Council on his having presided at the passing of this well-balanced Bill. I believe he will have reason to congratulate himself in the years to come on having passed this important measure, and he will see, when he turns his eyes to India—as I have no doubt he often will—from time to time a general progress and improvement in the administration of this most

difficult subject, the application of force to the maintenance of order, and the advancement by mild and regulated governmental action of good manners and civilization. I beg leave to recommend the third reading of this Bill.

The Honourable Mr. LITTLE :—For the reasons I have already mentioned I propose to vote against the Bill.

The Honourable Ráo Bahádur RANADE said :—While I accept the assurance given by the honourable mover that, as far as possible, the apparently harsh provisions of the Bill will be modified by the rules which Government is empowered to make, I think that this feature of the Bill constitutes its weakest points. The necessity of enforcing caution and moderation in the enforcement of the law becomes thus at this stage a manifest duty, seeing that the success of the Bill will depend on the spirit in which these rules are made and enforced. Government has, no doubt, the best intentions, and when any matter is of sufficient importance to come up before Government, the case will, no doubt, be dealt with in a very lenient manner; but the worst of the thing is that there are many occasions of interference by district officials which do not and cannot come up to Government, and no body of rules can possibly provide for all conceivable contingencies. Although therefore I vote for the third reading of the Bill and accept the general description of it given by the honourable mover, yet I cannot but feel some hesitation, not as regards the administrative difficulty, for I think that the different officers will loyally do all they can to make the new Police Act a success, when once it becomes law, but I am most apprehensive about the latter part of the Bill commencing with Section 37. Sections 37, 40, 40 A, B and 43 especially relate to matters of a complicated and delicate character, and going by the letter of the Act, without having regard to the spirit, they seem to interfere needlessly and in great detail with many cherished institutions and inherited prejudices of the people of the country. The people in many parts of the country have peculiar prejudices and customs, and these require to be gently dealt with. If in respect of the enforcement of these sections, a young or inexperienced magistrate overrode the spirit of the law, and acted strictly according to the letter, he would without doubt give serious offence and create much uneasiness. For these reasons, although I vote for the Bill, I do so with a certain amount of misgiving. I do not deem it necessary to refer here to any particular regulations; but there are some rules in respect of which in times of difficulty people will have to depend entirely on the discretionary interpretation given to them by the magistrate. For instance some of those provisions relating to the disposal of corpses, regulation of assemblies and meetings, celebrations on festive days, &c., which trench perilously near interference with religious customs.

The Honourable Sir RAYMOND WEST :—I will draw the honourable member's attention to the fact that these rules are not to be administered "save subject to reasonable regulations".

The Honourable Ráo Bahádur RANADE :—But the wisest rules framed by Government will not cover all the possible manifold applications of the sections, and Government interference and the relief afforded by the High Court will not and cannot in the nature of things help matters in time before the mischief takes place. That is what I apprehend. The great difficulty is that, in a Government like this, the District authorities are not always in full touch and sympathy with the habits of the people whom they are called upon to govern. There is a chance of a conflict and of misunder-

standing, and when that takes place wise rules might help matters to some extent, but Government cannot always ensure that the spirit of charity and leniency which animates it will also be the spirit which will guide its District officers in giving effect to the sections. I do not want to re-open questions which are settled to some extent, but Government should make such rules as will guarantee that no harm is done and that the spirit which animates it shall also be the spirit of the officers entrusted with the duty of carrying out the rules.

His Excellency the PRESIDENT:—I am sorry that the honourable member entertains some apprehension with regard to the spirit in which this Act will be carried out. As far as my recollection goes, whenever a complaint has been made with regard to the conduct of an officer wounding religious or national convictions or feelings, or even prejudices, Government have never hesitated to administer a stern rebuke, because such conduct would be in direct contravention of the principles laid down in the Queen's Proclamation. On this subject there can be no difference of opinion, because the rules which bind Government are perfectly clear, and there is not an officer in the service unacquainted with these constitutional safeguards. Any infringement of these fundamental precepts would at once be visited with the severe displeasure of Government. I do not wish of course to refer to the very rare instances which have occurred of such misbehaviour, and if there have been any not brought to the notice of Government, neither the law nor the administration are to blame, but the individuals who failed to call the attention of Government to these facts of the case. But I go a step further with regard to the general policy of this Bill. It commends itself to me because it makes additional provision and gives additional guarantees against the arbitrary proceedings of officials exercising police functions, as my honourable colleague has already pointed out. Before the Bill is read a third time I wish to state that I am convinced that it secures the possibility of complete harmony between the various officers who will carry it out. I say possibility, because the best laws can be defeated in their benign operation by injudicious executive Acts. The legitimate authority and influence of the Commissioners remain absolutely intact. The Bill will increase the efficiency of the police. I do not wish to give any encouragement to this apprehension which exists in some quarters that our police are absolutely inefficient, but I am convinced that the stricter supervision introduced by this Bill will be most useful. I may fairly congratulate the honourable member who has shown such complete mastery of the subject, and who has had the onerous charge of the Bill. The Bill has been subjected to the searching criticism of many experts, and it is due to the conciliatory spirit of the honourable mover that we have reached this stage. It will be another link in the chain of distinguished services rendered to the cause of law and order in this presidency by the Honourable Sir Raymond West. As this is the last time that I shall have the honour of speaking in this Council, I wish to express the feelings of personal gratitude which I cannot but entertain towards the members, past and present, of this Council for the unvarying considerateness which I have always received at their hands, whatever may have been the differences of opinion. This Council will ere long have its sphere of usefulness widened, but if the same dignified methods of debate are observed which have always been a leading feature of this Council, its decisions will continue to command the general respect which they have hitherto deserved and obtained.

Bill read a third time and passed.

The motion to read the Bill a third time was then put to the vote and carried, and the Bill was read a third time and passed.

THE MATADARS' BILL.

Mr. Moore moves the first reading of the Bill.

The Honourable Mr. MOORE said:—Your Excellency, in introducing this Bill I beg leave to remark that it has been introduced in order to correct a palpable defect in the Matádárs' Act (Bombay), No. VI of 1887.

The first amendment relates to Section 6 which runs thus :—.

"In every village in which there are two or more distinct Matádár families, separately recognized in the Collector's records, a right, to hold the office of Pátil, shall ordinarily be deemed to appertain to each of the said families:

"Provided that it shall be competent to the Governor in Council to declare if, upon consideration of the past history of the tenure of the office in any village, and of the circumstances, so far as known, under which the village was founded, it shall appear to him equitable so to do that the right to the Pátil's office in such village appertains, exclusively, to *one* Matádár family, and every such declaration shall be conclusive evidence of the exclusive right thereby affirmed."

The necessity for this amendment was first brought to notice by the Collector of Kaira, who asked whether, in all cases, in which the right to the Pátil's office is not found to appertain, exclusively, to one family, rotation must ordinarily be extended to all the Matádár families. The Commissioner, N. D., in forwarding the Collector's letter, expressed his opinion that if Government have the power to do justice to one family, the same power should apply to the case of more families than one, and that the proviso to Section 6 should be interpreted in that broad sense, but, still, he doubted whether Government could legally make the declaration contemplated by the proviso in favour of more families than one.

The view taken by the Commissioner, as regards the liberal interpretation of the proviso, appears to be in conformity with what was the real intention of the legislature. The word "exclusively" may be taken to mean "to the exclusion of any other families recognized in the Collector's records", and, in drafting the Bill, it was, evidently, intended that a declaration under Section 6 might be made in favour of more than one family, to the exclusion of others recognized in the Collector's records. And this view of the matter has commended itself to Government.

The amended section runs thus:—

" * * * * * * * * * *

appertains to one, or more than one, of such families, to the exclusion of the remainder of such families, and shall vest in such order as he may thereby determine, and every such declaration shall be conclusive evidence of the rights thereby affirmed."

Now the above amendment involves a revision of Section 14 of the Act which runs thus:—

"In every village, in which the Governor in Council declares, under Section 6, that the right to the Pátil's office appertains exclusively, to *one* Matádár family, the said right shall vest in the representative Matádár of that Matádár family alone."

But, according to the Act (Section 15), in every village, in which the right to the Pátil's office appertains to more than one Matádár family, "the right to the Pátil's office shall vest in each of the Matádár families entitled thereto by rotation." And then Section 17 comes in, which provides that, on the occurrence "of any vacancy in the office of Pátil,

in any village to which Section 15 applies, the Matádárs of the village may elect some member of the Matádár family, whose turn it is to enjoy the right of office to fill the vacancy"; so, the actual officiator is, no longer, the representative member of the family whose turn to serve has arrived, but *any* member of the family who may be elected by the whole body of Matádárs (even if he be one of those who have no right to supply a Pátil in turn) may be appointed to serve. The amendment of Section 14 has, therefore, been introduced in order to limit the right to office, in each recognized Matádár family, *to the representative member*. And the amended Section 14 runs thus :—

"In every village, in which the Governor in Council makes a declaration under Section 6, the right to the office of Pátil shall vest, to the exclusion of all other Matádárs, in the representative of each of the families whose rights are thereby declared, in such order as may therein be determined."

With regard to the rotation of service it is clear that it cannot be determined under Section 16 of the Act, which applies only to villages in which all the families have equal rights, and this section would give the excluded families a voice in settling the order; it has, therefore, been decided that the order of rotation shall be determined at the same time as the rights to the office. This, it is thought, would be more convenient, in practice as the past history of the tenure would be before Government at the time.

With these remarks I place the Bill before the Council in order that it may be read the first time.

Bill read a first time.

The Bill was read a first time.

His Excellency the PRESIDENT :—I suppose no member has any objection to the suspension of the standing orders in order that the Bill may be read a second and third time.

Standing orders suspended, and

Bill read a second and third time and passed.

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

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Right Honourable the Governor in Council,

A. C. LOGAN,
Secretary to the Council of His Excellency the Governor
of Bombay for making Laws and Regulations.

Bombay, 9th April 1890.

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 1st October 1890, at 3 P.M.

PRESENT:

His Excellency the Right Honourable Lord HARRIS, G.C.I.E., Governor of Bombay, *Presiding.*

The Honourable Sir R. WEST, K.C.I.E.

The Honourable Mr. J. G. MOORE.

The Honourable Mr. RAHIMTULA MAHAMED SAYANI, M.A., LL.B.

The Honourable Mr. NAVROJI NASARVANJI WADIA, C.I.E.

The Honourable Ráo Bahádur MAHADEO GOVIND RANADE, M.A., LL.B., C.I.E.

The Honourable Mr. JAVERILAL UMIASHANKAR YAJNIK.

The Honourable Mr. T. H. STEWART.

The Honourable Mr. L. R. W. FORREST.

His Excellency the PRESIDENT in taking his seat said :—In taking the chair, on the first occasion, at a meeting of the Council, I merely express the hope that my honourable colleagues will assist me in seeing that the deliberations are conducted in a proper and business-like manner.

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

(1) Paragraph 1 of the letter from the Government of India, Legislative Department, No. 738, dated the 28th April 1890, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bombay Village Sanitation Bill.

(2) Letter from the Government of India, Legislative Department, No. 792, dated the 9th May 1890, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend the Prevention of Gambling Act (Bombay IV of 1887).

(3) Letter from the Government of India, Legislative Department, No. 914, dated the 14th June 1890, returning with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to consolidate and amend the law relating to Salt and the Salt-revenue throughout the Presidency of Bombay.

(4) Letter from the Government of India, Legislative Department, No. 1208, dated the 30th July 1890, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend the Matádárs Act (Bombay VI of 1887).

(5) Letter from the Government of India, Legislative Department, No. 1328, dated the 16th August 1890, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend the Law for the Regulation of the District Police in the Presidency of Bombay.

(6) Report of the Select Committee appointed to consider and report on the Bombay Municipal Servants Bill No. of 1 of 1890.

THE BOMBAY MUNICIPAL SERVANTS BILL.

The Honourable Sir RAYMOND WEST, in moving the second reading of the Bill, said:—

Sir Raymond West moves the second reading of Bill No. 1 of 1890.

