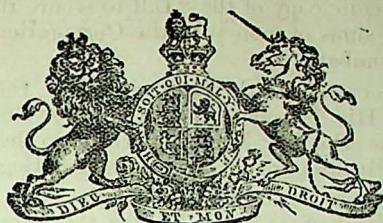


THE



Bombay Government Gazette.

Published by Authority.

THURSDAY, 29TH AUGUST 1872.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Extract from the Proceedings of the Governor of Bombay in the Legislative Department is published for general information :—

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 Puna on Saturday, the 27th July 1872, at mid-day.

P R E S E N T :

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

His Excellency the Honourable Sir AUGUSTUS ALMERIC SPENCER, K.C.B.

The Honourable H. P. St. G. TUCKER.

The Honourable A. ROGERS.

The Honourable the Acting ADVOCATE GENERAL.

The Honourable MUNGULDASS NUTHOOBHoy, C.S.I.

The Honourable BYRAMJEE JEJEEBHoy.

The Honourable Colonel M. K. KENNEDY.

The Honourable Sir JAMSETJEE JEJEEBHoy, Bart., C.S.I.

The Honourable E. W. RAVENSCROFT.

The Honourable J. A. FORBES.

Affirmation of Office, &c., taken by the Additional Members of the Council.

The Honourable C. J. MAYHEW, the Acting Advocate General, and the Honourable J. A. Forbes took the usual affirmation of office and declaration of allegiance to Her Majesty.

Papers presented to the Council.

The following papers were presented to the Council :—

- 1.—Letter from the Secretary to the Government of India, No. 274, dated 3rd June 1872, returns, with the assent of His Excellency the Governor-General signified thereon, the authentic copy of the "Bill to amend Act XIII. of 1856."

- 2.—Letter from the Secretary to the Government of India, No. 296, dated 14th June 1872, returns, with the assent of His Excellency the Governor-General signified thereon, the authentic copy of the "Bill to secure the payment to Government of certain additional sums of money by the Corporation of the Justices of the Peace for the City of Bombay."
3. Letter from the Secretary to the Government of India, No. 70, dated 21st June 1872, states that His Excellency the Governor-General has no objection to the introduction of the Bombay Municipal Bill into the Council of His Excellency the Governor of Bombay for making Laws and Regulations."

His Excellency the PRESIDENT intimated that the first business on the list was the second reading of "Bill No. 7 of 1870—a Bill for the regulation of Burial-grounds and Burning-grounds in the territories subject to the Government of Bombay, within the limits of the City of Bombay ;" but as considerable discussion was likely to arise upon that subject, it might be more convenient for the Council if they would permit the Honourable Mr. Tucker, on the part of the Government, to give a general idea of alterations that it was proposed to make on the Bombay Municipal Bill.

The Honourable Mr. TUCKER—Sir, I beg to move that the Council do allow an extension of time to the Select Committee appointed to take into consideration the Bombay Municipal Bill for the purpose of enabling the Committee to complete its report. This Committee was appointed at the end of last March, and at once proceeded to take into consideration the clauses of this somewhat voluminous measure. Owing to the inability of the late Advocate-General, the Honourable Mr. White, to attend more than twice a week, and owing also to differences of opinion entertained by the Members of the Committee, our progress, I am sorry to say, was but slow, so that up to May, when we held our last sitting in Committee, we had only settled some 60 sections of a Bill that contains 298 sections. Since this Bill was laid before the Committee—since, in fact, our last meeting of Council—there have been great changes in the *personnel* of the Executive Government of this Presidency. Not only has there been a new head to the Government appointed, but one of the Civil Members of the Executive Council has also been changed, and during the interval which has elapsed since the first discussion on the Bill a great many representations have been made by different sections of the community protesting against the restricted amount of popular representation which was proposed to be accorded by the Bill. The Executive Government, under these circumstances, have again reconsidered the subject, and have come to the conclusion that they will make wider concessions than have been already offered. What they propose to do I shall state briefly, and the alterations which are designed will be considered and reduced into form by the Select Committee. We propose that the number of the Corporation, fixed at eighty by the Bill as it now stands, should be reduced to 64 persons—of whom one-half, or thirty-two, shall be elected by the rate-payers; one quarter, or sixteen, elected by the present Bench of Justices, the number of whom will be increased; and the remaining sixteen nominated by Government. It is also proposed that of the Town Council, which will still consist of twelve members, eight shall be elected by the members of the Corporation, leaving only the Chairman and three other Town Councillors to be appointed by Government. It will be seen that by this new arrangement the representatives of the rate-payers will nominate half the members of the Corporation, and will also exercise a most potential influence in the election of two-thirds of the Town Council. It appears to me that the opponents of the measure who demurred to "the infinitesimal dose of popular representation," which was conceded by the Bill in its original form, ought now to be satisfied with so wide an extension of the basis upon which both the Council and Corporation are to be constituted, and that they will now have but little ground for complaint on that head. I may state that it had been settled in the Select Committee that all the members of the Corporation were to be rate-payers or persons who annually contributed Rs. 50 to Municipal rates and taxes generally; but since this point was decided on, I have received a letter addressed to me as Chairman of the Committee by Mr. Hope, the late Acting Municipal Commissioner, who, although desirous of seeing a wider extension of the elective principle, and opposed to the electors being confined to the class of persons who contributed to the house-rate alone, pointed out that it would not be expedient to include contributions to the water-rate, halalcore-cess, or wheel-tax in the payments which would go to form the qualification of either elector or representative; but that it would be better to declare the house-rate, the police and lighting rates, and what is termed the supplementary rate, to be the taxes, contributions to which should exclusively

regulate the qualification. As Mr. Hope's opinion on this point is supported by good reasons and entitled to consideration, the Select Committee will be again asked to consider whether it will be advisable to include in the qualification contributions to rates and taxes of every kind, or only to a certain specified number of such rates and taxes. On that point, the Government will endorse the conclusion at which the Committee shall arrive after a fair discussion of the question. A further concession that the Government is willing to make is to allow the Health Officer and the Executive Engineer to be appointed by the Corporation, subject to the approval of Government. The Controllership is, as you are aware, an office virtually done away with by the present Bill, which assigns his functions to the Town Council and their Secretary, who is to be appointed by the Council itself. I am not sure whether this direction regarding the appointment of Secretary to the Town Council is at present in the Bill, but if it is not Government will be prepared to give their sanction to the delegation of this appointment to the Town Council, though this nomination will also, of course, be subject to the approval of Government. The appointment to the office of Municipal Commissioner alone will be reserved to Government, and with regard to the others, the Corporation and Town Council will nominate, subject to the approval of Government. Of course, there will require to be a provision in the Bill to the effect that if the appointment to any of these offices be not made within a certain time, Government will make the appointment itself. Regarding the time to be allowed before the right to nominate shall lapse to Government, that can best be determined by the Select Committee. These are the most important changes which the Executive Government are prepared to assent to, and I mention them now, though it may not be strictly regular to do so, on account of the peculiar circumstances in which I find myself placed, and also because the statement at this moment of the intentions of Government may tend to allay public anxiety on the subject, while it will become known to those who have made urgent representations to Government for a more wide extension of the elective principle that we are prepared to make considerable concessions in that direction. I may say for myself personally that some of these changes go further than, it appears to me, is altogether prudent at the present time; but as it is undeniable that there is on the part of a large section of the community, both European and Native, a strong demand for a form of constitution based on the principle of representation, I have felt myself compelled, in deference to public opinion, and also to the views of others who are as competent to judge of these matters as I am, to waive my own particular sentiments on the points on which there will now be changes. I will now, Sir, move that the Select Committee be allowed six weeks' additional time to bring in their report; and I also move that the Honourable Mr. Rogers, the Honourable the Acting Advocate-General, and the Honourable Mr. Forbes, be added to the Committee.

Mr. Tucker moves that Mr. Rogers, the Acting Advocate General, and Mr. Forbes be added to the Select Committee.

Six weeks may appear to some persons a long time, but I mention this term so as to prevent the necessity for any further applications for extension. I trust that, if the members of this Council who reside in Bombay are able to attend regularly at the meetings of the Committee, the report will be finished in a shorter space. Speaking for myself and the other official members of the Committee, I may say that we shall do everything in our power to expedite the passing of a measure the completion of which is looked forward to with so much interest by a large portion of the public.

The Honourable the ACTING ADVOCATE-GENERAL congratulated the public upon the fact that they were likely to receive under the Bill a more liberal scheme of popular representation than was at first contemplated by Government. It would be out of place for him on the present occasion to express any views on the matter beyond mere congratulations, but he thought that the sentiments expressed by the Honourable Mr. Tucker would give great satisfaction; and he was sure every detail would meet with the closest consideration on the part of the new members of the Select Committee, of whom he had the honour to be one.

The Honourable Mr. FORBES—I also have very great pleasure in congratulating the community that Government are likely to bring forward a Bill of more liberal principles than those which were at first contained in the new Municipal Act. I think, however, that on the present occasion I ought to point out that the rate-payers of Bombay have already suffered very considerable hardship owing to the delay which has occurred in introducing a new Municipal Bill; and I am rather disposed to fear that by the same Bill being sent to the Select Committee for six weeks more, and also considering the alterations made upon it, a very considerably enhanced delay will be the result. I can hardly imagine this very bulky Bill, which is an amalgamation of eight or nine others, can be disposed of in so