Your Excellency,—Since this Bill was before the Council on the occasion of the first reading, it has been submitted to the Corporation of Bombay, who are more immediately and [illegible] interested in it than any other person in India, and it has also been before the public at large for a considerable time, and whatever may have been said of other Acts it cannot possibly be said of this Bill that it has been hurriedly rushed through, or that there has not been ample time to consider it in all its possible relations and bearings on society and on all individuals concerned. We have received and weighed the suggestions of various kinds which have come before us with regard to the principle and to the details of the Bill. Some of those were considered in the Select Committee, and some of the phases of that independent opinion were set forth in the report of the Select Committee, and our honourable colleague, Mr. Javerilal Yajnik, has, I believe, given notice of one or two amendments of clauses which, as they stand, he is unwilling to accept. There has been a consensus of opinion against him so far as the Select Committee is concerned. Of course honourable members have a perfect right to maintain not only in the Select Committee, but here as well, their views, and repeat their reasons here for the opinions they hold on the various points in which they differ from the principles of this Bill but apart from the points I have referred to and on consideration of such matters as have come to the notice of Government Mr. Javerilal is in favour generally of the Bill. As I dwelt on the main principles of the Bill on the occasion of its introduction, I will not discuss them at length on the present occasion. In a great Municipality like Bombay, or even like Poona, a set of rules for the benefit of the public, who are embraced within the Municipality, have to be laid down, and the public have to submit to the restrictions laid down, which they would not have to submit to were they as savages roaming in the fields or in the primeval forest where as no one else would be concerned they could do as they liked. These same restrictions, which people have to submit to, are indeed the price paid for civilization, for the comforts of orderly social existence and the advantaes of English life,—they have to submit to an amount of discipline which would be out of place in villages or in small hamlets. This is really the basis on which the Bill now before the Council rests; the general good of the community, which is the ground of all legislation, and is a sufficient justification for any necessary individual inconvenience. The Bill has been reviewed in the Select Committee, I think, most carefully on the basis of such principles as I have stated, and the members of the Select Committee, who are still Members of Council, will bear in mind that from such gentlemen as Mr. Latham and Mr. Beaufort, it underwent a most severe and searching criticism, and every point was well considered before the decision of the Select Committee was arrived at. The report now placed before the Council states what the views of the Committee were. I think it better, therefore, to rely on that general consensus of opinion than to go any further into the influences which determined the changes which have been made, for it will be observed, they very slightly affect the principles of the Bill. In clause (*c*) of section 3, it will be found that the words, "Who abets an offence under clause (*a*) or clause (*b*) shall forfeit his pay accruing due under a current term of service, and arrears of pay due for a term of not more than one month," have been introduced by the Select Committee. Under section 40 of the Indian Penal Code there is a certain punishment attached to abetment, and therefore in cases of

strike this clause is not absolutely necessary, a penalty against abetment of an offence being already provided, but its introduction, it was thought, would be a special convenience, making their responsibilites clear to subordinate servants of the Corporation of Bombay, into whose hands the Act, when it is passed, will be put, as a guide to them, and I would point out to the honourable members who have amendments to propose on this clause to consider whether the amendments will fit in with the general scheme of the Indian Penal Code. Another point I may refer to is that some communications which have reached us to the effect that the provisions of the Act should not only affect servants of the Municipality, but also the servants of contractors, who have taken contracts for work to the Municipality. It has been pointed out that the Gas Company employs gas lighters who, by striking, may cause difficulties and inconveniences which this Bill is intended to avoid. But on the other hand, the Corporation has nothing to gain and no money to make, by imposing undue restrictions on their servants or unfair terms upon them. But you cannot say the same of the contractor. If the contractor can take one anna a day more out of his servants, and put it into his own pocket he will so far be a gainer. He will have a private interest to serve which may not be identical with the public advantage and cannot therefore properly be given means of pressure which will be safely entrusted to a public body under no temptation to abuse them. The principles implied in the demand or request for rules I have received from the Municipal Commissioner and from the Solicitors of the Gas Company in Bombay, would, if carried out, inevitably lead to communism, because if we regulated the duties of employés to their masters, we could not do that without saying what were the duties of masters to their servants; and when we reach that length, we positively enter the field of communism. The inconveniences which the people in such a large city as Bombay are liable to suffer, justify this particular legislation being brought before the Council; but the primary difficulties in connection with it are such as may arise at times even in other large municipalities. If they do this we think it would be justifiable for Government at the instance of the Municipality to step in and say such a regulation may very well be applied to 150,000 people as well as to 800,000 people, because the necessity is as obvious in one case as the other. With such safeguards as have been provided we think the Bill in its whole extent, after such careful consideration, may fairly approve itself to the reception of the Council. I therefore move the second reading of the Bill.

The Honourable Mr. JAVERILAL UMIASHANKAR YAJNIK said:—I shall briefly state the circumstances under which this Bill has been introduced into the Council. In July last year the Health Department of the Bombay Municipality was threatened with strikes by the scavengers and *bigáries* in its service. Mr. E. C. K. Ollivant was then the Municipal Commissioner of Bombay. It appears that in reporting on the subject, he made an earnest appeal to Government for legal powers to deal more severely with strikes in the future. It was urged that the existing Municipal Act of 1888 was powerless to deal with combinations on the part of the workpeople. The old Act of 1872 did give power to the Corporation to make bye-laws "for the regular, efficient, and faithful performance of their several duties by all officers and servants of the Corporation subordinate to the Commissioner." Bye-law 9 was framed under that Act for the purpose of regulating the resignation, withdrawal from duty, and leave of such servants. That bye-law became extinct when the new Municipal Act of 1888 came into force. As, however, the new Act gave no power to the Corporation to make bye-laws, while it imposed heavy responsibilities on the Corporation

in respect of the surface cleaning of the city and of the removal of the city's nightsoil through the agency of scavengers and *halálkhores*, some provision for the enforcement of discipline among these municipal servants became necessary. The obvious course under the circumstance was the revival of the old bye-laws. One would have thought that the recommendation of the Commissioner should have taken the form of a proposal for a Bill limiting legislation to empowering the Corporation to frame bye-laws on the model of the old bye-laws which had stood the test of seventeen years, and providing penalties for combinations and abetments thereof. Indeed, when the Bill, which was forwarded for the opinion of the Municipal Corporation of Bombay, came up before that body for the adoption of the report of the Committee to which it was referred, an amendment in this very form was moved by one of the Councillors, my friend, Dr. Bhalchandra K. Bhatawadekar, in the absence of my other learned friend, Mr. Pherozeshah M. Mehta, the original proposer of the amendment. Mr. Mehta was one of the members of the Committee. In the minute of dissent recorded by him, and which was appended to the Committee's report, Mr. Pherozeshah Mehta discussed the merits of the Bill in detail, and set out his views with his usual clearness, forensic ability, and wide and intimate knowledge of the municipal affairs of Bombay. In recommending a resort to severer penalties for breaches of discipline hitherto liable to civil damages, Mr. Ollivant, it seems to me, put an unbounded faith in the virtue or efficacy of enactments, in a belief in what Herbert Spencer calls, "the unexpressed postulate that every evil in a society admits of cure; and that the cure is within the reach of the law," forgetting, at the same time that the remedy not unfrequently proves worse than the disease. A harsh law defeats its own object. In a special legislation of this kind it is not sufficient to keep before the mind the simple fact of the strikes and the necessity of preventing a recurrence of them. The experience gained in respect of the causes which produced the strikes and the lessons taught by them have to be correctly interpreted. It is necessary that the Council should have this phase of the question before it in considering the principle of the Bill. And here it may be asked, what are the facts connected with these strikes? In my opinion, the first and the most important fact in this connection is that last year was the second occasion on which the strikes occurred in the Health Department in the course of the past twenty-five years. The first occasion dates as far back as the 1st January, 1866. The strike then occurred among the *halálkhores*, and was due to the importation of up-country *halálkhores*; but the men soon got reconciled. In respect of the strikes of last year, it is noticeable that they were due mainly to the oppression and injustice practised upon the bigáries or scavengers in the Health Department by their immediate superiors, the mukádams. My Lord, I hold in my hand an official report on these strikes. It is dated the 17th December, 1889. It was made by Khán Bahádur M. Abdul Ali, Superintendent of the Detective Branch, to Colonel F. J. Wise, Acting Commissioner of Police, Bombay, and circulated to the members of the Corporation on the 15th May, 1890. This report is valuable as throwing a flood of light on the causes of the late strikes. Speaking of the grievances of the poor scavengers, the Superintendent remarks that "the principal grievances of the municipal *bigáries* at the time of the first strike in July, 1889, were (1) the payment of *dusturi* to the mukádams at the rate of annas 8 per male and annas 4 per female every month, and (2) the payment of one month's wages for procuring a permanent place and of a rupee per mensem for procuring a substitute's place." One of the mukádams, into whose conduct an enquiry was made by the Superintendent, admitted his guilt and, says the Superintendent, "offered under a promise

of pardon to lay bare the organised system of receiving *dusturi* and other illegal remunerations complained of, which, he said, were levied by all mukádams and shared with their respective ward clerks, sub-inspectors, and even inspectors, with one or two exceptions. I brought the fact by your order to the notice of the municipal authorities concerned, but it was not considered advisable to accept the offer under the condition" (para. 9). Why this organised system of levying *dusturi* and other illegal remunerations was not enquired into it is for Mr. Ollivant to explain. But the results of the prosecutions of certain ringleaders among the mukádams before the Presidency Magistrates left no manner of doubt on the subject. In para. 16 of the report, the Detective Police Superintendent says:—"The results of the above prosecutions have, no doubt, proved satisfactorily the correctness of the allegations of the bigáries, who have now not only exposed their superiors, but have also deprived them of their long and uninterruptedly enjoyed illegal remunerations. Thus the *bigáries* in general, and especially those who have been the cause of the exposures, have naturally made themselves irreconcilable enemies of the persons under whom they have to serve daily; such being the case, their immediate superiors, especially the mukádams, will sooner or later try every possible means in their power to unnecessarily molest and ruin their accusers and exposers." Before ending his report, the Superintendent remarks:—"In laying the above facts before you, I beg to state that, unless prompt and effective measures are adopted to protect the poor *bigáries* against their offended superiors, none of the oppressed will ever venture to come forward for the redress of his grievances, and the thing again (will) become as bad as before, and may lead to serious consequences." It does not appear that the facts elicited in course of the enquiries in the Presidency Magistrates' Courts and the experience thereby gained of the last strikes have been translated into any of the provisions of the Bill. While it is held that these workmen have in their ranks men with much power to do mischief, the fact that they are a very useful and indispensable class of work-people, and that the success of the sanitary administration of the city depends upon their cheerful and contented disposition, does not appear to have received a due measure of attention. The *Bombay Gazette*, in an admirable leading article the other day, called attention to this and other aspects of the question. Some idea, my Lord, of the very important and useful service these municipal servants do to the public in bringing about a low rate of mortality, in reducing the frequency of epidemics, and in maintaining Bombay in remarkably good health of late years, may be formed from the fact that on an average 3,974 men and women and 665 scavengering and drain carts and 158 nightsoil and cesspool carts were at work each day in 1888-89 for the collection and removal of many hundred tons of garbage or *kutchra* and nightsoil, and for the opening and cleaning of many hundred miles of covered drains. So rapidly has the city been extending of late that we, who live in the midst of the changes going on in respect of health and sanitation by the services these people perform, are scarcely able to appreciate them. No doubt the public who pay them are entitled to the performance of these services in a regular and faithful manner, but it is also due to the services they render that they should receive adequate protection from the municipal authorities against the levy of blackmail from their immediate superiors. And if, when failing to receive redress for their grievances, they abandon their work, and that, too, once in 25 years, what is it that the municipal authorities have recourse to? They consider the conduct of these men in asking protection against the levy of blackmail to be blameworthy, and ask Government to frame a law with a view to exact absolute obedience, on pain not only of forfeiture of pay and fine, but of imprisonment extending to