short a time as six weeks, mentioned by the Honourable Mr. Tucker. I would have been, I confess, more pleased had I heard that the present Bill was to be withdrawn altogether, that some short and concise amendments upon Act II. of 1865 had been proposed, or that a short new Bill had been introduced to meet the most emergent requirements of the City in consequence of the condition into which its municipal affairs have now fallen. When I say that the rate-payers have suffered considerable hardship from the delay that has already taken place, I do not think I am exceeding very moderate language. It is of course known to all the gentlemen here present that it is about twelve months ago that the Government of Bombay promised to introduce a new Municipal Bill, and that in the letter which they wrote they stated it would be done with all possible despatch. Although some of the delays may have been absolutely unavoidable, because of the necessity to enter into very intricate and difficult investigations before the actual position of the municipality could be ascertained, still I think some greater speed might reasonably have been expected. We have seen a Bill passed through this Council during the last year in twenty-one days, and here have twelve months been spent over this Municipal Bill, and yet we have not got it into shape! The Bombay public may be sufferers to a serious extent by this delay. They are still open to the same municipal misgovernment which brought on the crisis which forced the Justices of the Peace to appeal to Government for a new Act. In saying this, I do not wish to be misunderstood. I believe that the Bombay public have the utmost confidence in the two gentlemen who have lately filled the acting appointment of Municipal Commissioner; but the old Act is still in force, and it is quite possible that mistakes of the past may be again repeated. The Municipality having during the past year made every possible effort to retrench and reduce their expenditure, but some of the items most complained of, and which press with most undue severity upon rate-payers, have not been removed, merely because they are still imposed upon the City by Act II. of 1865. If a short Bill had been introduced last season, as was to have been done, the town would have been saved much. In October last, I drew attention to this fact, and I showed how reductions could be made if Government would only give assistance to the town to the extent of four lakhs. Now, not one rupee of these have been accomplished owing to the delay in bringing in this new Act. I therefore very much fear that so long as the present Bill is before the Council further delay must follow. This Bill has been criticised in Council and out of Council—and very severely criticised, too—and I am sorry to say I have not heard an expression of opinion in Council that is very much in its favour. I may add, in conclusion, that the Honourable Mr. Tucker has done me the honour of proposing to put my name on the Select Committee, and although I accept the position, I fear the task will be one of a very onerous nature. I repeat that I think a more short and concise Bill would have been advisable.

The Honourable Mr. MUNGULDAS NUTHOOBHAY—I may, your Excellency, express, on the part of the Native inhabitants of Bombay, the deep gratitude they will feel for the great and valuable concessions which your Excellency's Government are willing to make in the matter of extension of the principle of municipal election by the rate-payers. I have no doubt that these concessions will not be abused; on the contrary, they will be acted upon in a way which will reflect credit on Bombay; and I am sure the doubts or fears which the Honourable Mr. Tucker entertains will prove to be groundless. I agree with my Honourable friend and colleague Mr. Forbes that the delay which has taken place is to be regretted, but I do not think it would be of any use to spend time in commenting upon what has already passed. I do not think that a less period than six weeks would be sufficient to bring in a new Bill, and as so much time and trouble have been already taken in the matter, I would rather that the community of Bombay should wait for six weeks longer to enable the Select Committee to revise and settle the Bill. I think that if the members of the Select Committee could spare the time and sit from day to day, their report could be finished within the time mentioned by the Honourable Mr. Tucker; and I hope some such arrangement will be come to.

The Honourable Mr. TUCKER—With reference to the observations which have fallen from the Honourable Member on my left (the Honourable Mr. Forbes), it appears to me that the complaint of unnecessary delay which he has brought against Government has been answered by his own statement. He admits that Act II. of 1865 required alterations in many parts, and even goes so far as to say that in consequence of the non-amendment of this Act the rate-payers of the City of Bombay have been put to great hardship and losses. It was because the Government found that it could not by a short Act, as was at first contemplated, correct the defects which had been complained of in the old law, that it was resolved to revise and re-arrange the whole law relating to the Bombay Municipality; and

a task of this nature necessarily required time for its accomplishment. The Honourable Member would appear to think that the Government of Bombay has no other duty but that of legislating for the City of Bombay. Many causes have contributed to make the progress of this measure through the Council a slow one, and in my opinion the complaint of the Honourable Member is without substantial foundation. The reason why the consideration of the Bill proceeded so slowly in the Select Committee was the inability of the late Advocate-General to attend more than two afternoons in a week at the meetings of the Select Committee. The numerous important questions involved in the Bill, and the diversity of opinion which prevails regarding many of them, as is plainly shown in the different representations which have reached Government on the subject, are alone a sufficient cause why it could not, and should not, have been hurried rapidly through the Council. I do not understand the Honourable gentleman to have brought forward any definite proposition in opposition to my motion, and I do not think that the suggestion which he has thrown out, that the Bill should be withdrawn and a shorter measure prepared to effect the alterations in the law which are deemed to be necessary, would be likely to accelerate the final disposal of the subject. Personally I should have been glad if such a course had been determined on, as it would have relieved me from much labour, and I should have liked that other members should have some practical experience of the difficulties which are inseparable from the preparation of Legislative measures of a comprehensive character, and which deal with complicated subjects. I do not, however, think that the public would be benefited by an abandonment of the present Bill and the substitution in its place of a more limited enactment to amend Act II. of 1865 and the other Municipal Acts. If the sittings of the Select Committee can be arranged so as to be continuous and uninterrupted, the presentation of the amended Bill to the Council need not be deferred beyond the six weeks now applied for, and may even perhaps be made at a shorter interval of time.