three months. This brings me to the principle of the Bill. Section 3 of the Bill, which embodies the principle, makes resignation, withdrawal or absence from or neglect or breach of duty or of any law or rule or order by a person which, as a municipal servant it is his duty to obey, an offence punishable by imprisonment which may extend to three months. It seems to me that this principle goes far beyond the declared object of the Bill, which is to re-enact the penalties hitherto imposed under the old bye-laws. Para. 4 of the Statement of Objects and Reasons says that "the primary object of the present Bill is not so much to introduce any new obligations as to provide by legislation the penalty hitherto imposed under municipal bye-laws". Again, in para. 9 it is stated that "it appears to be necessary to provide by legislation the protection which the repeal of the bye-laws has withdrawn." Now, the penalty hitherto imposed under the old bye-laws for breaches of discipline consisted in a forfeiture of wages and fine. The principle of the Bill, however, goes further. It makes no distinction between light and serious offences, but treats all offences, whether they consist in absence or withdrawal from duty or wilful breaches on the part of individuals, as crimes punishable by imprisonment. Thus while the lighter acts or breaches of discipline by individual workmen, which cannot endanger public health or safety, are dealt with severely in the Bill, the more serious offences of combinations or strikes which really endanger public health and safety, and to prevent which is the avowed object of the Bill, are wholly ignored or indirectly dealt with. When the Bill came up before the Select Committee, it became my duty to point out that whereas absence or withdrawal from duty and wilful neglect or breach of discipline may be punished with forfeiture of pay and fine, the punishment of imprisonment should be reserved mainly for combinations and abetments thereof. To punish mere absence from or neglect of duty with imprisonment would involve excessive hardship in a matter in which public interests are not seriously jeopardised. In the case of strikes or combinations, public interests are seriously endangered. I accordingly suggested the addition of a special clause dealing with strikes. I also suggested that where acts on the part of individual workmen were such as to endanger public safety, as in the case of abandonment of duty by a member of the Fire Brigade, such acts should be made liable, not only to forfeiture of pay and fine, but to imprisonment. In making this recommendation, regard was had to the frequency with which fires have of late broken out in Bombay, resulting in a heavy loss of property. In a recent report of one of the Fire Insurance Companies (the Prince of Wales Fire Insurance Company) the following passage occurs :—"The year under review has been a prolific one for fires, the number and extent of losses being without precedent in Bombay. The yearly average loss by fire during the last 25 years amounts to Rs. 3,28,916, while the estimated value of property destroyed and damaged by fire during the year is about Rs. 50,00,000." In short, the principle I contended for was the award of punishments according to the degree or nature of the offence. These proposals did not meet with the acceptance of the Select Committee. The proposal to insert a clause dealing with strikes was objected to, on the ground that there would be considerable difficulty in defining the word "strike", or in introducing into our legislation a law of criminal conspiracy. But the Committee agreed to go so far as to add a fresh clause (*c*) which they thought would to some extent meet the case by providing a punishment, conformable to the existing law, for the abetment of the offences created by clauses (*a*) and (*b*). It was also thought that my proposed amendments would have had the effect of completely remodelling the first part of the section by creating three distinct classes of offences, with a distinct punishment for each. With regard to the last objection, I confess

I do not see how the first part of the section would have been completely remodelled by my proposal. The three classes of offences are not created by my proposal. They already exist in the Bill, and it was only in respect of punishments for them that I proposed what seemed to me to be a more logical arrangement. As to the difficulty of giving a legal definition of "strikes", I am quite prepared to admit it. In view of that difficulty I have proposed the addition of a clause dealing with combinations for purposes which are indicated in the Bill as offences under clauses (*a*) and (*b*). As regards the introduction of a law of criminal conspiracy which would be new to our Penal Code, I admit that it is a very difficult question to deal with. I may venture, however, to say that though a law dealing with industrial conspiracy may be unknown to the Indian Penal Code, it is by no means unknown to countries where labour disputes have been far more frequent and far more serious in their results than in India. The English statute of 1875 recognises it. I find from it that breaches of contract by the employés of gas and water companies acting in combination, and resulting in failure of supplies of gas and water, are liable to the punishment of imprisonment. Section 4 of 38 and 39 Victoria, chap. 85, known as the Conspiracy and Protection of Property Act, 1875, provides that where a person employed by a municipal authority or by any company or contractor on whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall, on conviction thereof by a court of summary jurisdiction, or on indictment, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour. If, then, the object of the present Bill is to punish strikes or illegal combinations, the legislature is, I am humbly of opinion, bound to recognise the principle of the English statute; but if the recognition, in an open manner, of such a principle for industrial conspiracy would not be conformable to the provisions of the Indian Penal Code, then any attempt to punish combinations of workmen through the indirect mode of punishing individual acts is, I respectfully submit, highly objectionable. Either punish strikes by a direct and straightforward provision of law, or leave them alone, but I consider it inexpedient to inflict penalties for combinations through or in the name of individual breaches of discipline. But if a law of criminal conspiracy in the shape of strikes or illegal combinations is not conformable to the provisions of the Indian Penal Code, still less, I presume, is the ordinary neglect of duty by an individual considered a fit subject for penal legislation. On this subject nothing can be more explicit, I think, than the view taken by Lord Macaulay and the other Commissioners on the Indian Penal Code. They appear to have shown great reluctance to treat neglect of duty by a servant as a crime. In note P. on the chapter on the criminal breaches of contracts of service, the Commissioners observe:—"We agree with the great body of jurists in thinking that in general a mere breach of contract ought not to be an offence, but only to be the subject of a civil action." To the general canon thus laid down the Commissioners make some exceptions. They agree (1) that some breaches of contract are very likely to cause evil such as no damages or only very high damages can repair, and (2) that they are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. My honourable and learned friend, the mover of the Bill, will perhaps take hold of these exceptions as

justifying the principle of the Bill. He will urge that in the ranks of the municipal workmen, such as scavengers and *halálkhores* there is much power to do mischief; that this mischief would be such as no amount of damages can repair, nor are the workmen in a condition to pay any damages. For instance, the refusal on the part of the scavengers to sweep streets or clean drains, or on the part of the *halálkhores* to remove nightsoil will give rise to epidemics which no amount of damages can repair, and that such evil will be caused by men from whom there is not the remotest possibility of recovering any damages. To this my reply is that such dangers to public health and safety are likely to arise by neglect of duties on the part, not of individuals, but of combinations of them, and that neglect of duty on the part of individuals can be met without difficulty by replacing such individuals by others. The Municipality of Bombay possesses resources which are ample enough for this purpose. The Commissioners on the Indian Penal Code then discuss concrete cases involving such breaches of contract as in their opinion are fit subjects for penal legislation. The cases are those of palanquin-bearers, seamen bound to carry a vessel to a particular port, and men having the care of infants, of the sick, and of the helpless. And they say:—"We have indeed been urged to go further, and to punish as a criminal every menial servant who before the expiration of the term for which he is hired quits his employer. But it does not appear to us that in the existing state of the market for that description of labour in India good masters are much in danger of being voluntarily deserted by their menial servants, or that the loss or inconvenience occasioned by the sudden departure of a cook, a groom, a hurkaru, or khidmatgar would often be of a serious character. If the words 'scavenger,' 'halálkhore,' 'drain-cleaner,' 'fireman', are substituted for the words 'cook,' 'groom,' 'hurkaru,' or 'khidmatgar', in the above quotation, the argument would, *mutatis mutandis*, stand equally good for municipal employés. And the conclusion which the Commissioners come to is:—"We are greatly apprehensive that by making these petty breaches of contracts offences we should give, not protection to good masters, but means of oppression to bad ones." On a careful review of all these considerations, the conclusion which the Indian Law Commissioners arrived at was that "they are not prepared to punish as criminal every menial servant who quits his employer without a certain notice upon the expiration of the term for which he is hired under ordinary circumstances." So much, my Lord, for what I may call the juridical view of the principle of the Bill which seeks to inflict heavier penalties for breaches of contract hitherto liable to civil damages. Since this expression of opinion by the Indian jurists, there have been, it seems to me, only two instances or, strictly speaking, only one instance in which the legislature has thought fit to interpose its authority. By Section II of Act XIII of 1859, if a workman, after having received money in advance from a person, wilfully neglects to perform the work he has contracted to perform, he shall be tried before a Magistrate who, on being satisfied of such wilful neglect, may order him to perform such work or repay the advance received by him, and in case of refusal to comply with such order, may direct to him to be imprisoned for a period not exceeding three months. Thus no workman can pocket advances with impunity if the work is not done. The only instance in which the principle of the Bill has found application, and which has been put forward as a precedent for the present legislation, is that of the Calcutta Municipal Act. I am not, however, sufficiently well posted in the circumstances which rendered such legislation at Calcutta expedient or necessary. But, apart from the legal aspects of the Bill, there are a few practical considerations which, I think, the Council have to bear in mind. By far a large number of municipal servants in the Health Department are mahárs, bhangis,

dheds, &c. They occupy a very low *status* in Hindu society. They belong, in fact, to what are known as the Hindu outcastes. As such they are debarred from employment as domestic servants for in-door or out-door work. It is, therefore, their interest as well as their duty to remain in the service of the municipality. Whether the present legislation would have the effect of preventing strikes or not, it is hard to say, but the probable result of holding the punishment of imprisonment *in terrorem* over their heads would be, in my opinion, to cause a serious disappointment to them. They will constantly be under the fear that the law will be used as a handle for extortion and oppression by the mukádams, their immediate superiors.

If their disappointment and fear will not drive them into open strikes or combinations, it is quite possible to hold that they may drive them to leave the service of the municipality one by one, consistently with the letter of the law, for I consider that a repressive measure like this which does not discriminate between light and serious offences but holds out the same penalties for all cannot fail to be ultimately productive of more harm than good. One more remark and I have done. The scope of the Bill is not limited to Bombay. Its operation admits of being extended to any municipal district in the Bombay Presidency. Now the measure may be necessary for Bombay, though the strikes even there have occurred at the interval of a quarter of a century, but not one out of the 160 municipalities or so that are spread over the different parts of the Bombay Presidency has, to my knowledge, ever complained of any strikes having taken place amongst its workmen and have ever wanted a law. The state of the labour market in the mofussil is entirely different, want of employment for workmen or cheapness of labour being its prominent feature. I therefore fail to see that any case whatever has been made out for extending the application of this Bill to any district municipality. And now to sum up what I have said. It seems to me, my Lord, that the principle of the Bill is open to the objection that whereas the object and reason of the Bill is to re-impose the penalties under the old bye-laws, the Bill goes far beyond this object in legislating for severer penalties; that while individual acts or offences of a lighter nature not hurtful to public health or safety are proposed to be penally dealt with, acts of combinations, which are really dangerous to public health and safety, are altogether ignored, any penal provision for them being considered as not conformable to the existing law in India, or if dealt with at all, they are reached indirectly through or in the name of lighter offences; that penalties for combinations and the principle which regulate them are known to the English Statute; that if they are not conformable to the existing law in India, neither has the treatment of individual breaches of contracts of service as crimes found favour with the Indian Law Commissioners; that the only case where the principle has found application is that of the Calcutta Municipal Act; that the very useful and indispensable class of municipal servants, on whose contented and cheerful service the success of the sanitary administration of Bombay depends, deserve better at the hands of the municipal authorities in Bombay than so serious a curtailment of their freedom; that stringent legislation in their case would be no certain guarantee that the public interests of health and safety will be safeguarded, but that, on the contrary, it is just possible to hold that it may result in consequences far more serious than those contemplated by the municipal authorities from the disappointment and heart-burning which the Bill may create, and, lastly, that no case has been made out for extending the application of the measure to any municipal district in the Bombay Presidency.

The Honourable Ráo Bahádur MAHADEO GOVIND RANADE said:—My friend, the Hon'ble Mr. Javerilal, has already anticipated much of what I had intended to say, and I do not think it right to take up the time of the Council by going over again the points on which he has dwelt at full length. He has referred to the Bill chiefly in so far as it seeks to extend the scope of the old byelaw, which worked satisfactorily in Bombay for many years past; but I have my own remarks to make on what may be properly spoken of as the application of the principle of the Bill for the first time to the mofussil municipalities. My honourable friend has dwelt on the peculiar circumstances of Bombay, and I freely admit that to a certain extent special legislation is justified in the interests of the large population of Bombay. But when the legislature seeks to remove a difficulty only felt in practice in the special circumstances of Bombay, and not likely to occur in any other part outside the Town and Island of Bombay, I think those who have some experience of mofussil life may be justified in asking your Excellency and the honourable members of this Council to consider whether, after all that has been said, a case has been made out proving the necessity of the extension of the Act to the other municipalities outside the City of Bombay. I for my part have been watching all that has been said by the honourable mover on this part of the subject and I have not been able to discover that there has been anything in the past history of these Municipalities or their present needs or in the previous legislation regarding them which can be referred to as sufficient to justify the present proposed extension of this special legislation to the other municipalities. The only city which at present has any special legislation of the kind is the town of Calcutta. I do not think there is any city outside Bombay which will require the help of this special legislation for forty or fifty years to come. I have gone carefully into the history of all special legislation seeking to regulate by criminal law the relations of master and servant for the last fifty years, and I have not been able to find a precedent in regard to such criminal legislation as is now proposed for the mofussil. I have made a note of every statute that has been passed and I find that unless very special circumstances compelled it, Government has never moved, and what is more, it has never thought it desirable to move in this matter on the lines now suggested. There is an Act (No. 1 of 1858) which regulates what is called the compulsory labour of citizens in the preservation of irrigation works, and it provides that in the case of threatened or unexpected breach of a dam, the villagers shall be obliged to give their labour freely. The special circumstances of the case justify this apparent departure from the general law. There is again the Merchant Seamens Act, No. I of 1859, the Binding of Apprentices Act, No. 19 of 1850; the Pilots' Act, No. 12 of 1859; Act 13 of 1859 for preventing fraudulent breaches of contract by workmen &c., who have received advances; Act No. 9 of 1860 for regulating disputes between employers and workmen who have engaged to serve on large works for fixed periods and the Emigration Act No. 7 of 1871. The Law Commissioners in dealing with the Indian Penal Code expressly refused to treat breaches of contract between employers and servants as offences except in three particular cases described in sections 490, 491 and 492, where the special circumstances justified a departure. It will be seen that in all these cases there were special considerations of fraud or force of advances made, which were not repaid, of engagements made and expectations created which could not justly be disappointed, of benefits conferred which needed a requital of obligations imposed upon the masters as well as the employés. These considerations can be clearly traced out in all these laws. Mere inconvenience by itself has never been accepted as a sufficient reason for taking out this relation of master

and servant from the domain of civil liability and constituting disobedience or withdrawal or absence from duty, an offence punishable with fine and imprisonment. In the present case there is no special advantage conferred, no advances made, no engagement broken, no expectations disappointed, no indication of fraud or force which requires criminal punishment. When municipal servants leave their service without any warning it is proposed to hold them criminally liable. But there is no obligation on the municipality to give two months' notice to their servants before dismissing them or see that they are not overworked or to take care of them in the same way that apprentices and seamen and emigrants are taken care of. They may dismiss them on short notice and frequently make up no deficiencies of pay to them. This seems to me to violate the principle of all previous legislation. Certainly in a large place like Bombay, where the late strike may be repeated, some coercive action may be justifiable; but for the special extension of the measure to the mofussil, no case has really been made out, and it does not seem to me to be called for. I am not opposed to the Bill so far as it refers to Bombay. Outside of Bombay there has been no occasion to exercise such powers for the last twenty years at least, and I do not believe there will be any occasion for it for fifty years to come until society advances. Out of Bombay we have at present dearth of employment and not of labour, while the reverse is the case in Bombay. There is no necessity therefore for this Council to legislate on matters which will not happen for fifty years, and this circumstance seems to me to be a sufficient reason why the Bill should not be read a second time.

The Honourable Mr. L. R. W. FORREST said:—I wish to express the satisfaction I feel at being present on this my first appearance in the Council for the discussion of a Bill brought forward in the interests of a city to which I am so greatly attached. For the twenty years that I have resided in Bombay I have, like many others of my fellow-citizens, been under the apprehension of the very calamity which this Bill is especially introduced to avoid. Though, like most Englishmen, I have not much sympathy with particular class legislation, I do not attach much weight to the fact that such a Bill has never been introduced into England, and there are certainly signs of a strong feeling setting in that the interests of the public shall not be injuriously affected by the action of its own public servants. This Bill, however, is a very powerful instrument, and for that reason I object to its being applied, at any rate for the present, to other municipalities only on the grounds that I do not consider these bodies are at present fit to administer such a powerful Act. I do not think Mr. Ranade has quite recognised the importance of a halálkhore service, for the halálkhoré service protects Bombay from disease and death. With a carefully selected committee and a superior staff of officers there is only a slight chance of power being abused. But I do not think there is the same security in the present constitution of mofussil municipalities. I also object to section 5 giving the power to the Executive Government, in consultation with the Corporation to legislate. I think the very careful manner in which this Bill has been discussed shows the advantage of all legislation passing through the Legislative Council, and I, for my part, am not willing to abrogate to the Executive Government and the Corporation the powers of this Council. I think Mr. Ranade has not sufficiently recognised the importance of a halálkhore service, or of the scarcity of the available supply of the necessary labour. If the army is to protect a country from an enemy the halálkhore service protects the city of Bombay from disease and death, and the exceptional legislation applied to the soldier is also necessary

for the halálkhore. In conclusion, I will only express a hope that the officers, who will have the powerful Bill to work under, will use it with justice, moderation, and mercy, and that there shall be no complaints that legislation was invoked to effect what might have been equally well done by judicious administration. For the leading officers of the Bombay Municipality I have no fear.

The Honourable Mr. MOORE said:—As a revenue officer, I have been in charge of many districts, and I have had to do with the working of a good many municipalities, and I quite admit what the Honourable Mr. Ranade has said that hitherto no cause has arisen for any such special legislation for mofussil municipalities. But I do not see why the principles of this Act, which admits of such an extension to mofussil municipalities, should not be allowed to stand, because the Government certainly would not apply the Act to any mofussil municipalities except on an urgent requisition. In these days of education and independent thought, what has not happened yet may happen, and with such a deficiency in the Act we should have to legislate when it was wanted. If the contingency does arise there will be some delay in legislating. Whereas, if we have this provision in the Act we can always apply it where it is wanted. No harm can possibly be done by leaving the provision in the Bill. As to what has been said about the Commissioners not being fit to carry out the provisions of the Act, of course the Government will naturally take care to see that they do not give authority to any Commissioners who are not fitted to use it.

The Honourable Mr. STEWART said he agreed with the remarks that had been made by the Honourable Mr. Moore.

His Excellency the PRESIDENT said:—I think it is only fair to myself to offer a few remarks on the Bill. I was not here when the occurrence, which caused the demand for the Bill, took place, and I was also not here when the Bill was first introduced. But, holding, as I do, very strong opinions as to the right of labour to sell itself for the best price it can, I looked very carefully into the Bill, and I found it had got through the process of consideration by the Corporation and the Select Committee. I am bound to say, therefore, that I think there are special circumstances in the City and Island of Bombay, which do warrant a drastic measure of this kind. I have looked at the schedule of the Bill, and I find that it practically refers to sanitary matters. I speak with the greatest deference to the opinions of the gentlemen who know Bombay well, but from what I have heard I am inclined to suppose that any great delay in the application of those matters might expose the city of Bombay to the gravest risk of pestilence. It seems to me that if there is such a risk as that, it is one of those exceptional cases where drastic measures should be applied. There is an exceptional aspect in this case which affects the employers of labour in this particular work in Bombay, which possibly cannot be found in the whole of England. Mr. Javerilal has referred to the men who are employed in this kind of work as being outcastes of the district. I do not know whether there is any superfluity of them in Bombay. I am alluding to the previous occasion when men had to be sent for from a long distance—from hundreds of miles and more in order to take the place of those who had struck. I am not prepared to admit that Mr. Ranade was justified in saying that there was such a superfluity of labour, or that the employer of labour here could turn to another source if his labour was suddenly withdrawn. In England there are generally men prepared to turn their hands to almost any novel work. In one of the most recent

cases, when there was a large strike in the docks, there were undoubtedly ample numbers of men willing to do the work demanded if they only dared to. The difficulty was that they were not prepared to face the odium of their fellow-workmen if they had undertaken the work. And, therefore, I think that looking at the character of the work to be done, and the risk of it in the City of Bombay if that work is not done, and allotting some little weight to the fact that there may not be a sufficient supply of that particular class of men, I think that upon all those grounds the special legislation, which is proposed in this Bill, is, on the whole, justified. Mr. Javerilal has based such objections as he intends to propose to the Bill to the origin of the demands for it, that there were causes, not on the surface, which caused the strike some little time ago, and that there was oppression and jobbery going on among the overseers. But it seems to me that if this is so, that is a subject which the Corporation should look to, and they should see that their servants are not imposed upon by those immediately over them. But I do not think that that is any reason why the health of the City of Bombay should be put to so great a peril, because the bulk of the men employed in this particular work think it too difficult for them, and strike work in order to maintain their case. Then, I think, Mr. Javerilal went on to substantiate his argument that it was preferable to legislate against strikes rather than against individuals. I am by no means certain that legislation against strikes is very successful from our experience of the attempts that have been made to prevent them, and, certainly if I may judge from the amendments which we have to discuss, I am inclined to think that, on the whole, labourers will be much better treated under the provisions of the Bill as it has come up to us from the Select Committee than they would be under the provisions of the amendments proposed by Mr. Javerilal, because it seems to me that what he proposes in those amendments would be far more drastic than they are in the Bill as it has come up from the Select Committee; and it is quite possible that the five or more persons dealt with by the amendment, might actually be prevented by the amendment from giving the two months' notice which it is intended to provide for in the Bill as it now stands. And then Ráo Bahádur Ranade has dealt with the subject of the extension of the Bill to other bodies than the Municipal Corporation of Bombay; and Mr. Forrest is inclined to hold the same opinion. Well, I think that the strongest argument that can possibly be adduced in favour of the introduction of that provision is the one which has been advanced by Ráo Bahádur Ranade himself. That gentleman thinks that fifty years will have elapsed before there is any need for special legislation. It is obvious that if such a long time is going to elapse before the provisions of the Bill are needed in the mofussil, then nobody can be hurt by them. On the other hand, if any special circumstances did arise on which it becomes necessary to apply the provisions, here are the provisions, and the power to extend them are ready to hand. It is possible on the application of a municipality and with the consent of the Government, and with the ample time which is given for a full consideration of the matter, that it may be necessary to have to extend the Act to a mofussil municipality. A notification will have to be made public, and the public will have ample time to consider it. And so, with all these safeguards, I suggest that it would be wise to introduce a provision for the enlargement of the Bill, so that it may be applied to the mofussil with those safeguards. It is not likely to be applied unless it is necessary to apply it; secondly, it requires the demand of the municipality; thirdly, it requires the consent of the Government; and fourthly, a public notification has to be given of it, and some trouble taken before it

can be applied. I submit that the Government is justified in adhering to the retention of such words as will make the Bill applicable to the mofussil.

The Honourable Sir RAYMOND WEST in reply said :—The second reading of this Bill appears not to be objected to by at any rate more than one of our Honourable members, and therefore I will not make many remarks in answer to the objections raised. Of course it is quite open to any Honourable member to discuss the points in detail as we come to each particular section. But I may be allowed to say with regard to the historical *resumé* of the Honourable Mr. Javerilal, that rightly considered it must produce quite a different impression from what it was meant to convey. When the report of its Select Committee was brought up, the Municipal Corporation strongly supported this Bill, and therefore we have the general consensus of opinion of the representative body of Bombay entirely in favour of the measure before us. No other Municipality has expressed an opinion, but as His Excellency has pointed out, this Bill, if passed, would only be extended to places where it was found necessary. In regard to the practices referred to by the Honourable Ráo Bahádur Ranade, we know the Penal Code already provides for their prevention. But as regards his objections as to the mode of dealing by penal legislation I have to observe that the line between the penal and the civil mode of dealing with injuries and misconduct is entirely arbitrary, and therefore it is a matter of discretion to determine whether you are to enforce duties by a civil or a penal sanction. In England I believe the criminal law punishes a man for giving drink in a public house at five minutes past eleven, when the public house should be shut at eleven. In the interest of the public at large, it has been found necessary to adopt legislation of that kind ; and with regard to the extension of the law of conspiracy to this country, I think if Mr. Yajnik were familiar with the English law of conspiracy, he would be the last to desire the introduction of it in the interest of his protegés. It is a law which has had to be modified again and again by special provisions on account of its bearing too harshly on the working classes. Therefore if we were to introduce this it is not the poor people of Bombay who would benefit from it. The Honourable Mr. Yajnik and Ráo Bahádur Ranade have dwelt on the exceptional character of this legislation as being something entirely without example. The answer to that is in the instances given by the Honourable members themselves. In the Calcutta Municipality an offence of the class we deal with is made penal with three months' imprisonment. This term was suggested to us by the Government of India, and out of deference to the highest authority we decided to adopt as in Calcutta, a higher penalty instead of a lower one. But of course although three months is set as the maximum, it does not mean that the maximum penalty is to be imposed in every case. The maximum penalty is not imposed except in the case of some exaggerated form of the offence, and a man subject to the maximum of three months' imprisonment may be let off with a fine of four annas as just sufficient to make the law effectual. In regard to the other case brought forward of our police who are subject to two months' imprisonment for being absent from duty, their liability does not stand alone, there is a section in the Indian Penal Code which says with reference to breach of contract :—

Breach of contract of service during a voyage or journey.

Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property for one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except

in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

The breaches of contract we have to deal with are not less mischievous and not less irremediable except by means of a penal law. The general principle of the Bill should be modified in the opinion of the Honourable members on the ground that it differs from English legislation; but English legislation entirely bears out the principles of this Bill which is now before the Council, if we limited ourselves to legislate on such principles as have been advocated by the Honourable members opposite, it certainly would not be working. English legislation affords us much to imitate and also to avoid in the spirit of recent English legislation. Supposing a gas or water difficulty arose in London, it would have been said by the Honourable members that there had never been a case of this kind in Leeds, and therefore the legislation ought to be confined to the metropolis. Leeds is excluded, and a fortnight after there is a strike in the gas-works of Leeds, the whole city is plunged in darkness and the streets rendered dangerous. I think it would be much better that you should foresee the necessity and legislate with due regard to the circumstances of the case; and there are sufficient reasons why you should anticipate difficulties of that kind. If a strike occurs amongst those classes of society with which this Bill deals it cannot be practically dealt with by suits for damages. Such a strike is a source of great danger to large communities like Bombay and Poona. It is necessary, therefore, to provide measures of this kind; and the distinction between Bombay and the mofussil has been explained by the Honourable Mr. Moore. He has had much experience of the mofussil, and I have had cases brought before me which have proved the absolute necessity of stringent legislation. But again the application of the Act is subject to certain stipulations. It cannot be extended to those new classes without first coming before the municipality. Not only have they to satisfy those representatives that an advantage is to be gained from it; but after it has been made apparent to the municipality, Government have also to consider whether it is desirable to introduce the measure; and not till Government has arrived at a clear understanding as to its necessity will it be extended. No one will place himself under the law unless he chooses. There is surely no appearance of any tyranny or tampering with freedom and liberty in this. It is better, I think, to be armed beforehand than to wait until it is too late; and I think the principle of the Bill being admitted its particular provisions are justifiable by the opinion of those most nearly concerned, viz., the representatives of the mofussil. These appear to me to be the answers to the objections which have been raised to the Bill; but the Honourable members will have an opportunity of explaining their objections on each section as the Bill is discussed in detail.

Bill read a second time.

The second reading of the Bill was then agreed to and the Bill was read a second time.

Consideration in detail of the Bombay Municipal Servants' Bill.

The detailed consideration of the Bill was next proceeded with.

At the suggestion of His Excellency the President, consideration of the title and preamble was postponed, pending consideration of the amendments affecting the body of the Bill.

The Honourable Ráo Báhádur RANADE moved:—In section 1 to omit sub-section (3). He said:—I do not think in cases of special legislation we ought to go beyond the limits

of the special purpose it is intended to serve. This Bill is admittedly a special drastic measure introduced to meet the special wants of Bombay, and I do not think we ought to go beyond this special case. Government has enough to do to provide for the wants of the day; and the necessity has not yet arisen—nor I believe will arise for the next fifty years—for the application of such an Act in any of these outside municipalities, which is not convenient or even right. It is merely expected it may be required in the mofussil, but such expectation does not justify the retention of this clause in sectioned.

The Honourable Mr. JAVERILAL :—I concur with the observations made by the Honourable Mr. Ranade. In the case of Bombay there is at least this to be said, that there have actually been strikes, and that there has been necessity of legislating for it; but I have known of no single instance of any application having been made by any municipality throughout this Presidency for a law of this kind for the purpose of putting down strikes. It is possible that circumstances may arise hereafter, as the Honourable member has said fifty years hence; and if such a case does arise it will be then the business of Government to legislate for it. Up till the present no such case has arisen, and, in the absence of any demand for legislation, I really do not see any special reason for the retention of this clause.

The Honourable Mr. FORREST :—As the Honourable Sir Raymond West has said that Government will take care that the provisions of this Bill are not extended to any municipality unless Government is satisfied that there is really a necessity for it, I will not oppose the provision enabling this to be done.

His Excellency the PRESIDENT :—We are glad to hear the Honourable Member has seen fit to change his mind, and thank him for the confidence he shows in Government.

The Honourable Mr. FORREST :—My previous remark was with regard to the members of district municipalities, and not about Government. I said I did not consider the members of district municipalities were at present fit to administer such a powerful Act.

The Honourable Mr. SAYANI :—Whenever there is legislation on any particular matter, I think it ought to be uniform, and as this Bill, if it is passed into law, cannot be extended to the mofussil until the corporation of that particular place demands it, and Government deem it fit to extend it and give notification of it for two months, there consequently cannot be any reason why this sub-clause should be omitted. Because were we to omit it now, and the necessity arises at some future period for legislation for a district municipality, there will not only be great delay, but legislation will have to be completed in haste, and the possibilities are there may be some difference between what then may be enacted, and the provisions of the Bill we are now considering. There should not be any difference in such a law in the same Presidency. Consequently I think this is an additional argument why we should have a uniformity of law, and why we should retain this sub-section.

The amendment on being put to the vote was lost.

The Honourable Mr. JAVERILAL withdrew the amendment to the same effect standing in his name. On the loss of this amendment, all the undermentioned amendments relating to the extension of the Act to Mofussil Municipalities standing in the names of the Honourable Ráo Bahádur Ranade and the Honourable Mr. Yajnik were withdrawn—

In the preamble, in lines 2 and 3, omit the words "and elsewhere".

In section 2, sub-section 2, to omit all the words after "Bombay Municipal Act, 1888," in line 12.

In section 3 to omit the words "or a Municipality" in line 5.

In clause (*a*), lines 11, 12 and 13 of the same section, to omit the words "and elsewhere of the officer authorised by the Municipality to give such permission."

In line 16 of the same clause to omit the words "or to such officer."

In lines 22, 23, of the same clause, to omit the words "or such officer".

In clause (*b*) of section 3, to omit the words "or a Municipality" in line 30.

In lines 51, 52 of the same section, to omit the words "and elsewhere by a Municipality in this behalf."

In section 4, lines 1—7, to omit the words "or officer authorized by the Municipality under section 3 (*a*)."

In lines 21, 22, of the same section, omit the words "or Municipality."

In section 5, lines 4, 5, omit the words "or of a Municipality."

In the same section, line 16, omit the words "or a Municipality."

In lines 23, 24, of the same section, omit all the words following the words "of this Act" down to the end of the clause.

In section 6, line 3, omit the words "or a Municipality."

In lines 12, 13 of the same section, omit the words "and elsewhere from the President of a Municipality."

In the Schedule, line 3, omit the words "or a Municipality."

The Honourable Sir RAYMOND WEST moved:—In section 3, line 1, insert the figure '(1)' denoting a sub-section before 'Any'."

The amendment was accepted.

The Honourable Mr. JAVERILAL then proposed, that in line 14 of the same clause the word "one" should be substituted for the word "two" before the words "month's notice." He said:—I understand that the object of providing for such a lengthened period of notice as two months is to enable the Bombay Municipality to recruit *halalkhores* from up-country, but it seems to me in these days of railways and telegrams there cannot be much difficulty in obtaining men in a month. I think the prospects of the employés would be injured if they had to wait for two months; since their employers could easily get good hands to replace them in less than two months. Both on the precedent of the Calcutta Municipality and on the ground that it is very easy to replace the men by others from up-country, I think a month's notice is sufficient. Again I should say this Bill applies equally to inspectors and others whose prospects would be seriously injured if they had to wait for two months.

The Honourable Mr. SAYANI:—I happen to know something about the late strike, and I know the Municipal Commissioner could not get men in place of those who stopped work. I think therefore from experience that two months would be necessary.

The Honourable Mr. MOORE:—I have personal knowledge of the case, and can testify from experience to the difficulty which was felt on that occasion, for as Commissioner, Central Division, at the time I was called on to assist in obtaining substitutes from Poona and elsewhere for the Corporation. We found it very difficult to get any body. If the men do not return to duty, it is impossible to get men from up-country in a month's time.

His Excellency the PRESIDENT:—The provision does not absolutely prevent the men from going under two months, because if a man wishes to go he can get the written permission of the Commissioner, and I think it is only reasonable to suppose that if any individual asked such permission it would not be withheld. It is only where there is a combination or where there may be a danger of a strike as in the city of Bombay, where it would be enforced; but I should think in individual cases it would be perfectly different. Of course, in a case of this kind I am bound to accept the opinions of gentlemen who have had experience of the difficulty of getting men in less than two months and who are of opinion that the time is absolutely necessary.

The Honourable Sir RAYMOND WEST:—This matter was considered in the Select Committee. The Honourable Mr. Latham remarked on the length of time proposed in the Bill. But the matter was carefully considered, and we came to the conclusion that two months were absolutely necessary. The history of previous strikes was considered, and also the great difficulty of preventing combinations, and thus the two months' notice was arrived at. The practical question was, what was the minimum time in which the difficulty could be met, and two months was the time considered by the Select Committee as the proper minimum. His Excellency has pointed out that the Municipal Commissioner may give a written permission. Under section 4 the Municipal Commissioner may accept any resignation and take less notice than two months. And as there is no object to be gained in keeping unwilling labourers to their work, the Commissioner will no doubt accept gladly in all ordinary cases a resignation for a period less than two months in advance. But I think it is very necessary to keep this provision in hand in order to secure the practical working of the measure. I would also point out that, under the Act, any man entering the service, if he does not like the idea of the two months' notice, may make special terms with the Commissioner, and then the Bill cannot touch him; so that therefore there is no undue pressure put upon people by keeping this two months in the section. I would also remark that the period of two months is the same time as that for which a police constable has to give notice. It is only a matter of practical convenience. A strike of a few police constables may cause some inconvenience; but not so great as a strike amongst these people may cause.

The Honourable Ráo Bahádur RANADE:—Is not one month generally the legal period for notice?

The Honourable Sir RAYMOND WEST:—No: it depends on the circumstances.

The Honourable Ráo Bahádur RANADE withdrew his amendment.

The Honourable Ráo Bahádur RANADE also withdrew his amendments to insert after the word 'accident' in line 19 of section 3 the words 'or other reasonable cause,' and in line 20 to omit all following the word "duties" to the end of clause (*a*).

The Honourable Ráo Bahádur RANADE moved:—In section 3, clause (*c*), lines 32, 33, for the words "who abets an offence under clause (*a*) or clause (*b*)" to substitute the words "who combines with five or more persons to commit or abet the offence of withdrawing or absenting himself from duty without legal excuse as defined under clause (*a*), or is guilty of wilful breach or neglect under clause (*b*)." He said:—My reason for proposing this amendment is that I consider it a matter which should be left to the judge or magistrate; for if the Commissioner has to depute his authority to another, he is the proper person to judge whether it is reasonable or not.

The Honourable Mr. SAYANI :—It would be better in my opinion to leave the clause as it is, because if you substituted these words it would become a matter of litigation, which in my opinion would be so expensive, it would be better to avoid it.

The Honourable Mr. JAVERILAL :—I have a similar amendment on the same subject, but I withdraw it in favour of Ráo Bahádur Ranade's. My reason is that the Commissioner is such a busy man that he will find it necessary to depute his authority to another person, who will not exercise it properly, and therefore it should be left to the magistrate to decide whether the reasons are sufficient or not. For this reason the section should in my opinion be altered.

The Honourable Sir RAYMOND WEST :—The objections raised by the Honourable Members opposite have been met very simply by the Honourable Mr. Sayani. To say that there is any danger of injustice through the Commissioner deputing his authority to another officer is purely imaginary; and again I repeat that any one who does not like the terms under the Act may insist upon other terms when he enters the service. The additional words to the clause also, were introduced by the Select Committee as a safeguard against what the Honourable Members are apprehensive of.

The amendment was then withdrawn.

The Honourable Mr. JAVERILAL moved :—"In clause (*b*), line 31, between the words 'obey' and 'or', insert the following :—

> 'Shall, in addition to such forfeiture of pay as aforesaid, be liable to a fine not exceeding Rs. 20, and in case of his being a member of the Fire Brigade shall be further liable to imprisonment which may extend to three months.'

He said :—My intention was that the punishment should be dealt out according to the nature of the offence. It seems to me that in regard to an offence connected with absence from duty, the penalty should be only forfeiture of pay; in case of gross neglect or wilful breach of duty, fine might well be added to forfeiture of pay, and in the special case of a member of the Fire Brigade the punishment might even be extended to imprisonment, for this reason that it is very necessary in cases of fire that men should be on the spot, as otherwise valuable properties would be consumed in a few hours. Such negligence therefore arising from absence of duty should be visited with imprisonment.

The Honourable Sir RAYMOND WEST :—I put this amendment as it stands and the clause as it stands before the Council, and I beg to point out to the Honourable Members that if they turn their eyes to line 37 or 38 of the clause following, that servants or other persons in the employment of the Municipality of Bombay guilty of absence from duty without sufficient reason may be subject to forfeit his pay for one month, "and in addition to such forfeiture and any other penalty which may be imposed on him under any enactment or rule for the time being in force, shall be liable, on conviction by a magistrate, to imprisonment, which may extend to three months, or to fine, or to both imprisonment and fine." Mr. Javerilal says a fine of Rs. 20. A fine in general terms covers all I think that is necessary; and so far as I can judge at present this is absolutely superfluous. Every thing can be done that is necessary according to the circumstances. Therefore I think these words need not be accepted.