His Excellency the PRESIDENT—I think I may understand that the motion for extending to the Select Committee the additional time asked for by the Honourable Mr. Tucker does not meet with any opposition generally on the part of the members of Council. For my own part, although six weeks is the time named, I may express a hope that the Committee will find it practicable to bring up their report before that period has expired. The question which I understand to have been before the public so long, and the one to which controversy has been mainly directed, and upon which there have been such differences of opinion, is that of the constitution of the new Municipal government of Bombay. If the alterations now proposed in the Bill prove acceptable to the Council, of course it will be very satisfactory to the Government, and I may state that my own view was that, as it had been decided that popular representative institutions should be conceded to Bombay, the experiments should be fully and fairly tried. (Hear, hear.) If the Select Committee should find it really impracticable to deal with the whole Bill just now, I would suggest that they should deal fully and efficiently with the constitutional clauses. A Bill might then be passed containing those clauses and empowering the new Municipality to act under the existing law, of which the amendments might for a time be postponed.

Six weeks additional time granted to the Select Committee to prepare their report, and additional members appointed on the Committee.

The Honourable Mr. TUCKER's motion was then agreed to.

The Honourable Mr. TUCKER begged to propose the second reading of the "Bill for the Regulation of Burial-grounds and Buring-grounds in the Territories subject to the Government of Bombay, without the limits of the City of Bombay." This Bill, he said, was originally introduced into the Council by my Honourable colleague Mr. Mansfield with the object of giving the Government power to suppress places used for sepulture to

Mr. Tucker moves the second reading of the Bill for the Regulation of Burial-grounds and Buring-grounds in the Territories subject to the Government of Bombay, without the limits of the City of Bombay.

the injury of the general health of the community. Instances have come to light of cases which showed the necessity for such a Bill as this is. In one place, which was close to the margin of a tank, the water of which was used for drinking purposes, people used to bury their dead, and it was found that the water was kept in a state of constant pollution by the proximity of the decaying bodies. In some parts of the presidency people bury their dead within their own houses, and some within spaces surrounded by human habitations, where any such process of burial must be detrimental to the health of the community. After the Bill was introduced it was referred for report to a Select Committee, who made alterations which are referred to in their report, and which appear to me calculated to prevent any hardship or oppression to the community from the working of the Bill. Of course, we must all

admit that the living public should not suffer by the way a number of people wish to dispose of their dead, and that all sections of the community must be placed under certain restrictions in this respect for the benefit of the general community.

Bill read a second time.

The Bill was read a second time.

The Bill considered in detail.

The Honourable Mr. TUCKER proposed that the Council do proceed to consider the clauses of the Bill in detail.

This was agreed to.

The Honourable Mr. ROGERS, alluding to the first part of the first section, thought it was inconsistent with the duties of a Revenue officer to carry out the duties proposed to be assigned to him, and suggested that a Magistrate should be substituted, because he had a general jurisdiction relating to all nuisances.

The Honourable the ACTING ADVOCATE-GENERAL preferred the use of the word "Collector," as he would be the party to set prosecutions in motion, the Magistrate carrying them out. A Magistrate could not be the party to prosecute and punish too.

After some discussion, the clause was altered to read thus, "The Collector of a District or other Officer specially appointed by Government for the purposes of this Act, may, if he think fit, cause a survey and measurement to be made of any burial-ground burning-ground, or place for the exposure of the dead," &c.

Section 1 was passed as amended.

His Excellency the PRESIDENT, alluding to the following part of a sentence in Section 2, "the Collector or other Officer as aforesaid, who is hereby empowered at his discretion to grant such licences," asked whether it was meant to give the Collector absolute power in the matter without any appeal.

The Honourable Mr. TUCKER thought the words "at his discretion" should be struck out, and the words "subject to the general control of Government" placed after "licences."

The suggestion was approved of.

The Honourable the ACTING ADVOCATE-GENERAL suggested the substitution of "burial," in the second line, for "interment," so as to make the language of the Bill uniform. He also thought the word "wilfully" should be placed between "shall" and "bury," in the twentieth line, to make the phraseology of the Bill similar throughout.

The suggestions were approved of.

The Honourable Mr. MUNGULDASS NUTHOOBHOY drew attention to line 9, in section 2, and proposed that the word "new" should be placed before "burial."

The Honourable the ACTING ADVOCATE-GENERAL said that the introduction of this word was unnecessary.

The Honourable Mr. MUNGULDASS NUTHOOBHOY—We only intended in the Select Committee that no old ground should be suppressed without proper and convenient ground being provided by the Collector. Under this section as it stands, supposing the people of Puna applied for a license for their burning or burial ground, and the Collector refused to grant it, what are the people to do with their dead? There is no compulsion to the Collector to register, and if he refuses to do so, the people have no power under this section to compel him to grant it. I beg, therefore, to propose that the word "new" should be inserted as I have indicated.

The Council then divided—

Ayes—

The Honourable Mr. MUNGULDASS NUTHOOBHOY.
The Honourable Mr. BYRAMJEE JEJEEBHOY.
The Honourable Sir JAMSETJEE JEJEEBHOY.
The Honourable J. A. FORBES.

Noes—

His Excellency the COMMANDER-IN-CHIEF.
The Honourable Mr. TUCKER.
The Honourable Mr. ROGERS.
The Honourable the ACTING ADVOCATE-GENERAL.
The Honourable Colonel KENNEDY.
The Honourable Mr. RAVENSCROFT.

The amendment proposed by the Honourable Mr. MUNGULDASS NUTHOOBHOY was therefore lost.

Section two was then passed with the other amendments.

The Honourable the ACTING ADVOCATE-GENERAL suggested the use of the words "the dead" for "corpses," in lines eight and twenty-nine.

The Honourable Mr. ROGERS proposed that lines nine and ten should read "dangerous to the public health."

The Honourable Mr. MUNGULDASS NUTHOOBHoy drew attention to line 31, in section 3, and moved that between the words "above-mentioned" and "the," the words "situated within a convenient distance" should be inserted. Perhaps His Excellency might not be aware of the peculiar customs of the Hindoos in the matter of burying their dead. When a man died, his relations, whether they were rich or poor, must carry his body to its final resting-place, and until this is done these relations are not allowed to take any food, or even to drink water. If the burning or burying place were situated ten miles off, or even say six, it could easily be imagined how great the hardship would be that might be inflicted upon these people, and he apprehended that by the insertion of the provision he proposed great inconvenience would be avoided. He instanced what might happen in Púna if his suggestion were not agreed to. There were three places for burning the dead. If Government were to shut up one, they might probably refuse to open a new one, saying that there was another six miles away which could be used, although this would inflict great hardship upon the people who were accustomed to go to the ground that had been closed. It was neither politic nor advisable that the possibility of such a thing occurring should be allowed.

All the amendments were adopted, and Section three was passed as amended.

The Honourable Mr. ROGERS, alluding to line one of section four, said he saw no reason why a two months' notification should be given to the public, and suggested that action should be immediate.

The Honourable Mr. MUNGULDASS NUTHOOBHoy objected to the omission proposed on the ground that two months time was necessary, for in the case of Parsees it was requisite that their Towers of Silence should be consecrated and certain ceremonies performed before these places could be used for the disposal of the dead.

After some discussion Section four was passed in the following shape :—"A copy of such notification, with a translation thereof in the Vernacular language of the district, shall be affixed conspicuously on some part of the ground, place, or building to which the notification relates, and whoever after the expiration of two months from the date of such notification being so affixed shall wilfully bury, burn, or expose, or cause, permit, or suffer to be buried, burned, or exposed, any corpse in, upon, within, or under the place, ground, church, or place of worship to which such notification relates, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

Section five was passed without alteration.

Section six was passed after the word "Commissioner," in the eleventh line, had been made "Commissioners."

Sections seven and eight were passed without alteration.

Section nine was altered to read as follows, and passed :—"This Act shall not apply to the City of Bombay, nor shall it come into operation in any district or part of a district, or any town, unless and until it shall have been previously extended to the same by the Governor in Council by notification in the *Government Gazette*."

On the suggestion of the Honourable the ACTING ADVOCATE-GENERAL—

The Honourable Mr. TUCKER moved the following additional Section to the Bill :—
Additional clause added to the Bill. "All offences under this Act shall be tried by an Officer having the jurisdiction of a First Class Magistrate, and no prosecution shall be instituted for any offence under this Act except with the sanction of the Collector or other Officer specially appointed by Government for the purposes of this Act."

This Section was adopted and made Section nine of the Bill; the former Section nine, commencing "This Act," becoming Section ten of the Bill.

The Preamble was altered to read as follows :—"Whereas for the sake of the public health and order it is expedient to regulate the use of burial-grounds and burning-grounds and places for the exposure of the dead in the territories subject to the Government of Bombay; It is enacted as follows."

The title of the Bill was amended to be, "A Bill for the Regulation of Burial-grounds, and Burning-grounds and places for the exposure of the dead in the territories subject to the Government of Bombay, without the limits of the City of Bombay."