His Excellency the PRESIDENT :—I take it the effect would be that a person who leaves his situation without the written permission of the Commissioner or without two months' notice, and again a person guilty of any wilful breach of order which

he ought to have carried out, is to be liable to a penalty of Rs. 20, except in the case of the fire brigade, when a person who commits an offence of this kind is to be liable to imprisonment. You wish to draw a distinction between the person who commits the offence and who abets the offence.

The Honourable Mr. JAVERILAL :—That is what I observed, your Excellency, but I withdraw my amendment.

The Honourable Mr. JAVERILAL moved :—Before clause (*c*) in the revised Bill, substitute the following as clause (*c*) :—

> (*c*) joins or combines with five or more persons to commit an offence under clause (*a*) or clause (*b*).

The Honourable Sir RAYMOND WEST :—There are various objections to this amendment, and one which is very conclusive to my mind is that it will involve us in contradictions of law. When this Bill was sent to the Government of India they pointed out very naturally that it was not necessary to retain the section for abetment. But for the sake of convenience it was thought desirable to keep the provision, even although sections 40, 108 and 116 of the Penal Code provide for it. But if the Penal Code says that such and such a punishment shall attend abetment, we are quite powerless to say some other punishment shall attend it. The effect of the provision pressed by the honourable member would cause an antinomy. If the Bill were sent up to the Government of India, it would be rejected on account of this; and I do not think this is the intention of the Honourable member. And to propose that five persons must of necessity be concerned—I take it in the wording of this amendment—is such as would create considerable difficulty about the persons who should give the notice under clause (*a*) as to whether they will become under the Penal Code or this Bill personally liable for enquiry to absent themselves from duty. A ruling in a very famous case is clear on this point as to the English law—

> "The offence of conspiracy is rendered complete by the bare engagement and association of two or more persons to break the law without any act being done in pursuance thereof by the conspirators."

So that here in introducing the number five we should be entirely opposed to the English law of conspiracy, and I think it would be most injurious and dangerous to say that the number must be no less than five. Suppose you have a person going about trying to breed dissension amongst workmen, it would be better to check him and bring him before a Magistrate at once than to wait until the number is increased to five. The clause as it stands, you may say, is subject to the objection that it is superfluous, because it is provided for in sections 40 and 108 of the Indian Penal Code; but it involves no contradiction of law. And it was thought by the Special Committee, and I rather think Mr. Javerilal was of the opinion, that it would be desirable to have this clause in the Bill (I am speaking of clause (*c*)) rather than leave it out. We consider this Bill will be put into the hands of a great number of half-educated and, on the whole, ignorant men, and it is necessary the law should be put before them plainly in order that they may arrive at a sense of their obligations. According to the amendment it would involve difficulties which I think it is desirable to avoid.

The Honourable Mr. JAVERILAL withdrew the amendment.

The Honourable Ráo Bahádur RANADE next moved :—In the same section, lines 42—45, for the words "to imprisonment which may extend to three months, or to fine,

or to both imprisonment and fine," substitute the words "to fine which may extend to Rs. 100 or in default to three months' imprisonment." He said:—In moving this amendment I have only to remark that it has been the practice in Bombay to impose a fine to carry out the administration of the Municipality; and I think in the case of a withdrawal from business it is better to impose a fine rather than to imprison, or when necessary the punishment of imprisonment could come in as an alternative.

The Honourable Sir RAYMOND WEST:—The section as it stands is not exactly in the shape in which it was originally conceived by the Bombay Government; but the Government of India pointed to a provision, which the Honourable Mr. Javerilal also pointed out, and a power exercised by the Calcutta Municipality. It was not necessary to make it imperative to imprison, we have put in the alternative of a fine; and although imprisonment is provided as a punishment, it does not mean that imprisonment is to be inflicted in every case. If it were inflicted wrongly, there is the High Court to cut it down; but then the honourable member opposite will agree with me, that in many cases, especially this case of abetment of breach of or neglect of duty, it would be very proper to inflict imprisonment. It is only in the most pressing cases that fines and imprisonment or both are imposed; and there is a sufficient safeguard in our High Court to prevent too severe punishments by means of fines and imprisonment combined. I therefore trust the Council will leave the section as it stands.

The amendment was then withdrawn.

The Honourable Mr. FORREST moved, with the permission of the President, to insert the words "be liable to" between "shall" and "forfeit" in section 3, clause (*c*), line 33.

His Excellency the PRESIDENT:—The amendment does not affect the principle of this section and I think it may be accepted.

The Honourable Sir RAYMOND WEST:—I do not think the introduction of the words suggested by the honourable member will alter the sense in the slightest degree. However, if the honourable member prefers that form, I think there need be no difficulty about it, and I shall accept the amendment.

The amendment was accepted.

The Honourable Sir RAYMOND WEST moved:—After line 55 of section 3 add the following sub-section:—

> "(2). The provisions of clauses (*a*) and (*b*) of sub-section (1) shall not apply to persons at the date of the passing of this Act in the employment of the Corporation or of a Municipality until the lapse of two months from such date."

He said:—The object of this amendment is to give to those who are in the employment of the Municipality plenty of time to consider their positions without being involved in difficulty, and I think the clause will commend itself at once to the honourable members.

The amendment was accepted.

The Honourable Mr, JAVERILAL withdrew his amendment to change clause (*c*) into clause (*d*).

The Honourable Mr. JAVERILAL moved to omit section 5. He said:—It will be remembered that at the first meeting of the Select Committee the omission of this clause was advised, because it was thought it would be practically giving power to Government

to legislate by notification in the *Government Gazette*. This omission was communicated to the Corporation. The Corporation thought that this section might prove useful in connection with the contemplated lighting of the city by electricity. On the receipt of the Corporation's report, the Select Committee found that the Corporation had approved the section. It was therefore accepted by the Select Committee with a few modifications, and the modifications introduced were that instead of Government bringing about the operation of this section by notification it would be better that application should be made by the Corporation or the Municipality for its introduction to Government before they took any action in the matter. But it seems to me that the simpler course would be to specify in the schedule the objects to be carried out by it. In this view of the matter I think it would be desirable to omit the section.

The Honourable Sir RAYMOND WEST:—The honourable member will recollect that the Select Committee were divided in their opinion as to the retention or omission of this clause, but many wished it to be retained, and the Corporation expressed a strong wish that it should be retained. We thought it proper that the Corporation which wanted such a measure should come to Government, and they thought the modification of it could not introduce any danger whatever. Nothing can be done except in matters which concern the public health and safety; the Corporation must make this application to Government; and then after considering whether any objections are urged the notification is to be made. I think it desirable that we should retain it as it is.

The Honourable Mr. FORREST:—I think I must oppose it. In discussing this clause in the Select Committee the Advocate General did not think it wise to include a clause of this sort, and I do not think the advice of the Corporation matters in any way. I can quite understand the Corporation wanting to legislate, and I may say my conviction is confirmed by the way they have asked for increased powers. Evidently the Corporation thought the Bill should include contractors' men, and this Council is not prepared to give them such powers to enforce them on contractors' men. It is not good law to legislate by notification because the Corporation ask for it.

The Honourable Sir RAYMOND WEST:—These objections were considered by the Select Committee, and surely the opinions of the Bombay Municipal Corporation should have some weight with us. We have only weighed them in the balance; and as to the honourable member's conception of the law, I do not think he has been any more happy than some other of the honourable members who have not made it their special study. The matter of the employment of contractors by the Municipality was one of the matters I referred to in my opening speech. It is not the case that persons, employed by a contractor, or employed by him on behalf of the Corporation, are liable. If they are employed on behalf of the Corporation, they must become servants of the Corporation and be paid by the Corporation in order to become liable under the Act.

The amendment on being put to the vote was lost.

The Honourable Sir RAYMOND WEST moved:—In Section 6, line 7, between the words "service" and "receive" insert "and every person now so employed shall forthwith."

The amendment was accepted.

The Honourable Mr. JAVERILAL moved:—In the Schedule—Under Duties, Class I, to omit the words "(*e*) preventing nuisances generally."

He said :—This expression "preventing nuisances generally" may mean anything and everything. In clause (*z*), section 3 of the Municipal Act of 1888 the word "nuisance" is defined to include any act or anything that is likely to cause danger or offence to the sense of sight, smell or hearing, or dangerous to life, or injurious to health or property. It is of such a general character that in a special legislation like this it should have no place. Special legislation like this should avoid going beyond the specific objects intended to be promoted by it.

The Honourable Sir RAYMOND WEST :—This clause would not mean "anything." It would mean only such things in the way of nuisance as would be so interpreted by a court of law, and I do not think we should eliminate it, as it is one of the duties which this Bill provides for. It is very desirable there should be a general expression to include all nuisances; and I think it may be left in, with advantage, because without it we might find something afterwards not specified, and there would be no remedy but further legislation, which would be inconvenient. I think it desirable that the honourable member should not press his amendment.

The amendment was withdrawn.

The Honourable Mr. JAVERILAL moved :—In the Schedule—Under Duties, Class II, to omit in (*b*) the word "drain" and all words "including" to "(8) workmen" inclusive.

He said :—My reason for moving this is that we have already in Class I "duties connected with public health," the cleansing or flushing of drains, and I do not know what duties under the head of public safety are included in drains.

The Honourable Sir RAYMOND WEST :—I can explain. Supposing you have a hundred men employed in drains and they all suddenly strike. The drains are left as they are, and in the dark, people—say two honourable members of this Council—fall into the drain, then the public safety would be inconvenienced, and Government would be without the presence of those honourable members at its meetings. That is an instance of what is meant by drains being connected with public safety.

The amendment was withdrawn.

The Honourable Mr. JAVERILAL moved :—In the same class to omit "(*c*) lamplighters." He said :—This is a Municipal Servants Bill, and it is intended for those persons who are in the actual service of the Municipality and receive pay from them. The Municipality is supplied by gas from contractors.

The Honourable Sir RAYMOND WEST :—Unless the Municipality take the gas supply into their own hands, or unless they should undertake the lamp-lighting for themselves lamp-lighters will not be affected, for they will not be the servants of the Municipality. But if they ever become Municipal servants, it is desirable that the Municipality should have the power of punishing them for breaches of duty involving public danger.

The amendment was withdrawn.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Right Honourable the Governor,

A. C. LOGAN,

Secretary to the Council of the Governor of Bombay
for making Laws and Regulations.

Poona, 1st October 1890.

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

The Council met at Poona on Monday the 20th October 1890, at 3-30 P.M.

PRESENT:

His Excellency the Right Honourable Lord HARRIS, G.C.I.E., Governor of Bombay, *Presiding.*

His Excellency Lieut.-General the Honourable Sir GEORGE R. GREAVES, K.C.B., K.C.M.G.

The Honourable Sir R. WEST, K.C.I.E.

The Honourable Mr. J. G. MOORE.

The Honourable the ADVOCATE GENERAL.

The Honourable Mr. NAVROJI NASARVANJI WADIA, C.I.E.

The Honourable Ráo Bahádur MAHADEO GOVIND RANADE, M.A., LL.B., C.I.E.

The Honourable Mr. JAVERILAL UMIASHANKAR YAJNIK.

The Honourable Mr. FAZULBHOY VISRAM.

Papers presented to the Council.

The following papers were presented to the Council:—

(1) Letter from the Secretary to the Bombay Presidency Association, dated the 17th October 1890, submitting the views of the Bombay Presidency Association on the Bombay Municipal Servants Bill No. I of 1890.

THE BOMBAY MUNICIPAL SERVANTS BILL.

The Honourable Sir RAYMOND WEST then said:—Before proceeding to move the third reading of the Bill I perhaps might be permitted to move a formal amendment, and I would ask the honourable members to turn to section 3, where the second proviso to sub-section 1, has by some mistake got misplaced, and I would propose accordingly that this proviso should be placed below the first proviso, line 56.

The amendment was agreed to.

Sir Raymond West moves the third reading of Bill No. 1 of 1890.

The Honourable Sir RAYMOND WEST, in moving the third reading of the Bill, said:—Your Excellency,—The principles upon which it rests have been pretty thoroughly sifted in the discussions which have already taken place, and one must frankly admit that the objections which have been raised to the Bill are based on very reasonable grounds of principle. But it is exactly one of those cases in which you have to balance the conflicting interest on one hand and on the other; while it is utterly impossible to accept without qualification the principles on both sides. The Government of Bombay has to provide for the general welfare of the community, and endeavours to conscientiously perform that duty, and in this case it has to steer its course between the advantages and disadvantages, and so far as it can, to consider itself a free agent in the matter. It has therefore drawn up a Bill, calculated as it thinks to promote the public interests without any undue pressure on any member of the community, that is any pressure beyond what is necessary for the general good. The substance of the Bill both before and after the second reading has been considerably debated, and it is very evident from the discussions in the

public prints that all the arguments which have been advanced here on every side are perfectly well appreciated by the public. They have been put forward with considerable ability in the public prints; so much so that if one wants to select one particular aspect, he could make out a strong case from one newspaper on one side, and from another public print on the other. But we are not quite at liberty in this case to take any one-sided view of the matter; we must endeavour to adapt ourselves to circumstances. There is one document which has come in since the second reading which would have deserved more full consideration than it is perhaps proper to give to it now had it come in before the principle of the Bill was accepted and was adopted on the second reading. I refer to the letter from the Bombay Presidency Association; and the principal remark I have to make on that is that it rests very much on misapprehension. The gentleman who signs this document—one of the secretaries—points out that the danger which was apprehended from the strike a good many months ago was more from the mukádams than from the men under them, and he seems to think they—the mukádams—would be left free in this Bill. That is not so. The mukádams would be as liable as any other servants. There is nothing to exclude mukádams from the operation of the Act, as that useful little clause (*c*) will show. But there is another point I dwelt on last time, and that is that the mukádams, having a somewhat stringent Act of this kind to rely upon, may possibly make use of it as a means of extortion or bribes from their subordinates. There is possibly a danger of that kind, but one must remember that in all legislation there is a possibility of duties being abused, and we must suppose that new Bills and new Acts will be carried out just as the old ones have been by people having a good deal of common-sense and having an interest in the community; and if they abuse the principles of this Bill we know there are vigilant watch-dogs who will not fail to bring their grievances to notice. Supposing those watch-dogs are awakened by anything of the kind suggested, there is the Penal Code waiting to punish people for extortion. But if the Corporation should put itself between the mukádams and the punishment they deserve, it is not impossible to repeal an Act of this kind, and even a Corporation should not abuse the law. With safeguards of this kind, it cannot be said that the servants of the municipality will be subjected to any oppression or tyranny. We must bear in mind that people will enter the service of the municipality with the provisions of the Act before them, and they need not take service unless the terms suit them; and they cannot fairly complain that the municipal law which they accept is unjust or tyrannous any more than he who becomes a constable can complain of being subjected to police law. And that leads me to another consideration; and that is that it is not only those people who carry on municipal duties who have to be considered, but it is the great mass of population living in cities and municipalities who are not allowed their own free action in matters of this kind. We must all submit to sanitary requirements in our houses and in our roads. While we pay taxes we are subjected to rules of this kind, and as we, being members of a great community, submit to these rules, we must by way of consolation consider what great privileges we enjoy. So also the people who are banded together to carry out these measures which we now allude to must be subjected to this particular rule. While we and they have the advantages, we must also accept the disadvantages. This brings us back to the foundation and justification of all law. Every man must submit to law by which his happiness is enormously increased and the consideration of that is enough to compensate for the disadvantages which attend its rules. The utmost disadvantage those servants are put to is that they must give two months' notice of leave unless they are ill. When

you have got a thousand men employed you must have long notice, otherwise the city might be put into an awkward situation. This time was fixed on a consideration of the absolute necessity of the case, and this is the utmost tyranny—if you can call it tyranny—which those subject to the law must submit to; and in the meanwhile if there is not a really serious combination or breach of law, no magistrate in his senses would impose the maximum penalty or anything like it. I do not think any of the objections to the Bill in its present state are of any such considerable weight as will prevent the Council from cordially adopting the Bill considering its principles have been adopted. Even the Bombay Presidency Association admit the general principle of the Bill; but they say "the Council is quite prepared to admit that for the better and more efficient conservancy of the city it is expedient that Municipal servants, on whose faithful and diligent performance of the work the protection of public health greatly depends, should be subjected to such statutory discipline as shall most advantageously accomplish the purpose in view. But at the same time it is essential that the measures introduced should neither be so harsh nor unreasonable as to defeat the very object which is sought to be carried out." Well, Government are of opinion in having admitted the Bill in its principles on the second reading the Council has recognized that it is not so dangerous or unreasonable as to defeat the objects sought to be carried out. We were not disposed to go quite so far as the Calcutta Act, but it will not be necessary to carry out the provisions of the Act to a harsh extent except in extreme cases. No such severe punishments will be inflicted, but a moderate penalty in moderate cases and a minimum penalty in trifling cases, and we may with that explanation assure the members of the Bombay Presidency Association with the greatest confidence that the measure introduced on this occasion is not so unreasonable as to defeat the object to be carried out. We think that on the contrary it will tend most strongly to carry out the objects we have in view, to promote the interests and advantages we have in view. "The enforcement by law," says the Presidency Association, "of that necessary discipline calculated to ensure regularity of attendance and proper discharge of the duty of sweeping the streets and keeping them clean may be admitted; provided the law is not tyrannous in practice and one-sided in its obligations." Well, we say the law is not one-sided in its obligations, because this is a supplemental law to that affecting the mukádams as at present existing in the Penal Code. As to its being tyrannous, we have no reason to suppose the Magistrates of the City of Bombay, if a case was brought before them not requiring a severe penalty, would use it in a tyrannous manner, therefore it is a pure assumption to say that the law will be tyrannous. And no law is really tyrannous which a man accepts with his eyes open. So every man entering the Municipality will have the law before him, and the most that will be asked of him will be to give two months' notice. These are the principles which have weighed with the Government, and I do not think these considerations are met by what is stated in this memorial, and as to the expressions of public opinion, they are so balanced that to put any one of them in force would unreservedly be to incur deserved censure from the exponents of the other. So far as we have gone, we trust the Council will support Government in carrying this measure, and I trust also that when the measure is carried the Municipality will always bear in mind that it ought to be carried out with due tenderness to a very large mass of ignorant people by those through whom the Act may be brought to bear. Of course the interest of Government will remain if this Act is passed as it was before. Its interest and its duty will not be lessened; and I am sure I may speak for His Excellency, it is His Excellency's desire that no one in the whole community should suffer from the slightest tyranny or

oppression. The object of Government, when the Bill was framed, was to do its duty to the Municipality of Bombay and kindred municipalities, and to go no further than was absolutely necessary to carry out the objects of the Bill.

The Honourable Mr. JAVERILAL UMIASHANKAR YAJNIK said:—At this stage of the Bill I do not wish to take up the time of the Council after the somewhat lengthened remarks I made on the last occasion. At the same time I do not wish to give a silent vote. I find from your Excellency's remarks at the last meeting that you hold very strong views on the right of labour to sell itself for the best price it can. I therefore venture to put in my last word on the point under discussion, at the same time apologising to your Excellency for what I have to say. Your Excellency was pleased to think that the amendments which I and my friend the Honourable Ráo Bahádur Ranadé proposed were more drastic than the revised Bill, but I may assure your Excellency that we proposed those amendments in the full belief that they would have a deterrent effect by making the strikes still scarcer. As to the causes of the late strikes I quite agree that it was a matter for the Corporation to have looked into, but since this was not done, there was reason to believe that the framers of the Bill would carefully consider the point. It seems to me, my Lord, that the weak point in the Bill is that it looks at labour disputes mainly from the point of view of the employer of labour, and does, in my humble opinion, scant justice to the claims of labour. In fact, it ignores altogether the employer's obligations and liabilities. It is thus only a one-sided measure. In this view of the matter it is satisfactory to know that your Excellency thinks that it is a drastic measure, but your Excellency is of opinion that this drastic character of the Bill is justified by the circumstances in the City of Bombay, and that any delay in its application would open the city to the gravest risk of pestilence. My Lord, I admit the force of this consideration. I admit the necessity of prompt action in a matter which affects the health and comfort of over 800,000 people in Bombay. But while admitting this, the point I submit for your consideration is whether there is anything in the circumstances of last year's strikes to warrant the imposition of fine and imprisonment for ordinary infractions of rules or verbal orders by ignorant men, liable to be easily misguided, or whether contented and cheerful service so needful for an efficient conservancy of the city would not be better promoted or secured by a less drastic measure, by lighter penalties for trivial individual offences not likely to endanger public health and safety, reserving the more severe punishment of imprisonment for serious acts of combinations. In making this last remark, I do not forget what the honourable mover of the Bill said on the last occasion and what he has said just now. He said that the statutory provisions of the Penal Code would forbid the Legislature from dealing criminally with combinations. So then practically it comes to this, that what the Penal Code would not sanction is proposed to be done by means of special legislation, giving statutory powers of dealing more severely with individuals for, and in the name of trivial offences hitherto liable to civil penalties only. This course was held to be justified by what your Excellency was pleased to say that there is not a superfluity of men for this kind of work in Bombay, and that the employer of labour cannot turn to another direction if his labour was withdrawn. And your Excellency referred to the fact that in England there are generally men prepared to turn their hands to almost any new work. With regard to the bearing of this remark on the point under discussion I say—and I speak with the greatest deference to your Excellency—that I am afraid even in England there would hardly be found men ready to take up the dirty and filthy work which the halálkhore

system requires the men in Bombay to do. An English working man's feelings on this subject may be better conceived from what Mr. Baldwin Latham, the eminent sanitary authority that visited Bombay in March last, says in his report on the sanitation of Bombay. Talking of our halálkhore system he says (page 62): "I cannot speak too strongly against such a disgusting and insanitary system; under it you have the daily accumulation of dangerous organic matter near or in very close proximity to the habitation, then the collection and carrying of this matter by men and women who ought to be engaged in more noble occupation; and, again, you have the cartage of the material through the streets to the disgust of the sensitive public; and, lastly, the repulsive operations of men entering the tanks that receive the fœces and mixing them with water. Now, all this vile business can be at once dispensed with if every house is connected with the sewers and those solid matters are distributed in detail over the whole system of sewers instead of being admitted wholesale at particular points of the system; and by the abolition of this system a very large sum of money would be annually saved, which is now exper d in the collection of the fœces only of the population." My Lord, I am sure no Engli working man would be willing to undertake such nasty work. I believe I am not wrong when I say that neither in England nor on the Continent of Europe is there anything analogous to or resembling our halálkhore system in this country. Even in India too, no other class of workmen would come forward to do this work. Fortunately, or unfortunately, we have in India a special class of men and women, singled out as it were by society as from father to son for this specific, disgusting, though, from a sanitary point of view, very indispensable work. And as long as the proposed scientific drainage and sewerage system in Bombay does not take the place of the present halálkhore system, I hold that the services of these men must be absolutely indispensable. Meanwhile, if these halálkhores, individuals among whom, especially young boys, have become already susceptible to educational influences, through missionary efforts, should come to know of their present lot and get despondent, or, through the stringent working of a very stringent law, leave the service of the municipality one by one, where, I ask, would the city be? What would become of the public health of Bombay? This is, to my mind, the more vital point in connection with this Bill. Honourable members at this board may, perhaps, think lightly of this. They may not attach the importance I attach to it, but I need hardly assure your Excellency that it weighs heavily upon my mind. It is my chief and serious fear. Your Excellency knows from the amendments I moved at the last meeting for dealing with strikes that I am not an apologist of strikes; but I find that even thoughtful employers of labour in England, after having calmly and dispassionately looked into the merits of this question of labour disputes, have come to the conclusion that these strikes are not wholly without their uses and not without their reasonableness. These strikes at this moment are exercising societies and public men in England, Scotland, Europe, Australia, and America; but we have not yet heard of penal legislation about them. The late Mr. John Bright was, as a cotton manufacturer, a large employer of labour, as your Excellency so well knows, Well, in a speech delivered at Manchester on April 12, 1860, Mr. Bright said:—"Now it has never been proved that strikes are bad; a strike is the reserved power in the hands of the working man. I would tell working men never to surrender their right to combine with their fellowmen in support of their interests." Earl Granville also, another extensive employer of labour, in a speech delivered in the House of Lords on August 2, 1859, said:—"It is imposible to put an end to strikes, even though it were desirable to

do so. They are the last resource of workmen, just as a Chancery suit is among litigants, and as war is the *ultimo ratio* of nations. The fear of them exercises a wholesome influence on masters." In like manner, I say that the strike of last year was the last resource the poor scavengers had against the *zulum* or oppression of wholesale blackmail practised on them by their mukádams, and when the Municipal Commissioner was applied to by them for protection from this, the protection they receive from him is in the form of this Bill. Is it to be wondered at if they should look upon it as making oppression and injustice doubly sure? This Bill, my Lord, will be, I repeat, an engine of oppression in the hands of those lowly-paid mukádams, their immediate superiors. One would not be surprised—and I for one would not be surprised—if the practical working of the Bill should lead to making strikes more frequent. All I wish is that in dealing with private employers of labour like the Municipal Corporation of Bombay the framers of the Bill should have shown a more sympathetic feeling for workmen in framing the punitory clauses of the Bill. Such a feeling would have been akin to the feeling which is known to have moved the Government of India to appoint a Factory Commission. This Commission, after inquiring into the conditions and requirements of factory labour and obtaining evidence of mill-hands as to the limits imposed on them in respect of their work, has just concluded its labours and gone elsewhere for enquiry. Thus, legislation in the case of factory labour would, in Bombay at least, have the merit of having been proceeded with after the results of the enquiry by the Commission had been placed before the Government of India. It was, at least, to be wished that a similar method had been pursued and evidence obtained at first hands. But what is to be said of a Bill which ignores the recorded official evidence and experience as to the causes of the strikes, and proceeds chiefly on the recommendations of the Municipal Commissioner? For these reasons, your Excellency, I regret I cannot give my adhesion to the Bill in its present form, in which I consider it is one-sided coercive legislation.