Third reading postponed.

The third reading of the Bill was postponed.

The Honourable Mr. TUCKER gave notice that it was his intention at the next meeting Leave given to Mr. Tucker to of Council to bring in a "Bill for the regulation of Vaccination in the City of Bombay."

His Excellency the President then adjourned the Council.

By order of His Excellency the Governor in Council,

JOHN NUGENT,

Acting Under-Secretary to Government.

Puna, 27th July 1872.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the Provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 15th August 1872.

Present :

The Honourable Sir JOHN STRACHEY, K.C.S.I., *presiding*.
His Honour the LIEUTENANT-GOVERNOR OF THE PANJÁB.
His Excellency the COMMANDER-IN-CHIEF, G.C.B., G.C.S.I.
The Honourable Sir RICHARD TEMPLE, K.C.S.I.
Major General the Honourable H. W. NORMAN, C.B.
The Honourable ARTHUR HOBHOUSE, Q.C.
The Honourable E. C. BAYLEY, C.S.I.
The Honourable R. E. EGERTON.

NORTHERN INDIA CANAL AND DRAINAGE BILL.

The PRESIDENT moved for leave to introduce a Bill to consolidate and amend the law relating to Irrigation, Navigation, and Drainage in Northern India. He said that the reasons for this motion could be explained in a few words. Nearly a year ago, the Panjáb Canal and Drainage Act came into operation. It contained sections providing that, under certain circumstances and conditions, water-rates might be imposed on lands which, although irrigable, were not irrigated. These provisions had been disapproved by the Secretary of State, and although he had not disallowed the Act, since his objections only extended to these five or six sections, it was his wish that these sections should be repealed. Sir J. STRACHEY thought that it would be convenient to reserve for a future stage of the Bill any remarks which he might wish to make in regard to the general principle on which the provisions in question had been based. He would now only say for himself personally, that while he believed that principle to be thoroughly sound, he thought that every one must admit that the particular provisions, which the Council was invited to repeal, were unworkable in practice. He should therefore see with very little regret their disappearance from the statute book. He would say nothing further now regarding their merits or demerits.

It would be convenient to take this opportunity of re-enacting the rest of the law, to which no objection had been made by the Secretary of State, and of making it applicable not only to the Panjáb, but to other parts of Northern India. This would be in complete accordance with the wishes of the Lieutenant-Governor of the North-Western Provinces, and with the views of the Secretary of State. Although a few slight modifications of the Act might be desirable, Sir J. STRACHEY believed that, when the sections to which he had referred were omitted, there would remain no differences of opinion on any question of much importance; and he hoped that the Council would find that the amendment and extension of the Act would be little more than a formal matter, requiring little or no further discussion.

The Motion was put and agreed to.

ACT X. OF 1859 AMENDMENT BILL.

The Honourable Mr. HOBHOUSE moved for leave to introduce a Bill for the further amendment of Act No. X. of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal). He said that the object of this Bill was to remedy a practical inconvenience of great magnitude arising from the recent discovery that a course of practice pursued under Act X. of 1859 was not in accordance with law. Mr. HOBHOUSE gave the Council credit for knowing much better than himself the scope of the Act; how it governed in the North-West Provinces and in part of the Lower Provinces all questions relating to rent, and incidentally established a registry of title, so that a vast number of private rights were ascertained and defined under it. It was hardly an exaggeration to say that it was one of the most important Acts in the statute book relating to property, and that if the proceedings under it were not well founded in law, innumerable titles would be disturbed.

The present question arose in this way. The Act committed judicial power to the Collectors of Districts, and then, by section one hundred and fifty, it provided that all the powers vested in the Collector by the preceding sections might be exercised by any Deputy Collector "placed in charge of any Sub-Division of a District." What was the practice previous to the Act, Mr. HOBHOUSE had not inquired. But since its passing, it had been the constant practice for the Collectors to assign specified tracts of country to the Deputy Collectors. These tracts were naturally considered 'Sub-divisions' within the meaning of the Act, and the Deputy Collectors exercised jurisdiction accordingly. That practice had gone on continuously up to the present time. Recently, however, on an appeal from the decision of a Deputy Collector, it had occurred to the appellant to take an exception to his jurisdiction, on the ground that the tract within which he administered the law was not technically a sub-division. The High Court took this view, and declared the decision null and void. The principle of this judgment must affect all similar cases, and, in fact, vitiated nearly the whole practice under the Act. Here was obviously a *dignus*

vindice nodus in cutting which the Legislature was bound to intervene. The case had two aspects,—one as regards the past, the other as regards the future. As regards the past, there could be no question, that it was the duty of the Legislature to legalise a consistent and uniform course of practice followed in perfect good faith, of which nobody complained, and on the legality of which numberless titles to property depended. As regarded the future, the matter was, at the first blush, not quite so clear, because there existed the decision of the highest Court of Appeal in the Province, to the effect that the existing practice was illegal. It was hardly necessary to say that he being a man whose whole working life had been spent in Courts of Justice, entertained great respect for their proceedings. He did not consider it by any means a matter of course for a Legislature to interfere with judicial declarations of law, merely because some of their consequences might be inconvenient. And if he found that the Judges objected to a particular practice, because it violated some general legal principle, or because it was productive of injustice, or even because it was a clear departure from the meaning of the Act, and set up some different system from that intended by the Act, he would think it right to hesitate much, and to be very clearly convinced of the necessity of the case before legislating in a sense opposed to the opinion of the Judges.

With these feelings he thought it his duty to look very carefully into the judgment, and he confessed to feeling some disappointment and much relief. It was disappointing to find no full or clear statement of the reasons which led the Court to so grave a judicial act as the upsetting of a constant and uniform practice not at variance with the popular or grammatical meaning of the words used by the Act. It was, however, a relief to find that the Judges did not dissent from the practice for any of the grave reasons before adverted to; but that they would have been quite content to uphold it if they had thought that the wording of the Act permitted them to do so. The Council ought to be satisfied on this point, and, therefore, he would refer to the judgments rather more in detail. But he wished to premise that it was no part of his business or of his intention to criticise the judgments from any legal point of view, or to examine whether they were right or wrong. He examined them for the purpose of drawing from them such instruction as could be got.

The Chief Justice, after shortly stating the nature of the case, said—

"In a general way, of course, every tahsildári, every pargana, any taluká, a munsifi, a tháná, a mauzá, may be said to be a sub-division of a District. A cluster of mauzás formed by the Collector at his discretion might likewise be called a sub-division."

The Council would therefore see that the tracts assigned to Deputy Collectors fell within the grammatical and popular meaning of the word "Sub-division." The Chief Justice then stated:—

"The question is whether the sub-division spoken of in the Act is such a sub-division adopted by a Collector for the purpose of distributing the business of the districts among his subordinates in a convenient manner, and liable to be changed from time to time at his discretion, or is a permanent sub-division which has been established and placed under the charge of a separate officer, by the authority of the Government; as, for instance, Pilibhit in the Bareilly District, or Kirwá in the Banda District."

That was a very clear statement of the question, and then come the reasons which guided the judgment of the Court. They were expressed in these few words:—"The latter appears to be the sub-division contemplated by law."

Mr. Justice Pearson concurred with the Chief Justice, and mentioned two subsequent Acts, one being the new Code of Criminal Procedure, which had not yet come into operation, as throwing light upon the meaning of the word 'sub-division' in the Act X. of 1859.

The Council would perceive from the tenor of these judgments that the practice did not violate any legal principle, that it did not work any practical injustice, and that it was not in disregard of any alternative system clearly contemplated by the Act. The reasons which controlled the Court appeared to have been solely of a technical kind, leading it to the conclusion that the word 'sub-division' was not an apt word to express the particular tracts which had been committed to the Deputy Collectors.

The case, then, was one which was relieved of all difficulties in point of substance, and in which the Legislature might, so far as any judicial objection was concerned, feel itself free to follow whatever course was dictated by convenience. What course, then, was most convenient? Clearly to support the existing practice and to allow people to transact their business in the way to which they were accustomed. He proposed, therefore, to introduce a Bill, the primary object of which would be to declare that actual subdivisions were legal sub-divisions; and that the popular and grammatical import of the word and that which had hitherto been accepted was, its true and legal import. He anticipated no disapproval of this course from the Judges. On the contrary, he hoped they would give their best assistance in making the law clear and in preventing the recurrence of such a disaster as had happened to Act X. of 1859.

The Government of the North-Western Provinces had suggested some other alterations of detail in the Act which he would not then discuss, as the Bill must be referred to a Select Committee. As regarded time, he hoped there would be no necessity for pressing on the Bill out of due course. But it was impossible to tell what might happen. Sometimes an unexpected decision of this kind, affecting multitudes of private properties, produced a sudden and rank crop of litigation; and if such proved to be the case in the present instance, it might be the duty of the Legislature to act with the utmost speed of which it was capable.

The Motion was put and agreed to.

SEPOY LUNATICS BILL.

Major-General the Honourable H. W. NORMAN presented the report of the Select Committee on the Bill to provide for the admission of Native Military Lunatics into Asylums.

CODE OF CRIMINAL PROCEDURE POSTPONEMENT BILL.