The Honourable Ráo Bahádur RANADE said:—I have only a few remarks to make by way of addition to what the Honourable Mr. Javerilal has said. In the first place I wish it to be distinctly understood that those who object to the Bill do not object to the principle of it, but only to the large extensions of that principle in various directions. The Bill seems to me to press heavily in three directions, it seeks to bring all Municipalities within its scope, it extends the scope of the acts to which its punishments are meted out, and it enlarges the list of the classes of workmen to whom these punishments are to be meted out. In this threefold direction the Bill is an extension of existing Indian legislation, and it is in regard to this extension of the scope of the Bill that the objections have been chiefly directed. Nobody questions the right of the Bombay Municipality to try and protect itself against combinations; but to meet this difficulty there was only the punishment of fine warranted by the old law, which law has admittedly worked well for the last twenty years. The punishments have now been made very much heavier, and so far as I can understand it this extension has not been fully justified. The honourable mover on the last occasion compared the Police Acts and the Articles of war to this measure, and said that these special laws furnished by analogy the reason why in the case of municipal servants some strong measures would not be entirely out of place. I must humbly submit that neither the Police Act nor the Articles of war are analogous to the present legislation for the following among other reasons. In the case of the Police force, as also in the case of the army the employer is Government, and though Government has a perfect right to dismiss a servant without assigning a

cause, it never dispenses with the services of a Policeman unless he himself forfeits the claim to be so employed by his own negligence or disobedience. The employment for all practical purposes is permanent employment solely dependent on the employé's good behaviour. Not only does he hold his post during good behaviour, but he has regular promotion and sick leave and privilege leave on full or half pay and there is also a provision made for him in his old age, so that Government service is a permanent service with mutual obligations binding on both the employer and employé. There is a reciprocity of obligations and Government may well, in the case of its military and police forces, subject them to terms of this sort, but in the present case the Municipal servants can claim no protection for their own interests. The Calcutta Act is the only precedent in point, but even that Act applies only to the *mehtars*, and it has not been made to embrace the workmen to whom it is proposed to apply this enactment. The Municipality does not undertake to guarantee employment to its servants during their good behaviour, and pay them at such and such a rate as long as they are able to do such and such service, and provide them with pensions in old age. While the servants cannot leave service without notice the Municipality has power to dismiss its servants without notice. The unfair character of these provisions led the Bombay Presidency Association to send in their memorial characterising the Bill as a one-sided measure. That is the view I take of this Bill and that is why I think the analogy of terms imposed by the legislature on the military and police servants does not hold good in this case of private and municipal employés. For these reasons this measure will be characterised as an employer's measure which does not compel the Municipality to protect the interests of the servants in their employ, and give them encouragement to continue in its service during good behaviour, by giving them something to look forward to at the end of their term of service. As to the observations made by the honourable mover about what has been said by the newspapers on the subject, I have been carefully watching what has appeared in the Press, and, with one or two exceptions, I think the general consensus of opinion is that the Municipality has been too much favoured by the provisions of the Bill at the sacrifice of the interests of its poor servants. That is the view which both the English and Native press have taken, so far as I have been able to follow it. The Municipal servants are truly a wage-earning class. There is no provision for them if they become ill, and on the contrary they may be left to find out other work for themselves at a moment's notice. There is no obligation imposed on the masters; the Municipal servants are worse off than merchants, seamen, emigrants, artizans, and workmen employed for fixed terms or paid in advance. This stringent Act will only strengthen the hands of the Municipal Executive, *i.e.*, the hands of the mukádams, who will have the management of these people, men possibly of their own caste, but who have not in this matter the same interest as those of the persons whom they control. It is for these reasons I think the Bill one-sided, and although it has now passed beyond the stage in which a discussion about its principles is allowed, all I can do is to express my humble opinion that there are grave reasons to apprehend that instead of improving matters, they will only be made worse, not only to the detriment of the employés but in the interests of the employer himself.

The Honourable the Advocate General (Mr. Macpherson) said:—As I have not hitherto had an opportunity of addressing the Council on this Bill, I ask permission to do so very

briefly now. Although I am temporarily an officer of Government, I have had nothing whatever, directly or indirectly, to do with the Bill. Therefore what I say may, I think, be deemed to be unbiassed, and prompted only by the deep interest which, as an old resident in Bombay, I take in that city, its well being, and municipal government. I at once say that this Bill struck me in the first place as a new departure,—a departure in the direction of special penal legislation which was in the abstract objectionable, and which could only be justified by supreme necessity or something very much akin to it. One would almost suppose from the speeches of the two honourable members who have just spoken, that the object of the Bill was the amelioration of the condition of halálkhores or to provide them with pensions on retirement in old age. The object of the Bill is, of course, nothing of the kind. The object of the Bill, as I understand it, is to protect the public of Bombay in a way that is absolutely necessary. You have the City of Bombay with nearly a million inhabitants, liable at any juncture, on the co-operation of a body of the most ignorant classes, to be plunged into the very direst calamity. It would be no mere inconvenience, but an insanitary danger. The more ignorant those people are the more liable they are to be misled, and the more necessity there is therefore for the public to be protected. At the same time, since they are ignorant, it is necessary to see that their liberty is interfered with no more than it is necessary. Coming to the Bill one has to consider whether there is any parallel or precedent for it; and one looks in vain for any parallel; for no class like those halálkhores is to be found in European cities; but so long as they are here we have to deal with them. Then the question is, is this Bill the most perfect under the circumstances? Is it an enactment the least objectionable under the circumstances? The objections to it appear to be twofold, first, that it is liable to be applied oppressively. But so is every penal enactment that ever was passed, and it does not seem to me that this Bill is more open to the objection of being oppressive and tyrannous than any other penal Bill yet enacted. There never was a penal section that was not open to abuse. The security against such abuse is a competent and honest Magistrate, and this Council, I apprehend, legislates on the assumption that British magistrates are competent and honest and not on the contrary assumption, therefore I am quite unable to see any force whatever in that objection. The second objection is that the Bill is one which punishes individuals and leaves combinations untouched. That objection has been duly considered and weighed by the Select Committee. The Select Committee was formed of individuals who had amongst them trained and practical minds; they applied themselves to this point, and gave it every consideration, and came to the conclusion that effect could not be given to the objection. It seems to me that far more deference is due to the result of the deliberations of a body of that kind than to the comparatively amateur opinions of men who have not had the same opportunity to weigh the matter as Members of the Committee had. I certainly think that by providing for combinations only, the Bill would be practically useless. What is required is not so much to punish as to prevent strikes, and to prevent them you must have this Bill which reaches at once the first individual who does anything which approaches an attempt to create a strike. If it were possible it would be well to provide punishments for combinations only; but to do so would defeat the object of the Bill, which is to stifle combinations by punishing the earliest act tending to a combination, and so the Bill as it is, is the best available preventive of the mischief which it is the desire of the legislature to prevent. Therefore I have not the slightest hesitation in voting in favour of the Bill.

His Excellency the PRESIDENT said:—I should not have had any remarks to make; but as the Honourable Mr. Javerilal has referred to a remark of mine on the occasion of the second reading of the Bill, perhaps I may offer a reply to it. The Honourable Mr. Javerilal has asked me whether a contented and cheerful service would not be better promoted by a less drastic Bill. I do not think the question is a valid one. It really depends on whether the Municipal Corporation treat their servants liberally or not, and if they do it is extremely improbable they will be left without servants; and I imagine the contrast the Honourable Ráo Bahádur Ranade has drawn between the liberal treatment of their servants by Government and the opposite is applicable in this case. The Corporation will no doubt take the advice the Honourable Ráo Bahádur Ranade has been good enough to offer. The Honourable Mr. Javerilal quoted from one of Mr. John Bright's eloquent speeches in which he implored labouring men never to give up their power of striking and also expressed his own opinion that it would be impossible ever to suppress the possibility of strikes. I gather from what Mr. Javerilal has remarked that he agrees with Mr. John Bright's views. Under these circumstances I cannot help expressing my surprise at Mr. Javerilal moving the amendments he did aiming at the strikes. I think it was Mr. Javerilal who moved for the punishment of five or more persons who attempted such an offence. And yet Mr. Javerilal concurs with Mr. John Bright who implored the labouring men never to give up their power of striking. Mr. Javerilal suggested that the same consideration has not been given by this Government to the halálkhores by appointing a committee to consider the circumstances of their case, as has been done by the Government of India in the case of the mill hands. There was a committee which inquired into the case of the halálkhores, and the result of their deliberations was that legislation of a drastic kind was necessary. But as a matter of fact the answer to any argument of that kind is the argument which has been put forward in Ráo Bahádur Ranade's own words when he admitted that drastic treatment of this kind is absolutely necessary even although he considered it going too far, and that the Bombay Presidency Association thought it is one-sided. Well, now I have just to remark on that point, that I quite understand the argument, and it is this, that the provision of the terms of giving notice is not reciprocal; that whereas the Corporation imposes two months upon the employés, on the other hand the employé is not able to claim the same terms from his employer supposing he wishes to leave. Well, I should have thought if that was the view of those gentlemen who moved amendments to the Bill when it was in committee, that it would have been for them to have moved amendments of that character making the terms of notice reciprocal. But I understand from Ráo Bahádur Ranade's speech that he acknowledges himself that legislation of this kind is not desirable in a case of this kind. But I claim that I have gone as far as any one could have gone in giving to the present employés of the Municipal Corporation an advantage which was entirely overlooked by the two gentlemen who have chiefly opposed this Bill, and that was by inducing the honourable mover of this Bill, Sir Raymond West, to insert a sub-section (2) to clause 3 which says "the provisions of clauses (*a*) and (*b*) of sub-section (1) shall not apply to persons at the date of the passing of this Act in the employment of the Corporation or of a Municipality until the lapse of two months from such date." It was Government that inserted that clause, and the gentlemen who chiefly opposed this Bill never thought of it. There was nothing in their amendments approaching the degree of liberality which the Government has extended to people now in the employment of the Corporation; so that I am

not prepared to admit, so far as Government is concerned, the charge of illiberality brought against it is made out. It was only for very exceptional reasons that a measure of this kind was thought desirable; and when I came to consider the Bill, I found it was impossible for me to disapprove of it. The discussion appears to me to have gone into every question that can possibly be raised on the terms of the Bill, and I am glad at any rate to observe, from the speeches of the honourable members who chiefly opposed the Bill, and from the petition that has been presented to us by the Bombay Presidency Association, that it is acknowledged by those who object to the Bill that the principle of it is necessary and that there should be some punishment hanging over the heads of these persons to compel them to give due notice before leaving their service; because otherwise the City of Bombay might run a very grave risk of getting into a serious insanitary condition. If this is acknowledged, then I think Government may rest content that it has endeavoured to carry out what is now acknowledged to be a necessity.

Bill read a third time and passed.

The Bill was then read a third time and passed, the Honourable Mr. Javerilal and the Honourable Ráo Bahádur Ranade dissenting.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Right Honourable the Governor,

A. C. LOGAN,

Secretary to the Council of the Governor of Bombay for making Laws and Regulations.

Poona, 20th October 1890.