The Honourable Mr. HOBHOUSE introduced the Bill to postpone the commencement of Act No. X. of 1872 (*for regulating the procedure of the Courts of Criminal Judicature*). He said that on moving for leave to introduce the Bill, he had assigned reasons which he need not now repeat. Since then it had so happened that through a devious path, that of the Financial Department, some fresh proof of the expediency of a little delay had been given. It appeared that the Government Translator in Bombay petitioned for larger allowances, the reason being the enormous pressure of work created by the three Acts, which had necessitated the employment of an extra number of skilled hands. Of these Acts the Criminal Procedure Code was particularly specified as being onerous; and it was stated that with all extra assistance the work could only just be done in time. Now if the translations were only just done in time, it was pretty clear that they could not be read or digested by the Native judges and practitioners in due time.

The Honourable Mr. HOBHOUSE then applied to the President to suspend the Rules for the Conduct of Business, observing that from the nature of the Bill it was obvious that, to be useful, it must become law before the 1st September next, and that it would be convenient to allow a margin for public notice.

The PRESIDENT declared the Rules to be suspended.

The Honourable Mr. HOBHOUSE then moved that the Bill passed.

The Motion was put and agreed to.

EVIDENCE ACT AMENDMENT BILL.

The Honourable Mr. HOBHOUSE moved for leave to introduce a Bill to amend the Indian Evidence Act, 1872. He said that the object of this Bill was to amend some defects to which attention had been called by the Legislative Department, and which were owing to a very common incident attending the passing of new Acts, namely, the total repeal of prior Acts of which it was intended to re-enact large portions, and the omission of some of those portions from the new Act. He would only mention in detail the most important point. This related to the power of administering an oath. Act I. of 1872, repealed the whole of Act XV. of 1852. One of the sections of the Act of 1852 contained the authority on which most of the High Courts in India and Commissioners, Arbitrators, and other persons acting in suits depending before them, administered oaths to witnesses. By an accident the section had not been re-enacted. Mr. HOBHOUSE had no such knowledge of the Indian Statute-book as would enable him to say of his own authority that such a power to administer oaths did not somewhere exist. But the Secretary had assured him that he could not find any such, so far at least as regarded Commissioners and Arbitrators, and Mr. HOBHOUSE thought that the Council might rely on this assurance. If such a power of administering oaths to witnesses was suspended for a single day, it might cause great disturbance of the course of the justice. And even if doubt hung over such a point, it might be very embarrassing.

The opportunity had been taken to make corrections of few other errors, being clerical, or typographical, or mere slips in drafting, but he would not now enlarge upon them, as the Bill, he hoped, would be published with a full statement of Objects and Reasons, and would, he trusted, be referred to a Select Committee.

The Honourable Mr. HOBHOUSE then applied to the President to suspend the Rules for the Conduct of Business.

The PRESIDENT declared the Rules suspended.

The Honourable Mr. HOBHOUSE then introduced the Bill, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

DEFINITION OF "COIN" AMENDMENT BILL.

The Honourable Mr. HOBHOUSE presented the Report of the Select Committee on the Bill to amend the definition of Coin contained in the Indian Penal Code.

The following Select Committee was named :—

On the Bill to amend the Indian Evidence Act, 1872—The Honourable Sir John Strachey, the Honourable Messrs. Bayley and Egerton and the Mover.

The Council then adjourned till the 29th August 1872.

WHITLEY STOKES,

Secretary to the Government of India.

Simla, the 15th August 1872.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Extract from the Proceedings of the Governor of Bombay in the Legislative Department is published for general information :—

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 Puna on Friday, the 9th August 1872, at mid-day.

P R E S E N T :—

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

The Honourable H. P. ST. G. TUCKER.

The Honourable A. ROGERS.

The Honourable the ACTING ADVOCATE GENERAL.

The Honourable MUNGULDASS NUTHOOBHoy, C.S.I.

The Honourable Colonel M. K. KENNEDY.

The Honourable E. W. RAVENSCROFT.

The Honourable J. A. FORBES.

The Honourable NARAYEN WASUDEVJEE.

The following gentlemen took the usual affirmation of Office, &c., taken by Additional Members of Council, of office and declaration of allegiance to Her Majesty :—

The Honourable MUNGULDASS NUTHOOBHoy, C.S.I.

The Honourable Colonel M. K. KENNEDY.

The Honourable J. A. FORBES.

The Honourable NARAYEN WASUDEVJEE.

The Honourable Mr. TUCKER, in moving the re-appointment on the Select Committee appointed to consider and report on the Bombay Municipal Bill (No. 3 of 1872) of the Honourable Colonel KENNEDY and the Honourable Messrs. MUNGULDASS NUTHOOBHoy and FORBES, stated that he did not propose the nomination on the Select Committee of any of the gentlemen now appointed for the first time to be Additional Members of the Council, as the Committee had already accomplished more than one-third of its work, and if any new members were added to the Committee it would probably be necessary to recommence the duty and go through the Bill again from the beginning.

The Motion was carried.

The Council then adjourned.

By order of His Excellency the Governor in Council,

J. NUGENT,

Acting Under-Secretary to Government.

Puna, 9th August 1872.